

109TH CONGRESS
2^D SESSION

H. R. 5252

AN ACT

To promote the deployment of broadband networks and
services.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

1 **SECTION 1. SHORT TITLE; TABLE OF CONTENTS.**

2 (a) **SHORT TITLE.**—This Act may be cited as the
 3 “Communications Opportunity, Promotion, and Enhance-
 4 ment Act of 2006”.

5 (b) **TABLE OF CONTENTS.**—

Sec. 1. Short title; table of contents.

TITLE I—NATIONAL CABLE FRANCHISING

Sec. 101. National cable franchising.
 Sec. 102. Definitions.
 Sec. 103. Monitoring and reporting.
 Sec. 104. Rule of construction.

TITLE II—ENFORCEMENT OF BROADBAND POLICY STATEMENT

Sec. 201. Enforcement of broadband policy statement.

TITLE III—VOIP/911

Sec. 301. Emergency services; interconnection.
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TITLE IV—MUNICIPAL PROVISION OF SERVICES

Sec. 401. Government authority to provide services.

TITLE V—BROADBAND SERVICE

Sec. 501. Stand-alone broadband service.
 Sec. 502. Study of interference potential of broadband over power line systems.

TITLE VI—SEAMLESS MOBILITY

Sec. 601. Development of seamless mobility.

6 **TITLE I—NATIONAL CABLE**
 7 **FRANCHISING**

8 **SEC. 101. NATIONAL CABLE FRANCHISING.**

9 (a) **AMENDMENT.**—Part III of title VI of the Com-
 10 munications Act of 1934 (47 U.S.C. 541 et seq.) is
 11 amended by adding at the end the following new section:

12 **“SEC. 630. NATIONAL CABLE FRANCHISING.**

13 **“(a) NATIONAL FRANCHISES.**—

1 “(1) ELECTION.—A person or group that is eli-
2 gible under subsection (d) may elect to obtain a na-
3 tional franchise under this section as authority to
4 provide cable service in a franchise area in lieu of
5 any other authority under Federal, State, or local
6 law to provide cable service in such franchise area.
7 A person or group may not provide cable service
8 under the authority of this section in a franchise
9 area unless such person or group has a franchise
10 under this section that is effective with respect to
11 such franchise area. A franchising authority may not
12 require any person or group that has a national
13 franchise under this section in effect with respect to
14 a franchise area to obtain a franchise under section
15 621 or any other law to provide cable service in such
16 franchise area.

17 “(2) CERTIFICATION.—To obtain a national
18 franchise under this section as authority to provide
19 cable service in a franchise area, a person or group
20 shall—

21 “(A) file with the Commission a certifi-
22 cation for a national franchise containing the
23 information required by paragraph (3) with re-
24 spect to such franchise area, if such person or

1 group has not previously obtained a national
2 franchise; or

3 “(B) file with the Commission a subse-
4 quent certification for additional franchise areas
5 containing the information required by para-
6 graph (3) with respect to such additional fran-
7 chise areas, if such person or group has pre-
8 viously obtained a national franchise.

9 “(3) CONTENTS OF CERTIFICATION.—Such cer-
10 tification shall be in such form as the Commission
11 shall require by regulation and shall contain—

12 “(A) the name under which such person or
13 group is offering or intends to offer cable serv-
14 ice;

15 “(B) the names and business addresses of
16 the directors and principal executive officers, or
17 the persons performing similar functions, of
18 such person or group;

19 “(C) the location of such person or group’s
20 principal business office;

21 “(D) the name, business address, elec-
22 tronic mail address, and telephone and fax
23 number of such person or group’s local agent;

24 “(E) a declaration by such person or group
25 that such person or group is eligible under sub-

1 section (d) to obtain a national franchise under
2 this section;

3 “(F) an identification of each franchise
4 area in which such person or group seeks au-
5 thority to offer cable service pursuant to such
6 certification, which franchise area shall be—

7 “(i) the entirety of a franchise area in
8 which a cable operator is, on the date of
9 the filing of such certification, authorized
10 to provide cable service under section 621
11 or any other law (including this section);
12 or

13 “(ii) a geographic area that covers the
14 entirety of the jurisdiction of a unit of gen-
15 eral local government, except that—

16 “(I) if the geographic area over-
17 laps with a franchise area in which a
18 cable operator is, on such date, au-
19 thorized to provide cable service under
20 section 621 or any other law, the geo-
21 graphic area identified in the certifi-
22 cation under this clause as a franchise
23 area shall not include the overlapping
24 area; and

1 “(II) if such geographic area in-
2 cludes areas that are, respectively,
3 within the jurisdiction of different
4 franchising authorities, the certifi-
5 cation shall specify each such area as
6 a separate franchise area;

7 “(G) a declaration that such person or
8 group transmitted, or will transmit on the day
9 of filing such declaration, a copy of such certifi-
10 cation to the franchising authority for each
11 franchise area for which such person or group
12 is filing a certification for authority to offer
13 cable service under this section;

14 “(H) a declaration by the person or group
15 that the person or group will comply with the
16 rights-of-way requirements of the franchising
17 authority in accordance with subsection (f); and

18 “(I) a declaration by the person or group
19 that—

20 “(i) the person or group will comply
21 with all Commission consumer protection
22 and customer service rules under section
23 632(b) (including the rules adopted under
24 section 632(b) pursuant to subsection (g)
25 of this section); and

1 “(ii) the person or group agrees that
2 such standards may be enforced by the
3 Commission or by the franchising author-
4 ity in accordance with subsection (g) of
5 this section.

6 “(4) LOCAL NOTIFICATION; PRESERVATION OF
7 OPPORTUNITY TO NEGOTIATE.—

8 “(A) COPY TO FRANCHISING AUTHOR-
9 ITY.—On the day of filing any certification
10 under paragraph (2)(A) or (B) for a franchise
11 area, the person or group shall transmit a copy
12 of such certification to the franchising authority
13 for such area.

14 “(B) NEGOTIATED FRANCHISE AGREE-
15 MENTS PERMITTED.—Nothing in this section
16 shall prevent a person or group from negoti-
17 ating a franchise agreement or any other au-
18 thority to provide cable service in a franchise
19 area under section 621 or any other law. Upon
20 entry into any such negotiated franchise agree-
21 ment, such negotiated franchise agreement shall
22 apply in lieu of any national franchise held by
23 that person or group under this section for such
24 franchise area.

1 “(5) UPDATING OF CERTIFICATIONS.—A person
2 or group with a certification under this section shall
3 update any information contained in such certifi-
4 cation that is no longer accurate and correct.

5 “(6) PUBLIC AVAILABILITY OF CERTIFI-
6 CATIONS.—The Commission shall provide for the
7 public availability on the Commission’s Internet
8 website or other electronic facility of all current cer-
9 tifications filed under this section.

10 “(b) EFFECTIVENESS; DURATION.—

11 “(1) EFFECTIVENESS.—A national franchise
12 under this section shall be effective with respect to
13 any franchise area 30 days after the date of the fil-
14 ing of a completed certification under subsection
15 (a)(2)(A) or (B) that applies to such franchise area.

16 “(2) DURATION.—

17 “(A) IN GENERAL.—A franchise under this
18 section that applies to a franchise area shall be
19 effective for that franchise area for a term of
20 10 years.

21 “(B) RENEWAL.—A franchise under this
22 section for a franchise area shall be renewed
23 automatically upon expiration of the 10-year
24 period described in subparagraph (A).

1 “(C) PUBLIC HEARING.—At the request of
2 a franchising authority in a franchise area, a
3 cable operator authorized under this section to
4 provide cable service in such franchise area
5 shall, within the last year of the 10-year period
6 applicable under subparagraph (A) to the cable
7 operator’s franchise for such franchise area,
8 participate in a public hearing on the cable op-
9 erator’s performance in the franchise area, in-
10 cluding the cable operator’s compliance with the
11 requirements of this title. The hearing shall af-
12 ford the public the opportunity to participate
13 for the purpose of identifying cable-related com-
14 munity needs and interests and assessing the
15 operator’s performance. The cable operator
16 shall provide notice to its subscribers of the
17 hearing at least 30 days prior to the hearing.
18 The Commission shall by rule specify the meth-
19 ods by which a franchising authority shall no-
20 tify a cable operator of the hearing for which its
21 participation is required under this subpara-
22 graph.

23 “(D) REVOCATION.—A franchise under
24 this section for a franchise area may be revoked
25 by the Commission—

1 “(i) for willful or repeated violation of
2 any Federal or State law, or any Commis-
3 sion regulation, relating to the provision of
4 cable service in such franchise area;

5 “(ii) for false statements or material
6 omissions knowingly made in any filing
7 with the Commission relating to the provi-
8 sion of cable service in such franchise area;

9 “(iii) for willful or repeated violation
10 of the rights-of-way management laws or
11 regulations of any franchising authority in
12 such franchise area relating to the provi-
13 sion of cable service in such franchise area;
14 or

15 “(iv) for willful or repeated violation
16 of the antidiscrimination requirement of
17 subsection (h) with respect to such fran-
18 chise area.

19 “(E) NOTICE.—The Commission shall
20 send a notice of such revocation to each fran-
21 chising authority with jurisdiction over the
22 franchise areas for which the cable operator’s
23 franchise was revoked.

24 “(F) REINSTATEMENT.—After a revoca-
25 tion under subparagraph (D) of a franchise for

1 a franchise area of any person or group , the
2 Commission may refuse to accept for filing a
3 new certification for authority of such person or
4 group to provide cable service under this section
5 in such franchise area until the Commission de-
6 termines that the basis of such revocation has
7 been remedied.

8 “(G) RETURN TO LOCAL FRANCHISING IF
9 CABLE COMPETITION CEASES.—

10 “(i) If only one cable operator is pro-
11 viding cable service in a franchise area,
12 and that cable operator obtained a national
13 franchise for such franchise area under
14 subsection (d)(2), the franchising authority
15 for such franchise area may file a petition
16 with the Commission requesting that the
17 Commission terminate such national fran-
18 chise for such franchise area.

19 “(ii) The Commission shall provide
20 public notice and opportunity to comment
21 on such petition. If it finds that the re-
22 quirements of clause (i) are satisfied, the
23 Commission shall issue an order granting
24 such petition. Such order shall take effect
25 one year from the date of such grant, if no

1 other cable operator offers cable service in
2 such area during that one year. If another
3 cable operator does offer cable service in
4 such franchise area during that one year,
5 the Commission shall rescind such order
6 and dismiss such petition.

7 “(iii) A cable operator whose national
8 franchise is terminated for such franchise
9 area under this subparagraph may obtain
10 new authority to provide cable service in
11 such franchise area under this section, sec-
12 tion 621, or any other law, if and when eli-
13 gible.

14 “(c) REQUIREMENTS OF NATIONAL FRANCHISE.—A
15 national franchise shall contain the following require-
16 ments:

17 “(1) FRANCHISE FEE.—A cable operator au-
18 thorized under this section to provide cable service
19 in a franchise area shall pay to the franchising au-
20 thority in such franchise area a franchise fee of up
21 to 5 percent (as determined by the franchising au-
22 thority) of such cable operator’s gross revenues from
23 the provision of cable service under this section in
24 such franchise area. Such payment shall be assessed
25 and collected in a manner consistent with section

1 622 and the definitions of gross revenues and fran-
2 chise fee in this section.

3 “(2) PEG/I-NET REQUIREMENTS.—A cable op-
4 erator authorized under this section to provide cable
5 service in a franchise area shall comply with the re-
6 quirements of subsection (e).

7 “(3) RIGHTS-OF-WAY.—A cable operator au-
8 thorized under this section to provide cable service
9 in a franchise area shall comply with the rights-of-
10 way requirements of the franchising authority under
11 subsection (f).

12 “(4) CONSUMER PROTECTION AND CUSTOMER
13 SERVICE STANDARDS.—A cable operator authorized
14 under this section to provide cable service in a fran-
15 chise area shall comply with the consumer protection
16 and customer service standards established by the
17 Commission under section 632(b).

18 “(5) CHILD PORNOGRAPHY.—A cable operator
19 authorized under this section to provide cable service
20 in a franchise area shall comply with the regulations
21 on child pornography promulgated pursuant to sub-
22 section (i).

23 “(d) ELIGIBILITY FOR NATIONAL FRANCHISES.—
24 The following persons or groups are eligible to obtain a
25 national franchise under this section:

1 “(1) COMMENCEMENT OF SERVICE AFTER EN-
2 ACTMENT.—A person or group that is not providing
3 cable service in a franchise area on the date of en-
4 actment of this section under section 621 or any
5 other law may obtain a national franchise under this
6 section to provide cable service in such franchise
7 area.

8 “(2) EXISTING PROVIDERS OF CABLE SERV-
9 ICE.—A person or group that is providing cable
10 service in a franchise area on the date of enactment
11 of this section under section 621 or any other law
12 may obtain a franchise under this section to provide
13 cable service in such franchise area if, on the date
14 that the national franchise becomes effective, an-
15 other person or group is providing cable service
16 under this section, section 621, or any other law in
17 such franchise area.

18 “(e) PUBLIC, EDUCATIONAL, AND GOVERNMENTAL
19 USE.—

20 “(1) IN GENERAL.—Subject to paragraph (3), a
21 cable operator with a national franchise for a fran-
22 chise area under this section shall provide channel
23 capacity for public, educational, and governmental
24 use that is not less than the channel capacity re-
25 quired of the cable operator with the most sub-

1 scribers in such franchise area on the effective date
2 of such national franchise. If there is no other cable
3 operator in such franchise area on the effective date
4 of such national franchise, or there is no other cable
5 operator in such franchise area on such date that is
6 required to provide channel capacity for public, edu-
7 cational, and governmental use, the cable operator
8 shall provide the amount of channel capacity for
9 such use as determined by Commission rule.

10 “(2) PEG AND I-NET FINANCIAL SUPPORT.—A
11 cable operator with a national franchise under this
12 section for a franchise area shall pay an amount
13 equal to 1 percent of the cable operator’s gross reve-
14 nues (as such term is defined in this section) in the
15 franchise area to the franchising authority for the
16 support of public, educational, and governmental use
17 and institutional networks (as such term is defined
18 in section 611(f)). Such payment shall be assessed
19 and collected in a manner consistent with section
20 622, including the authority of the cable operator to
21 designate that portion of a subscriber’s bill attrib-
22 utable to such payment. A cable operator that pro-
23 vided cable service in a franchise area on the date
24 of enactment of this section and that obtains a na-
25 tional franchise under this section shall continue to

1 provide any institutional network that it was re-
2 quired to provide on the day before its national fran-
3 chise became effective in such franchise area under
4 section 621 or any other law. Notwithstanding sec-
5 tion 621(b)(3)(D), a franchising authority may not
6 require a cable operator franchised under this sec-
7 tion to construct a new institutional network.

8 “(3) ADJUSTMENT.—Every 10 years after the
9 commencement of a franchise under this section for
10 a franchise area, a franchising authority may require
11 a cable operator authorized under such franchise to
12 increase the channel capacity designated for public,
13 educational, or governmental use, and the channel
14 capacity designated for such use on any institutional
15 networks required under paragraph (2). Such in-
16 crease shall not exceed the higher of—

17 “(A) one channel; or

18 “(B) 10 percent of the public, educational,
19 or governmental channel capacity required of
20 that operator prior to the increase.

21 “(4) TRANSMISSION AND PRODUCTION OF PRO-
22 GRAMMING.—

23 “(A) A cable operator franchised under
24 this section shall ensure that any public, edu-
25 cational, or governmental programming carried

1 by the cable operator under this section within
2 a franchise area is available to all of its sub-
3 scribers in such franchise area.

4 “(B) The production of any programming
5 provided under this subsection shall be the re-
6 sponsibility of the franchising authority.

7 “(C) A cable operator franchised under
8 this section shall be responsible for the trans-
9 mission from the signal origination point (or
10 points) of the programming, or from the point
11 of interconnection with another cable operator
12 under subparagraph (D), to the cable operator’s
13 subscribers, of any public, educational, or gov-
14 ernmental programming produced by or for the
15 franchising authority and carried by the cable
16 operator pursuant to this section.

17 “(D) Unless two cable operators otherwise
18 agree to the terms for interconnection and cost
19 sharing, such cable operators shall, if at least
20 one of the operators is providing cable service
21 in the franchise area pursuant to a franchise
22 under this section, comply with regulations pre-
23 scribed by the Commission providing for—

24 “(i) the interconnection between two
25 cable operators in a franchise area for

1 transmission of public, educational, or gov-
2 ernmental programming, without material
3 deterioration in signal quality or
4 functionality; and

5 “(ii) the reasonable allocation of the
6 costs of such interconnection between such
7 cable operators.

8 “(E) A cable operator shall display the
9 program information for public, educational, or
10 governmental programming carried under this
11 subsection in any print or electronic program
12 guide in the same manner in which it displays
13 program information for other video program-
14 ming in the franchise area. The cable operator
15 shall not omit such public, educational, or gov-
16 ernmental programming from any navigational
17 device, guide, or menu containing other video
18 programming that is available to subscribers in
19 the franchise area.

20 “(f) RIGHTS-OF-WAY.—

21 “(1) AUTHORITY TO USE.—Any franchise under
22 this section for a franchise area shall be construed
23 to authorize the construction of a cable system over
24 public rights-of-way, and through easements, which
25 is within the area to be served by the cable system

1 and which have been dedicated for compatible uses,
2 except that in using such easements the cable oper-
3 ator shall ensure that—

4 “(A) the safety, functioning, and appear-
5 ance of the property and the convenience and
6 the safety of other persons not be adversely af-
7 fected by the installation or construction of fa-
8 cilities necessary for a cable system;

9 “(B) the cost of the installation, construc-
10 tion, operation, or removal of such facilities be
11 borne by the cable operator or subscriber, or a
12 combination of both; and

13 “(C) the owner of the property be justly
14 compensated by the cable operator for any dam-
15 ages caused by the installation, construction,
16 operation, or removal of such facilities by the
17 cable operator.

18 “(2) MANAGEMENT OF PUBLIC RIGHTS-OF-
19 WAY.—Nothing in this section affects the authority
20 of a State or local government (including a fran-
21 chising authority) over a person or group in their ca-
22 pacity as a cable operator with a franchise under
23 this section to manage, on a reasonable, competi-
24 tively neutral, and non-discriminatory basis, the pub-
25 lic rights-of-way, and easements that have been dedi-

1 cated for compatible uses. A State or local govern-
2 ment (including a franchising authority) may, on a
3 reasonable, competitively neutral, and non-discrimi-
4 natory basis—

5 “(A) impose charges for such management;
6 and

7 “(B) require compliance with such man-
8 agement, such charges, and paragraphs (1)(A),
9 (B), and (C).

10 “(g) CONSUMER PROTECTION AND CUSTOMER SERV-
11 ICE.—

12 “(1) NATIONAL STANDARDS.—Notwithstanding
13 section 632(d), no State or local law (including any
14 regulation) shall impose on a cable operator fran-
15 chised under this section any consumer protection or
16 customer service requirements other than consumer
17 protection or customer service requirements of gen-
18 eral applicability.

19 “(2) PROCEEDING.—Within 120 days after the
20 date of enactment of this section, the Commission
21 shall issue a report and order that updates for cable
22 operators franchised under this section the national
23 consumer protection and customer service rules
24 under section 632(b), taking into consideration the
25 national nature of a franchise under this section and

1 the role of State and local governments in enforcing,
2 but not creating, consumer protection and customer
3 service standards for cable operators franchised
4 under this section.

5 “(3) REQUIREMENTS OF NEW RULES.—

6 “(A) Such rules shall, in addition to the
7 requirements of section 632(b), address, with
8 specificity, no less than the following consumer
9 protection and customer service issues:

10 “(i) Billing, billing disputes, and dis-
11 continuation of service, including when and
12 how any late fees may be assessed (but not
13 the amount of such fees).

14 “(ii) Loss of service or service quality.

15 “(iii) Changes in channel lineups or
16 other cable services and features.

17 “(iv) Availability of parental control
18 options.

19 “(B) The Commission’s revised consumer
20 protection rules shall provide for forfeiture pen-
21 alties, or customer rebates, refunds or credits,
22 or both, and shall establish forfeiture, rebate,
23 refund, and credit guidelines with respect to
24 violations of such rules. Such guidelines shall—

1 “(i) provide for increased forfeiture
2 penalties for repeated violations of the
3 standards in such rules; and

4 “(ii) establish procedures by which
5 any forfeiture penalty assessed by the
6 Commission under this subsection shall be
7 paid by the cable operator directly to the
8 franchising authority affected by the viola-
9 tion.

10 “(4) COMPLAINTS.—

11 “(A) IN GENERAL.—Any person may file a
12 complaint with respect to an alleged violation of
13 the Commission’s revised consumer protection
14 rules in a franchise area by a cable operator
15 franchised under this section—

16 “(i) with the franchising authority in
17 such area; or

18 “(ii) with the Commission.

19 “(B) LOCAL FRANCHISING AUTHORITY
20 PROCEDURE.—On its own motion or at the re-
21 quest of any person, a franchising authority for
22 a franchise area may—

23 “(i) initiate its own complaint pro-
24 ceeding with respect to such an alleged vio-
25 lation; or

1 “(ii) file a complaint with the Com-
2 mission regarding such an alleged viola-
3 tion.

4 “(C) TIMING.—The Commission or the
5 franchising authority conducting a proceeding
6 under this paragraph shall render a decision on
7 any complaint filed under this paragraph within
8 90 days of its filing.

9 “(5) LOCAL FRANCHISING ORDERS.—

10 “(A) REQUIRING COMPLIANCE.—In a pro-
11 ceeding commenced by a franchising authority,
12 a franchising authority may issue an order re-
13 quiring compliance with the Commission’s re-
14 vised consumer protection rules, but a fran-
15 chising authority may not create any new
16 standard or regulation, or expand upon or mod-
17 ify the Commission’s revised consumer protec-
18 tion rules.

19 “(B) ACCESS TO RECORDS.—In such a
20 proceeding, the franchising authority may issue
21 an order requiring the filing of any data, docu-
22 ments, or records (including any contract,
23 agreement, or arrangement between the sub-
24 scriber and the cable operator) that are directly
25 related to the alleged violation.

1 “(C) COST OF FRANCHISING AUTHORITY
2 ORDERS.—A franchising authority may charge
3 a cable operator franchised under this section a
4 nominal fee to cover the costs of issuing orders
5 under this paragraph.

6 “(6) COMMISSION REMEDIES; APPEALS.—

7 “(A) REMEDIES.—An order of a fran-
8 chising authority under this subsection shall be
9 enforced by the Commission under this Act if—

10 “(i) the order is not appealed to the
11 Commission;

12 “(ii) the Commission does not agree
13 to grant review during the 30-day period
14 described in subparagraph (B); or

15 “(iii) the order is sustained on appeal
16 by the Commission.

17 “(B) APPEALS.—Any party may file a no-
18 tice of appeal of an order of a franchising au-
19 thority under this subsection with the Commis-
20 sion, and shall transmit a copy of such notice
21 to the other parties to the franchising authority
22 proceeding. Such appeal shall be deemed denied
23 at the end of the 30-day period beginning on
24 the date of the filing unless the Commission

1 agrees within such period to grant review of the
2 appeal.

3 “(C) TIMING.—After the filing of a notice
4 of appeal under subparagraph (B), if such no-
5 tice is not denied by operation of such subpara-
6 graph, the Commission shall render a decision
7 within 90 days of such filing.

8 “(7) ANNUAL REPORT.—

9 “(A) IN GENERAL.—Not later than 1 year
10 after the date of enactment of this section, and
11 annually thereafter, the Commission shall sub-
12 mit a report to the Committee on Energy and
13 Commerce of the House of Representatives and
14 the Committee on Commerce, Science, and
15 Transportation of the Senate on the implemen-
16 tation of this subsection, including the fol-
17 lowing:

18 “(i) The number of complaints filed
19 with franchising authorities under clause
20 (4)(A)(i).

21 “(ii) Any trends concerning com-
22 plaints, such as increases in the number of
23 particular types of complaints or in new
24 types of complaints.

1 “(iii) The timeliness of the response
2 of such franchising authorities and the re-
3 sults of the complaints filed with such
4 franchising authorities, if not appealed to
5 the Commission.

6 “(iv) The number of complaints filed
7 with the Commission under clause
8 (4)(A)(ii).

9 “(v) The number of appeals filed with
10 the Commission under paragraph (6)(B)
11 and the number of such appeals which the
12 Commission agreed to hear.

13 “(vi) The timeliness of the Commis-
14 sion’s responses to such complaints and
15 appeals.

16 “(vii) The results of such complaints
17 and appeals filed with the Commission.

18 “(B) SUBMISSION OF INFORMATION BY
19 FRANCHISING AUTHORITIES.—The Commission
20 may request franchising authorities to submit
21 information about the complaints filed with the
22 franchising authorities under subparagraph
23 (4)(A)(i), including the number of such com-
24 plaints and the timeliness of the response and
25 the results of such complaints.

1 “(8) DEFINITION.—For purposes of this sub-
2 section, the term ‘Commission’s revised consumer
3 protection rules’ means the national consumer pro-
4 tection and customer service rules under section
5 632(b) as revised by the Commission pursuant to
6 paragraph (2) of this subsection.

7 “(h) ANTIDISCRIMINATION.—

8 “(1) PROHIBITION.—A cable operator with a
9 national franchise under this section to provide cable
10 service in a franchise area shall not deny access to
11 its cable service to any group of potential residential
12 cable service subscribers in such franchise area be-
13 cause of the income of that group.

14 “(2) ENFORCEMENT.—

15 “(A) COMPLAINT.—If a franchising au-
16 thority in a franchise area has reasonable cause
17 to believe that a cable operator is in violation
18 of this subsection with respect to such franchise
19 area, the franchising authority may, after com-
20 plying with subparagraph (B), file a complaint
21 with the Commission alleging such violation.

22 “(B) NOTICE BY FRANCHISING AUTHOR-
23 ITY.—Before filing a complaint with the Com-
24 mission under subparagraph (A), a franchising
25 authority—

1 “(i) shall give notice of each alleged
2 violation to the cable operator;

3 “(ii) shall provide a period of not less
4 than 30 days for the cable operator to re-
5 spond to such allegations; and

6 “(iii) during such period, may require
7 the cable operator to submit a written re-
8 sponse stating the reasons why the oper-
9 ator has not violated this subsection.

10 “(C) BIENNIAL REPORT.—A cable oper-
11 ator with a national franchise under this section
12 for a franchise area, not later than 180 days
13 after the effective date of such national fran-
14 chise, and biennially thereafter, shall submit a
15 report to the Commission and the franchising
16 authority in the franchise area—

17 “(i) identifying the geographic areas
18 in the franchise area where the cable oper-
19 ator offers cable service; and

20 “(ii) describing the cable operator’s
21 progress in extending cable service to other
22 areas in the franchise area.

23 “(D) NOTICE BY COMMISSION.—Upon re-
24 ceipt of a complaint under this paragraph alleg-
25 ing a violation of this subsection by a cable op-

1 erator, the Commission shall give notice of the
2 complaint to the cable operator.

3 “(E) INVESTIGATION.—In investigating a
4 complaint under this paragraph, the Commis-
5 sion may require a cable operator to disclose to
6 the Commission such information and docu-
7 ments as the Commission deems necessary to
8 determine whether the cable operator is in com-
9 pliance with this subsection. The Commission
10 shall maintain the confidentiality of any infor-
11 mation or document collected under this sub-
12 paragraph.

13 “(F) DEADLINE FOR RESOLUTION OF
14 COMPLAINTS.—Not more than 60 days after
15 the Commission receives a complaint under this
16 paragraph, the Commission shall issue a deter-
17 mination with respect to each violation alleged
18 in the complaint.

19 “(G) DETERMINATION.—If the Commis-
20 sion determines (in response to a complaint
21 under this paragraph or on its own initiative)
22 that a cable operator with a franchise under
23 this section to provide cable service in a fran-
24 chise area has denied access to its cable service
25 to a group of potential residential cable service

1 subscribers in such franchise area because of
2 the income of that group, the Commission shall
3 ensure that the cable operator extends access to
4 that group within a reasonable period of time.

5 “(H) REMEDIES.—

6 “(i) IN GENERAL.—This subsection
7 shall be enforced by the Commission under
8 titles IV and V.

9 “(ii) MAXIMUM FORFEITURE PEN-
10 ALTY.—For purposes of section 503, the
11 maximum forfeiture penalty applicable to a
12 violation of this subsection shall be
13 \$750,000 for each day of the violation.

14 “(iii) PAYMENT OF PENALTIES TO
15 FRANCHISING AUTHORITY.—The Commis-
16 sion shall order any cable operator subject
17 to a forfeiture penalty under this sub-
18 section to pay the penalty directly to the
19 franchising authority involved.

20 “(i) CHILD PORNOGRAPHY.—Not later than 180
21 days after the date of enactment of this section, the Com-
22 mission shall promulgate regulations to require a cable op-
23 erator with a national franchise under this section to pre-
24 vent the distribution of child pornography (as such term
25 is defined in section 254(h)(7)(F)) over its network.

1 “(j) LEASED ACCESS.—The provisions of section
2 612(i) regarding the carriage of programming from a
3 qualified minority programming source or from any quali-
4 fied educational programming source shall apply to a cable
5 operator franchised under this section to provide cable
6 service in a franchise area.

7 “(k) APPLICABILITY OF OTHER PROVISIONS.—The
8 provisions of this title that apply to a cable operator shall
9 apply in a franchise area to a person or group with a na-
10 tional franchise under this section to provide cable service
11 in such franchise area, except that the following sections
12 shall not apply in a franchise area to a person or group
13 franchised under this section in such franchise area, or
14 confer any authority to regulate or impose obligations on
15 such person or group in such franchise area: Sections
16 611(a), 611(b), 611(c), 613(a), 617, 621 (other than sub-
17 sections (b)(3)(A), (b)(3)(B), (b)(3)(C), and (c)), 624(b),
18 624(c), 624(h), 625, 626, 627, and 632(a).

19 “(l) EMERGENCY ALERTS.—Nothing in this section
20 shall be construed to prohibit a State or local government
21 from accessing the emergency alert system of a cable oper-
22 ator with a franchise under this section in the area served
23 by the State or local government to transmit local or re-
24 gional emergency alerts.

25 “(m) REPORTING, RECORDS, AND AUDITS.—

1 “(1) REPORTING.—A cable operator with a
2 franchise under this section to provide cable service
3 in a franchise area shall make such periodic reports
4 to the Commission and the franchising authority for
5 such franchise area as the Commission may require
6 to verify compliance with the fee obligations of sub-
7 sections (c)(1) and (e)(2).

8 “(2) AVAILABILITY OF BOOKS AND RECORDS.—
9 Upon request under paragraph (3) by a franchising
10 authority for a franchise area, and upon request by
11 the Commission, a cable operator with a national
12 franchise for such franchise area shall make avail-
13 able its books and records to periodic audit by such
14 franchising authority or the Commission, respec-
15 tively.

16 “(3) FRANCHISING AUTHORITY AUDIT PROCEDURE.—A franchising authority may, upon reason-
17 able written request, but no more than once in any
18 12-month period, review the business records of such
19 cable operator to the extent reasonably necessary to
20 ensure payment of the fees required by subsections
21 (c)(1) and (e)(2). Such review may include the meth-
22 odology used by such cable operator to assign por-
23 tions of the revenue from cable service that may be
24 bundled or functionally integrated with other serv-
25

1 ices, capabilities, or applications. Such review shall
2 be conducted in accordance with procedures estab-
3 lished by the Commission.

4 “(4) COST RECOVERY.—

5 “(A) To the extent that the review under
6 paragraph (3) identifies an underpayment of an
7 amount meeting the minimum percentage speci-
8 fied in subparagraph (B) of the fee required
9 under subsection (c)(1) or (c)(2) for the period
10 of review, the cable operator shall reimburse the
11 franchising authority the reasonable costs of
12 any such review conducted by an independent
13 third party, as determined by the Commission,
14 with respect to such fee. The costs of any con-
15 tingency fee arrangement between the fran-
16 chising authority and the independent reviewer
17 shall not be subject to reimbursement.

18 “(B) The Commission shall determine by
19 rule the minimum percentage underpayment
20 that requires cost reimbursement under sub-
21 paragraph (A).

22 “(5) LIMITATION.—Any fee that is not reviewed
23 by a franchising authority within 3 years after it is
24 paid or remitted shall not be subject to later review
25 by the franchising authority under this subsection

1 and shall be deemed accepted in full payment by the
2 franchising authority.

3 “(6) FEE DISPUTE RESOLUTION.—

4 “(A) COMPLAINT.—A franchising author-
5 ity or a cable operator may file a complaint at
6 the Commission to resolve a dispute between
7 such authority and operator with respect to the
8 amount of any fee required under subsection
9 (c)(1) or (e)(2) if—

10 “(i) the franchising authority or the
11 cable operator provides the other entity
12 written notice of such dispute; and

13 “(ii) the franchising authority and the
14 cable operator have not resolved the dis-
15 pute within 90 calendar days after receipt
16 of such notice.

17 “(B) MEETINGS.—Within 30 calendar
18 days after receipt of notice of a dispute pro-
19 vided pursuant to subparagraph (A)(i), rep-
20 resentatives of the franchising authority and
21 the cable operator, with authority to resolve the
22 dispute, shall meet to attempt to resolve the
23 dispute.

24 “(C) LIMITATION.—A complaint under
25 subparagraph (A) shall be filed not later than

1 3 years after the end of the period to which the
2 disputed amount relates, unless such time is ex-
3 tended by written agreement between the fran-
4 chising authority and cable operator.

5 “(D) RESOLUTION.—The Commission
6 shall issue an order resolving any complaint
7 filed under subparagraph (A) within 90 days of
8 filing.

9 “(n) ACCESS TO PROGRAMMING FOR SHARED FA-
10 CILITIES.—

11 “(1) PROHIBITION.—A cable programming ven-
12 dor in which a cable operator has an attributable in-
13 terest shall not deny a cable operator with a national
14 franchise under this section access to video program-
15 ming solely because such cable operator with a na-
16 tional franchise uses a headend for its cable system
17 that is also used, under a shared ownership or leas-
18 ing agreement, as the headend for another cable sys-
19 tem.

20 “(2) DEFINITION.—The term ‘cable program-
21 ming vendor’ means a person engaged in the produc-
22 tion, creation, or wholesale distribution for sale of
23 video programming which is primarily intended for
24 the direct receipt by cable operators for their re-
25 transmission to cable subscribers.

1 “(o) GROSS REVENUES.—As used in this section:

2 “(1) IN GENERAL.—Subject to paragraphs (2)
3 and (3), the term ‘gross revenues’ means all consid-
4 eration of any kind or nature, including cash, cred-
5 its, property, and in-kind contributions (services or
6 goods) received by the cable operator from the provi-
7 sion of cable service within the franchise area.

8 “(2) INCLUDED ITEMS.—Subject to paragraph
9 (3), the term ‘gross revenues’ shall include the fol-
10 lowing:

11 “(A) all charges and fees paid by sub-
12 scribers for the provision of cable service, in-
13 cluding fees attributable to cable service when
14 sold individually or as part of a package or bun-
15 dle, or functionally integrated, with services
16 other than cable service;

17 “(B) any franchise fee imposed on the
18 cable operator that is passed on to subscribers;

19 “(C) compensation received by the cable
20 operator for promotion or exhibition of any
21 products or services over the cable service, such
22 as on ‘home shopping’ or similar programming;

23 “(D) revenue received by the cable oper-
24 ator as compensation for carriage of video pro-

1 gramming or other programming service on
2 that operator’s cable service;

3 “(E) all revenue derived from the cable op-
4 erator’s cable service pursuant to compensation
5 arrangements for advertising; and

6 “(F) any advertising commissions paid to
7 an affiliated third party for cable services ad-
8 vertising.

9 “(3) EXCLUDED ITEMS.—The term ‘gross reve-
10 nues’ shall not include the following:

11 “(A) any revenue not actually received,
12 even if billed, such as bad debt net of any re-
13 coveries of bad debt;

14 “(B) refunds, rebates, credits, or discounts
15 to subscribers or a municipality to the extent
16 not already offset by subparagraph (A) and to
17 the extent such refund, rebate, credit, or dis-
18 count is attributable to the cable service;

19 “(C) subject to paragraph (4), any reve-
20 nues received by the cable operator or its affili-
21 ates from the provision of services or capabili-
22 ties other than cable service, including tele-
23 communications services, Internet access serv-
24 ices, and services, capabilities, and applications
25 that may be sold as part of a package or bun-

1 dle, or functionally integrated, with cable serv-
2 ice;

3 “(D) any revenues received by the cable
4 operator or its affiliates for the provision of di-
5 rectory or Internet advertising, including yellow
6 pages, white pages, banner advertisement, and
7 electronic publishing;

8 “(E) any amounts attributable to the pro-
9 vision of cable service to customers at no
10 charge, including the provision of such service
11 to public institutions without charge;

12 “(F) any tax, fee, or assessment of general
13 applicability imposed on the customer or the
14 transaction by a Federal, State, or local govern-
15 ment or any other governmental entity, col-
16 lected by the provider, and required to be remit-
17 ted to the taxing entity, including sales and use
18 taxes and utility user taxes;

19 “(G) any forgone revenue from the provi-
20 sion of cable service at no charge to any person,
21 except that any forgone revenue exchanged for
22 trades, barters, services, or other items of value
23 shall be included in gross revenue;

24 “(H) sales of capital assets or surplus
25 equipment;

1 “(I) reimbursement by programmers of
2 marketing costs actually incurred by the cable
3 operator for the introduction of new program-
4 ming; and

5 “(J) the sale of cable services for resale to
6 the extent the purchaser certifies in writing
7 that it will resell the service and pay a franchise
8 fee with respect thereto.

9 “(4) FUNCTIONALLY INTEGRATED SERVICES.—
10 In the case of a cable service that is bundled or inte-
11 grated functionally with other services, capabilities,
12 or applications, the portion of the cable operator’s
13 revenue attributable to such other services, capabili-
14 ties, or applications shall be included in gross rev-
15 enue unless the cable operator can reasonably iden-
16 tify the division or exclusion of such revenue from
17 its books and records that are kept in the regular
18 course of business.

19 “(5) AFFILIATE REVENUE.—Revenue of an af-
20 filiate shall be included in the calculation of gross
21 revenues to the extent the treatment of such revenue
22 as revenue of the affiliate has the effect (whether in-
23 tentional or unintentional) of evading the payment
24 of franchise fees which would otherwise be paid for
25 cable service.

1 “(6) AFFECT ON OTHER LAW.—Nothing in this
2 section is intended to limit a franchising authority’s
3 rights pursuant to section 622(h).

4 “(p) ADDITIONAL DEFINITIONS.—For purposes of
5 this section:

6 “(1) CABLE OPERATOR.—The term ‘cable oper-
7 ator’ has the meaning provided in section 602(5) ex-
8 cept that such term also includes a person or group
9 with a national franchise under this section.

10 “(2) FRANCHISE FEE.—

11 “(A) The term ‘franchise fee’ includes any
12 fee or assessment of any kind imposed by a
13 franchising authority or other governmental en-
14 tity on a person or group providing cable serv-
15 ice in a franchise area under this section, or on
16 a subscriber of such person or group, or both,
17 solely because of their status as such.

18 “(B) The term ‘franchise fee’ does not in-
19 clude—

20 “(i) any tax, fee, or assessment of
21 general applicability (including any such
22 tax, fee, or assessment imposed on both
23 utilities and a person or group providing
24 cable service in a franchise area under this
25 section (or the services of such person or

1 group) but not including a fee or assess-
2 ment which is unduly discriminatory
3 against such person or group or the sub-
4 scribers of such person or group);

5 “(ii) any fee assessed under sub-
6 section (e)(2) for support of public, edu-
7 cational, and governmental use and institu-
8 tional networks (as such term is defined in
9 section 611(f));

10 “(iii) requirements or charges under
11 subsection (f)(2) for the management of
12 public rights-of-way, including payments
13 for bonds, security funds, letters of credit,
14 insurance, indemnification, penalties, or
15 liquidated damages; or

16 “(iv) any fee imposed under title 17,
17 United States Code.

18 “(3) INTERNET ACCESS SERVICE.—The term
19 ‘Internet access service’ means a service that enables
20 users to access content, information, electronic mail,
21 or other services offered over the Internet.

22 “(4) UNIT OF GENERAL LOCAL GOVERN-
23 MENT.—The term ‘unit of general local government’
24 means—

1 “(A) a county, township, city, or political
2 subdivision of a county, township, or city;

3 “(B) the District of Columbia; or

4 “(C) the recognized governing body of an
5 Indian tribe or Alaskan Native village that car-
6 ries out substantial governmental duties and
7 powers.”.

8 (b) IMPLEMENTING REGULATIONS.—The Federal
9 Communications Commission shall prescribe regulations
10 to implement the amendment made by subsection (a) with-
11 in 120 days after the date of enactment of this Act.

12 **SEC. 102. DEFINITIONS.**

13 Section 602 of the Communications Act of 1934 (47
14 U.S.C. 522) is amended—

15 (1) in paragraph (4), by inserting before the
16 semicolon at the end the following: “, or its equiva-
17 lent as determined by the Commission”;

18 (2) in paragraph (5)(A), by inserting “(regard-
19 less of whether such person or group provides such
20 service separately or combined with a telecommuni-
21 cations service or information service)” after “over
22 a cable system”;

23 (3) by striking paragraph (6) and inserting the
24 following:

25 “(6) the term ‘cable service’ means—

1 “(A)(i) the one-way transmission to sub-
2 scribers of (I) video programming, or (II) other
3 programming service; and

4 “(ii) subscriber interaction, if any, which is
5 required for the selection or use of such video
6 programming or other programming service; or

7 “(B) the transmission to subscribers of
8 video programming or other programming serv-
9 ice provided through wireline facilities located
10 at least in part in the public rights-of-way,
11 without regard to delivery technology, including
12 Internet protocol technology, except to the ex-
13 tent that such video programming or other pro-
14 gramming service is provided as part of—

15 “(i) a commercial mobile service (as
16 such term is defined in section 332(d)); or

17 “(ii) an Internet access service (as
18 such term is defined in section 630(p));”;

19 (4) in paragraph (7)(D), by inserting after
20 “section 653 of this title” the following; “except in
21 a franchise area in which such system is used to
22 provide cable service under a national franchise pur-
23 suant to section 630”;

24 (5) in paragraph (9)—

25 (A) by inserting “(A)” after “means”; and

1 (B) by inserting before the semicolon at
2 the end the following: “; and (B) a national
3 franchise that is effective under section 630 on
4 the basis of a certification with the Commis-
5 sion”; and

6 (6) in paragraph (10), by inserting before the
7 semicolon at the end the following: “, but does not
8 include the Commission with respect to a national
9 franchise under section 630”.

10 **SEC. 103. MONITORING AND REPORTING.**

11 (a) REPORT ON CABLE SERVICE DEPLOYMENT.—

12 The Federal Communications Commission shall, com-
13 mencing not later than one year after the date of enact-
14 ment of this Act, issue a report annually on the deploy-
15 ment of cable service pursuant to the amendments made
16 by this title. In its report, the Commission shall describe
17 in detail—

18 (1) with respect to deployment by new cable op-
19 erators—

20 (A) the progress of deployment of such
21 service within the telephone service area of
22 cable operators, if the operator is also an in-
23 cumbent local exchange carrier, including a
24 comparison with the progress of deployment of

1 broadband services not defined as cable services
2 within such telephone service area;

3 (B) the number of franchise areas in which
4 such service is being deployed and offered;

5 (C) where such service is not being de-
6 ployed and offered; and

7 (D) the number and locations of franchise
8 areas in which the cable operator is serving only
9 a portion of the franchise area, and the extent
10 of such service within the franchise area;

11 (2) the number and locations of franchise areas
12 in which a cable operator with a franchise under sec-
13 tion 621 of the Communications Act of 1934 (47
14 U.S.C. 541) on the date of enactment of this Act
15 withdraws service from any portion of the franchise
16 area for which it previously offered service, and the
17 extent of such withdrawal of service within the fran-
18 chise area;

19 (3) the rates generally charged for cable service;

20 (4) the rates charged by overlapping, competing
21 multichannel video programming distributors and by
22 competing cable operators for comparable service or
23 cable service;

24 (5) the average household income of those fran-
25 chise areas or portions of franchise areas where

1 cable services is being offered, and the average
2 household income of those franchise areas, or por-
3 tions of franchise areas, where cable service is not
4 being offered;

5 (6) the proportion of rural households to urban
6 households, as defined by the Bureau of the Census,
7 in those franchise areas or portions of franchise
8 areas where cable service is being offered, and the
9 proportion of rural households to urban households
10 in those franchise areas or portions of franchise
11 areas where cable service is not being offered, in-
12 cluding a State-by-State breakdown of such data
13 and a comparison with the overall ratio of rural and
14 urban households in each State; and

15 (7) a comparison of the services and rates in
16 areas served by national franchisees under section
17 630 of the Communications Act of 1934 (as added
18 by section 101 of this Act) and the services and
19 rates in other areas.

20 (b) CABLE OPERATOR REPORTS.—The Federal Com-
21 munications Commission is authorized—

22 (1) to require cable operators to report to the
23 Commission all of the information that the Commis-
24 sion needs to compile the report required by this sec-
25 tion; and

1 (2) to require cable operators to file the same
2 information with the relevant franchising authorities
3 and State commissions.

4 **SEC. 104. RULE OF CONSTRUCTION.**

5 Nothing in this Act or the amendments made by this
6 Act shall affect the application or interpretation of section
7 224 of the Communications Act of 1934 (47 U.S.C. 224).

8 **TITLE II—ENFORCEMENT OF**
9 **BROADBAND POLICY STATE-**
10 **MENT**

11 **SEC. 201. ENFORCEMENT OF BROADBAND POLICY STATE-**
12 **MENT.**

13 Title VII of the Communications Act of 1934 (47
14 U.S.C. 601 et seq.) is amended by adding at the end the
15 following new section:

16 **“SEC. 715. ENFORCEMENT OF BROADBAND POLICY STATE-**
17 **MENT.**

18 “(a) **AUTHORITY.**—The Commission shall have the
19 authority to enforce the Commission’s broadband policy
20 statement and the principles incorporated therein.

21 “(b) **ENFORCEMENT.**—

22 “(1) **IN GENERAL.**—This section shall be en-
23 forced by the Commission under titles IV and V. A
24 violation of the Commission’s broadband policy

1 statement or the principles incorporated therein
2 shall be treated as a violation of this Act.

3 “(2) MAXIMUM FORFEITURE PENALTY.—For
4 purposes of section 503, the maximum forfeiture
5 penalty applicable to a violation described in para-
6 graph (1) of this subsection shall be \$500,000 for
7 each violation.

8 “(3) ADJUDICATORY AUTHORITY.—The Com-
9 mission shall have exclusive authority to adjudicate
10 any complaint alleging a violation of the broadband
11 policy statement and the principles incorporated
12 therein. The Commission shall complete an adjudica-
13 tory proceeding under this subsection not later than
14 90 days after receipt of the complaint. If, upon com-
15 pletion of an adjudicatory proceeding pursuant to
16 this section, the Commission determines that such a
17 violation has occurred, the Commission shall have
18 authority to adopt an order to require the entity
19 subject to the complaint to comply with the
20 broadband policy statement and the principles incor-
21 porated therein. Such authority shall be in addition
22 to the authority specified in paragraph (1) to en-
23 force this section under titles IV and V. In addition,
24 the Commission shall have authority to adopt proce-
25 dures for the adjudication of complaints alleging a

1 violation of the broadband policy statement or prin-
2 ciples incorporated therein.

3 “(4) LIMITATION.—Notwithstanding paragraph
4 (1), the Commission’s authority to enforce the
5 broadband policy statement and the principles incor-
6 porated therein does not include authorization for
7 the Commission to adopt or implement rules or reg-
8 ulations regarding enforcement of the broadband
9 policy statement and the principles incorporated
10 therein, with the sole exception of the authority to
11 adopt procedures for the adjudication of complaints,
12 as provided in paragraph (3).

13 “(c) STUDY.—Within 180 days after the date of en-
14 actment of this section, the Commission shall conduct, and
15 submit to the House Committee on Energy and Commerce
16 and the Senate Committee on Commerce, Science, and
17 Transportation, a study regarding whether the objectives
18 of the broadband policy statement and the principles in-
19 corporated therein are being achieved.

20 “(d)(1) RULE OF CONSTRUCTION.—Nothing in this
21 section shall be construed to modify, impair, or supersede
22 the applicability of the antitrust laws or the jurisdiction
23 of the district courts of the United States to hear claims
24 arising under the antitrust laws.

1 “(2) DEFINITION OF ANTITRUST LAWS.—The term
 2 ‘antitrust laws’ has the meaning given it in subsection (a)
 3 of the first section of the Clayton Act (15 U.S.C. 12(a)),
 4 except that such term includes section 5 of the Federal
 5 Trade Commission Act (15 U.S.C. 45) to the extent that
 6 such section 5 applies to unfair methods of competition.

7 “(e) DEFINITION.—For purposes of this section, the
 8 term ‘Commission’s broadband policy statement’ means
 9 the policy statement adopted on August 5, 2005, and
 10 issued on September 23, 2005, In the Matters of Appro-
 11 priate Framework for Broadband Access to the Internet
 12 over Wireline Facilities, and other Matters (FCC 05–151;
 13 CC Docket No. 02–33; CC Docket No. 01–337; CC Dock-
 14 et Nos. 95–20, 98–10; GN Docket No. 00–185; CS Dock-
 15 et No. 02–52).”.

16 **TITLE III—VOIP/911**

17 **SEC. 301. EMERGENCY SERVICES; INTERCONNECTION.**

18 Title VII of the Communications Act of 1934 (47
 19 U.S.C. 601 et seq.) is further amended by adding after
 20 section 715 (as added by section 201 of this Act) the fol-
 21 lowing new sections:

22 **“SEC. 716. EMERGENCY SERVICES.**

23 “(a) 911 AND E-911 SERVICES.—

1 “(1) IN GENERAL.—Each VOIP service pro-
2 vider has a duty to ensure that 911 and E-911 serv-
3 ices are provided to subscribers of VOIP services.

4 “(2) USE OF EXISTING REGULATIONS.—A
5 VOIP service provider that complies with the Com-
6 mission’s regulations requiring providers of VOIP
7 service to supply 911 and E911 capabilities to their
8 customers (Report and Order in WC Docket Nos.
9 04-36 and 05-196) and that are in effect on the
10 date of enactment of this section shall be considered
11 to be in compliance with the requirements of this
12 section, other than subsection (c), until such regula-
13 tions are modified or superseded by subsequent reg-
14 ulations.

15 “(b) NON-DISCRIMINATORY ACCESS TO CAPABILI-
16 TIES.—

17 “(1) ACCESS.—Each incumbent local exchange
18 carrier (as such term is defined in section 251(h))
19 or government entity with ownership or control of
20 the necessary E-911 infrastructure shall provide any
21 requesting VOIP service provider with nondiscrim-
22 inatory access to such infrastructure. Such carrier
23 or entity shall provide access to the infrastructure at
24 just and reasonable, nondiscriminatory rates, terms,
25 and conditions. Such access shall be consistent with

1 industry standards established by the National
2 Emergency Number Association or other applicable
3 industry standards organizations.

4 “(2) ENFORCEMENT.—The Commission or a
5 State commission may enforce the requirements of
6 this subsection and the Commission’s regulations
7 thereunder. A VOIP service provider may obtain ac-
8 cess to such infrastructure pursuant to section 717
9 by asserting the rights described in such section.

10 “(c) NEW CUSTOMERS.—A VOIP service provider
11 shall make 911 service available to new customers within
12 a reasonable time in accordance with the following require-
13 ments:

14 “(1) CONNECTION TO SELECTIVE ROUTER.—
15 For all new customers not within the geographic
16 areas where a VOIP service provider can imme-
17 diately provide 911 service to the geographically ap-
18 propriate PSAP, a VOIP service provider, or its
19 third party vendor, shall have no more than 30 days
20 from the date the VOIP provider has acquired a cus-
21 tomer to order service providing connectivity to the
22 selective router so that 911 service, or E911 service
23 where the PSAP is capable of receiving and proc-
24 essing such information, can be provided through
25 the selective router.

1 “(2) INTERIM SERVICE.—For all new customers
2 not within the geographic areas where the VOIP
3 service provider can immediately provide 911 service
4 to the geographically appropriate PSAP, a VOIP
5 service provider shall provide 911 service through—

6 “(A) an arrangement mutually agreed to
7 by the VOIP service provider and the PSAP or
8 PSAP governing authority; or

9 “(B) an emergency response center with
10 national call routing capabilities.

11 Such service shall be provided 24 hours a day from
12 the date a VOIP service provider has acquired a cus-
13 tomer until the VOIP service provider can provide
14 911 service to the geographically appropriate PSAP.

15 “(3) NOTICE.—Before providing service to any
16 new customer not within the geographic areas where
17 the VOIP service provider can immediately provide
18 911 service to the geographically appropriate PSAP,
19 a VOIP service provider shall provide such customer
20 with clear notice that 911 service will be available
21 only as described in paragraph (2).

22 “(4) RESTRICTION ON ACQUISITION OF NEW
23 CUSTOMERS.—A VOIP service provider may not ac-
24 quire new customers within a geographic area served
25 by a selective router if, within 180 days of first ac-

1 quiring a new customer in the area served by the se-
2 lective router, the VOIP service provider does not
3 provide 911 service, or E911 service where the
4 PSAP is capable of receiving and processing such in-
5 formation, to the geographically appropriate PSAP
6 for all existing customers served by the selective
7 router.

8 “(5) ENFORCEMENT: NO FIRST WARNINGS.—
9 Paragraph (5) of section 503(b) shall not apply to
10 the assessment of forfeiture penalties for violations
11 of this subsection or the regulations thereunder.

12 “(d) STATE AUTHORITY.—Nothing in this Act or any
13 Commission regulation or order shall prevent the imposi-
14 tion on or collection from a VOIP service provider, of any
15 fee or charge specifically designated or presented as dedi-
16 cated by a State, political subdivision thereof, or Indian
17 tribe on an equitable, and non-discriminatory basis for the
18 support of 911 and E-911 services if no portion of the
19 revenue derived from such fee or charge is obligated or
20 expended for any purpose other than support of 911 and
21 E-911 services or enhancements of such services.

22 “(e) FEASIBILITY.—In establishing requirements or
23 obligations under subsections (a) and (b), the Commission
24 shall ensure that such standards impose requirements or
25 obligations on VOIP service providers and entities with

1 ownership or control of necessary E-911 infrastructure
2 that the Commission determines are technologically and
3 operationally feasible. In determining the requirements
4 and obligations that are technologically and operationally
5 feasible, the Commission shall take into consideration
6 available industry technological and operational standards.

7 “(f) PROGRESS REPORTS.—To the extent that the
8 Commission concludes that it is not technologically or
9 operationally feasible for VOIP service providers to comply
10 with E-911 requirements or obligations, then the Com-
11 mission shall submit reports to the Committee on Energy
12 and Commerce of the House of Representatives and the
13 Committee on Commerce, Science, and Transportation of
14 the Senate on the progress in attaining and deploying E-
15 911 service. Such reports shall be submitted semiannually
16 until the Commission concludes that it is technologically
17 and operationally feasible for all VOIP service providers
18 to comply with E-911 requirements and obligations. Such
19 reports may include any recommendations the Commission
20 considers appropriate to encourage the migration of emer-
21 gency services to TCP/IP protocol or other advanced serv-
22 ices.

23 “(g) ACCESS TO INFORMATION.—The Commission
24 shall have the authority to compile a list of PSAP contact
25 information, testing procedures, and classes and types of

1 services supported by PSAPs, or other information con-
2 cerning the necessary E-911 infrastructure, for the pur-
3 pose of assisting providers in complying with the require-
4 ments of this section.

5 “(h) EMERGENCY ROUTING NUMBER ADMINIS-
6 TRATOR.—Within 30 days after the date of enactment of
7 this section, the Federal Communications Commission
8 shall establish an emergency routing number adminis-
9 trator to enable VOIP service providers to acquire non-
10 dialable pseudo-automatic number identification numbers
11 for 9-1-1 routing purposes on a national scale. The Com-
12 mission may adopt such rules and practices as are nec-
13 essary to guide such administrator in the fair and expedi-
14 tious assignment of these numbers.

15 “(i) EMERGENCY RESPONSE SYSTEMS.—

16 “(1) NOTICE PRIOR TO INSTALLATION OR NUM-
17 BER ACTIVATION OF VOIP SERVICE.—Prior to instal-
18 lation or number activation of VOIP service for a
19 customer, a VOIP service provider shall provide
20 clear and conspicuous notice to the customer that—

21 “(A) such customer should arrange with
22 his or her emergency response system provider,
23 if any, to test such system after installation;

1 “(B) such customer should notify his or
2 her emergency response system provider after
3 VOIP service is installed; and

4 “(C) a battery backup is required for cus-
5 tomer premises equipment installed in connec-
6 tion with the VOIP service in order for the sig-
7 naling of such system to function in the event
8 of a power outage.

9 “(2) DEFINITION.—In this subsection:

10 “(A) The term ‘emergency response sys-
11 tem’ means an alarm or security system, or per-
12 sonal security or medical monitoring system,
13 that is connected to an emergency response cen-
14 ter by means of a telecommunications carrier or
15 VOIP service provider.

16 “(B) The term ‘emergency response center’
17 means an entity that monitors transmissions
18 from an emergency response system.

19 “(j) MIGRATION TO IP-ENABLED EMERGENCY NET-
20 WORK.—

21 “(1) NATIONAL REPORT.—No more than 18
22 months after the date of the enactment of this sec-
23 tion, the National 911 Implementation and Coordi-
24 nation Office shall develop a report to Congress on
25 migrating to a national IP-enabled emergency net-

1 work capable of receiving and responding to all cit-
2 izen activated emergency communications.

3 “(2) CONTENTS OF REPORT.—The report re-
4 quired by paragraph (1) shall—

5 “(A) outline the potential benefits of such
6 a migration;

7 “(B) identify barriers that must be over-
8 come and funding mechanisms to address those
9 barriers;

10 “(C) include a proposed timetable, an out-
11 line of costs and potential savings;

12 “(D) provide recommendations on specific
13 legislative language,

14 “(E) provide recommendations on any leg-
15 islative changes, including updating definitions,
16 to facilitate a national IP-enabled emergency
17 network; and

18 “(F) assess, collect, and analyze the expe-
19 riences of the PSAPs and related public safety
20 authorities who are conducting trial deploy-
21 ments of IP-enabled emergency networks as of
22 the date of enactment of this section.

23 “(3) CONSULTATION.—In developing the report
24 required by paragraph (1), the Office shall consult
25 with representatives of the public safety community,

1 technology and telecommunications providers, and
2 others it deems appropriate.

3 “(k) IMPLEMENTATION.—

4 “(1) DEADLINE.—The Commission shall pre-
5 scribe regulations to implement this section within
6 120 days after the date of enactment of this section.

7 “(2) LIMITATION.—Nothing in this section
8 shall be construed to permit the Commission to issue
9 regulations that require or impose a specific tech-
10 nology or technological standard.

11 “(l) DEFINITIONS.—For purposes of this section:

12 “(1) VOIP SERVICE.—The term ‘VOIP service’
13 means a service that—

14 “(A) provides real-time 2-way voice com-
15 munications transmitted through customer
16 premises equipment using TCP/IP protocol, or
17 a successor protocol (including when the voice
18 communication is converted to or from TCP/IP
19 protocol by the VOIP service provider and
20 transmitted to the subscriber without use of cir-
21 cuit switching), for a fee or without a fee;

22 “(B) is offered to the public, or such class-
23 es of users as to be effectively available to the
24 public (whether part of a bundle of services or
25 separately); and

1 “(C) has the capability so that the service
2 can originate traffic to, and terminate traffic
3 from, the public switched telephone network.

4 “(2) VOIP SERVICE PROVIDER.—The term
5 ‘VOIP service provider’ means any person who pro-
6 vides or offers to provide a VOIP service.

7 “(3) NECESSARY E-911 INFRASTRUCTURE.—
8 The term ‘necessary E-911 infrastructure’ means
9 the originating trucks to the selective routers, selec-
10 tive routers, databases (including automatic location
11 information databases and master street address
12 guides), trunks, or other related facilities necessary
13 for the delivery and completion of 911 and E-911
14 calls, or other 911 and E-911 equipment, facilities,
15 databases, interfaces, and related capabilities speci-
16 fied by the Commission.

17 “(4) NON-DIALABLE PSEUDO-AUTOMATIC NUM-
18 BER IDENTIFICATION NUMBER.—The term ‘non-
19 dialable pseudo-automatic number identification
20 number’ means a number, consisting of the same
21 number of digits as numbers used for automatic
22 number identification, that is not a North American
23 Numbering Plan telephone directory number and
24 that may be used in place of an automatic number
25 identification number to convey special meaning.

1 The special meaning assigned to the non-dialable
2 pseudo-automatic number identification number is
3 determined by nationally standard agreements, or by
4 individual agreements, as necessary, between the
5 system originating the call, intermediate systems
6 handling and routing the call, and the destination
7 system.

8 **“SEC. 717. RIGHTS AND OBLIGATIONS OF VOIP SERVICE**
9 **PROVIDERS.**

10 “(a) IN GENERAL.—

11 “(1) FACILITIES-BASED VOIP SERVICE PRO-
12 VIDERS.—A facilities-based VOIP service provider
13 shall have the same rights, duties, and obligations as
14 a requesting telecommunications carrier under sec-
15 tions 251 and 252, if the provider elects to assert
16 such rights.

17 “(2) VOIP SERVICE PROVIDERS.—A VOIP serv-
18 ice provider that is not a facilities-based VOIP serv-
19 ice provider shall have only the same rights, duties,
20 and obligations as a requesting telecommunications
21 carrier under sections 251(b), 251(e), and 252, if
22 the provider elects to assert such rights.

23 “(3) CLARIFYING TREATMENT OF VOIP SERV-
24 ICE.—A telecommunications carrier may use inter-
25 connection, services, and network elements obtained

1 pursuant to sections 251 and 252 from an incum-
2 bent local exchange carrier (as such term is defined
3 in section 251(h)) to exchange VOIP service traffic
4 with such incumbent local exchange carrier regard-
5 less of the provider originating such VOIP service
6 traffic, including an affiliate of such telecommuni-
7 cations carrier.

8 “(b) DISABLED ACCESS.—A VOIP service provider
9 or a manufacturer of VOIP service equipment shall have
10 the same rights, duties, and obligations as a telecommuni-
11 cations carrier or telecommunications equipment manufac-
12 turer, respectively, under sections 225, 255, and 710 of
13 the Act. Within 1 year after the date of enactment of this
14 Act, the Commission, in consultation with the Architec-
15 tural and Transportation Barriers Compliance Board,
16 shall prescribe such regulations as are necessary to imple-
17 ment this section. In implementing this subsection, the
18 Commission shall consider whether a VOIP service pro-
19 vider or manufacturer of VOIP service equipment pri-
20 marily markets such service or equipment as a substitute
21 for telecommunications service, telecommunications equip-
22 ment, customer premises equipment, or telecommuni-
23 cations relay services.

24 “(c) DEFINITIONS.—For purposes of this section:

1 “(1) FACILITIES-BASED VOIP SERVICE PRO-
2 VIDER.—The term ‘facilities-based VOIP service
3 provider’ means an entity that provides VOIP serv-
4 ice over a physical facility that terminates at the end
5 user’s location and which such entity or an affiliate
6 owns or over which such entity or affiliate has exclu-
7 sive use. An entity or affiliate shall be considered a
8 facilities-based VOIP service provider only in those
9 geographic areas where such terminating physical
10 facilities are located.

11 “(2) VOIP SERVICE PROVIDER; VOIP SERVICE.—
12 The terms ‘VOIP service provider’ and ‘VOIP serv-
13 ice’ have the meanings given such terms by section
14 716(l).”.

15 **SEC. 302. COMPENSATION AND CONTRIBUTION.**

16 (a) RULE OF CONSTRUCTION.—Nothing in this Act
17 (including the amendments made by this Act) shall be con-
18 strued to exempt a VOIP service provider from require-
19 ments imposed by the Federal Communications Commis-
20 sion or a State commission on all VOIP service providers
21 to—

22 (1) pay appropriate compensation for the trans-
23 mission of a VOIP service over the facilities and
24 equipment of another provider; or

1 (2) contribute on an equitable and non-discrimi-
2 natory basis to the preservation and advancement
3 of universal service.

4 (b) DEFINITIONS.—As used in this section—

5 (1) the terms “VOIP service provider” and
6 “VOIP service” have the meanings given such terms
7 in section 716(h) of the Communications Act of
8 1934, as added by section 301 of this Act; and

9 (2) the term “State commission” has the mean-
10 ing given such term in section 3 of the Communica-
11 tions Act of 1934 (47 U.S.C. 153).

12 **TITLE IV—MUNICIPAL** 13 **PROVISION OF SERVICES**

14 **SEC. 401. GOVERNMENT AUTHORITY TO PROVIDE SERV-** 15 **ICES.**

16 (a) IN GENERAL.—Neither the Communications Act
17 of 1934 nor any State statute, regulation, or other State
18 legal requirement may prohibit or have the effect of pro-
19 hibiting any public provider of telecommunications service,
20 information service, or cable service (as such terms are
21 defined in sections 3 and 602 of such Act) from providing
22 such services to any person or entity.

23 (b) COMPETITION NEUTRALITY.—Any State or polit-
24 ical subdivision thereof, or any agency, authority, or in-
25 strumentality of a State or political subdivision thereof,

1 that is, owns, controls, or is otherwise affiliated with a
2 public provider of telecommunications service, information
3 service, or cable service shall not grant any preference or
4 advantage to any such provider. Such entity shall apply
5 its ordinances, rules, and policies, including those relating
6 to the use of public rights-of-way, permitting, performance
7 bonding, and reporting without discrimination in favor of
8 any such provider as compared to other providers of such
9 services.

10 (c) COMPLIANCE WITH OTHER LAWS NOT AF-
11 FECTED.—Nothing in this section shall exempt a public
12 provider from any law or regulation that applies to pro-
13 viders of telecommunications service, information service,
14 or cable service.

15 (d) REPORT.—Not later than 1 year after the date
16 of the enactment of this Act, the Federal Communications
17 Commission shall submit to the Congress a report on the
18 status of the provision of telecommunications service, in-
19 formation service, and cable service by States and political
20 subdivisions thereof.

21 (e) DEFINITION OF PUBLIC PROVIDER.—For pur-
22 poses of this section, the term “public provider” means
23 a State or political subdivision thereof, or any agency, au-
24 thority, or instrumentality of a State or political subdivi-
25 sion thereof, that provides telecommunications service, in-

1 formation service, or cable service, or any entity that is
2 owned, controlled, or is otherwise affiliated with such
3 State or political subdivision thereof, or agency, authority,
4 or instrumentality of a State or political subdivision there-
5 of.

6 **TITLE V—BROADBAND SERVICE**

7 **SEC. 501. STAND-ALONE BROADBAND SERVICE.**

8 Title VII of the Communications Act of 1934 (47
9 U.S.C. 601 et seq.) is further amended by adding after
10 section 717 (as added by section 301 of this Act) the fol-
11 lowing new section:

12 **“SEC. 718. STAND-ALONE BROADBAND SERVICE.**

13 “(a) PROHIBITION.—A broadband service provider
14 shall not require a subscriber, as a condition on the pur-
15 chase of any broadband service the provider offers, to pur-
16 chase any cable service, telecommunications service, or
17 VOIP service offered by the provider.

18 “(b) DEFINITIONS.—In this section:

19 “(1) The term ‘broadband service’ means a two-
20 way transmission service that connects to the Inter-
21 net and transmits information at an average rate of
22 at least 200 kilobits per second in at least one direc-
23 tion.

24 “(2) The term ‘broadband service provider’
25 means a person or entity that controls, operates, or

1 resells and controls any facility used to provide
2 broadband service to the public, by whatever tech-
3 nology and whether provided for a fee, in exchange
4 for an explicit benefit, or for free.

5 “(3) The term ‘VOIP service’ has the meaning
6 given such term by section 716(l).”.

7 **SEC. 502. STUDY OF INTERFERENCE POTENTIAL OF**
8 **BROADBAND OVER POWER LINE SYSTEMS.**

9 Within 90 days after the date of enactment of this
10 Act, the Federal Communications Commission shall con-
11 duct, and submit to the Committee on Energy and Com-
12 merce of the House of Representatives and the Committee
13 on Commerce, Science, and Transportation of the Senate,
14 a study of the interference potential of broadband over
15 power line systems.

16 **TITLE VI—SEAMLESS MOBILITY**

17 **SEC. 601. DEVELOPMENT OF SEAMLESS MOBILITY.**

18 (a) STREAMLINED REVIEW.—

19 (1) The Commission shall further the develop-
20 ment of seamless mobility.

21 (2) Within 120 days after the date of enact-
22 ment of this Act, the Commission shall implement a
23 process for streamlined review and authorization of
24 multi-mode devices that permit communication

1 across multiple Internet protocol-enabled broadband
2 platforms, facilities, and networks.

3 (b) STUDY.—The Commission shall undertake an in-
4 quiry to identify barriers to the achievement of seamless
5 mobility. Within 180 days after the date of enactment of
6 this Act, the Commission shall report to the Congress on
7 its findings and its recommendations for steps to eliminate
8 those barriers.

9 (c) DEFINITIONS.—For purposes of this section, the
10 term “seamless mobility” means the ability of a commu-
11 nications device to select between and utilize multiple
12 Internet protocol-enabled technology platforms, facilities,
13 and networks in a real-time manner to provide a unified
14 service.

Passed the House of Representatives June 8, 2006.

Attest:

Clerk.

109TH CONGRESS
2^D SESSION

H. R. 5252

AN ACT

To promote the deployment of broadband networks
and services.