

[STAFF DISCUSSION DRAFT]

SEPTEMBER 15, 2005

109TH CONGRESS
1ST SESSION

H. R. _____

To [purpose to be supplied]

IN THE HOUSE OF REPRESENTATIVES

M. _____ introduced the following bill; which was referred to the
Committee on _____

A BILL

To [purpose to be supplied]

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

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

4 (a) SHORT TITLE.—This Act may be cited as the
5 “_____ Act of 2005”.

6 (b) TABLE OF CONTENTS.—

- Sec. 1. Short title; table of contents.
- Sec. 2. Definitions.
- Sec. 3. Purposes/principles/findings.

TITLE I—BROADBAND INTERNET TRANSMISSION SERVICES



2

- Sec. 101. Jurisdiction.
- Sec. 102. Registration of BITS providers.
- Sec. 103. Interconnection.
- Sec. 104. Access to BITS.
- Sec. 105. Treatment as a telecommunications carrier for certain purposes.
- Sec. 106. Coordination for interconnectivity.

TITLE II—VOIP SERVICES

- Sec. 201. Jurisdiction.
- Sec. 202. Registration of VOIP service providers.
- Sec. 203. Exchange of traffic.
- Sec. 204. Mediation, arbitration, and dispute resolution.
- Sec. 205. Emergency services.
- Sec. 206. Revision of universal service requirements.
- Sec. 207. Number portability.
- Sec. 208. Provision of relay service.

TITLE III—VIDEO SERVICES

- Sec. 301. Jurisdiction.
- Sec. 302. Registration of broadband video service providers.
- Sec. 303. Broadband video service franchising.
- Sec. 304. Application of video regulations to broadband video service providers.
- Sec. 305. Regulation of carriage agreements.
- Sec. 306. Implementation.

TITLE IV—GENERAL PROVISIONS

- Sec. 401. Regulations; availability of registration statements.
- Sec. 402. National consumer protection standards.
- Sec. 403. Protection of consumer privacy.
- Sec. 404. Access by persons with disabilities.
- Sec. 405. Prohibition on buyouts.
- Sec. 406. Reliability and integrity.
- Sec. 407. Access to poles, ducts, conduits, and rights-of-way.
- Sec. 408. Standard setting delays.
- Sec. 409. Government authority to provide services.
- Sec. 410. Preservation of existing laws.
- Sec. 411. Complaints to the Commission.
- Sec. 412. Commission authority over documents.
- Sec. 413. Revocation of registration.
- Sec. 414. Additional remedies.

1 **SEC. 2. DEFINITIONS.**

2 (a) TERMS.—For purposes of this Act:

3 (1) BIT.—The term “BIT” or “broadband
4 Internet transmission” means the transmission of
5 information in a packet-based protocol, including



1 TCP/IP protocol or a successor protocol, regardless
2 of the facilities used.

3 (2) BIT PROVIDER.—The term “BIT provider”
4 means any person who provides or offers to provide
5 BIT, either directly or through an affiliate.

6 (3) BITS.—The term “BITS” or “broadband
7 Internet transmission service”—

8 (A) means a packet-switched service that is
9 offered to the public, or to such classes of users
10 as to be effectively available directly to the pub-
11 lic, with or without a fee, and that, regardless
12 of the facilities used—

13 (i) is transmitted in a packet-based
14 protocol, including TCP/IP or a successor
15 protocol; and

16 (ii) provides to subscribers the capa-
17 bility to send and receive packetized infor-
18 mation;

19 (B) includes any features, functions, and
20 capabilities, as well as any associated
21 packetized facilities, network equipment, and
22 electronics, used to transmit or route packetized
23 information;

24 (C) does not include—



1 (i) any time division multiplexing fea-
2 tures, functions, and capabilities; or

3 (ii) the provision of any video pro-
4 gramming package; and

5 (D) does not include customer premises
6 equipment, inside wiring, or mobile personal
7 communications devices.

8 (4) BITS PROVIDER.—The term “BITS pro-
9 vider” means any person who provides or offers to
10 provide BITS, either directly or through an affiliate.

11 (5) BROADBAND VIDEO SERVICE.—The term
12 “broadband video service” means a two-way, inter-
13 active service that—

14 (A) is offered, with or without a fee, to the
15 public or to such classes of users as to be effec-
16 tively available to the public, regardless of the
17 facilities used;

18 (B) integrates, on a real-time and sub-
19 scriber customizable basis, a video program-
20 ming package with voice and data features,
21 functions, and capabilities; and

22 (C) integrates the capability to access
23 Internet content of the subscriber’s choosing
24 consistent with section 104 of this Act.



1 (6) BROADBAND VIDEO SERVICE PROVIDER.—
2 The term “broadband video service provider” means
3 any person that provides or offers to provide, di-
4 rectly or through an affiliate, a broadband video
5 service that is delivered directly to subscribers over
6 facilities the service provider owns or controls.

7 (7) FRANCHISE.—The term “franchise” means
8 an authorization, or renewal thereof, that authorizes
9 under section 303 of this Act the operation of a
10 broadband video service in a local franchise area.

11 (8) FRANCHISE FEE.—The term “franchise
12 fee”—

13 (A) includes any fee or assessment of any
14 kind imposed by a franchising authority or
15 other governmental entity on a broadband video
16 service, broadband video service provider, or
17 broadband video service subscriber, or any com-
18 bination thereof, solely because of their status
19 as such; and

20 (B) does not include—

21 (i) any fee or assessment of general
22 applicability (including any such fee or as-
23 sessment imposed on utilities, cable opera-
24 tors, and broadband video service providers
25 or their services, but not including a fee or



1 assessment which is unduly discriminatory
2 against broadband video service providers
3 or broadband video service subscribers); or

4 (ii) the requirements or charges inci-
5 dental to the awarding or enforcing of the
6 franchise, including payments for bonds,
7 security funds, letters of credit, insurance,
8 indemnification, penalties, or liquidated
9 damages.

10 (9) ILEC.—The term “incumbent local ex-
11 change carrier” has the meaning provided by section
12 251(h) of the 1934 Act (47 U.S.C. 251(h)).

13 (10) LOCAL FRANCHISE AREA.—The term
14 “local franchise area” means the area within the ju-
15 risdiction of a local franchising authority.

16 (11) LOCAL FRANCHISING AUTHORITY.—The
17 term “local franchising authority” means any gov-
18 ernmental entity that is empowered by Federal,
19 State, or local law to grant a franchise within the
20 meaning of section 602(9) of the 1934 Act (47
21 U.S.C. 522), and without regard to the definition of
22 franchise in this section.

23 (12) VIDEO PROGRAMMING PACKAGE.—The
24 term “video programming package” means the offer-
25 ing of a package of multiple programs generally con-



1 sidered to be comparable to programs provided by a
2 television broadcast station.

3 (13) NECESSARY E-911 INFRASTRUCTURE.—

4 The term “necessary E-911 infrastructure” means
5 the selective routers, selective router databases,
6 automatic location information databases, master
7 street address guides, trunk lines between selective
8 routers and PSAPs, trunk lines between automatic
9 location information databases and PSAPs, and
10 other 911 and E-911 equipment, facilities, data-
11 bases, interfaces, and related capabilities specified
12 by the Commission.

13 (14) PACKET-SWITCHED SERVICE.—The term
14 “packet-switched service” means a service that
15 routes or forwards packets, frames, cells, or other
16 data units based on the identification, address, or
17 other routing information contained in the packets,
18 frames, cells, or other data units.

19 (15) PACKETIZED.—The term “packetized”
20 means the segmentation of information into packets,
21 cells, frames, or other data units for transmission
22 over a network.

23 (16) PSAP.—The term “PSAP” means a facil-
24 ity that has been designated to receive emergency
25 calls and route them to emergency service personnel.



1 (17) SUBSCRIBER.—The term “subscriber”
2 means any person who consumes goods or services,
3 whether provided for a fee, in exchange for an ex-
4 plicit benefit, or for free.

5 (18) TCP/IP PROTOCOL.—The term “TCP/IP
6 protocol” refers to the family of Internet networking
7 protocols that enable the exchange of data across
8 interconnected networks.

9 (19) VOICE COMMUNICATIONS.—The term
10 “voice communications” means the two-way, real-
11 time transmission of voice conversation, regardless
12 of the facilities and protocol used to transmit the
13 voice conversation.

14 (20) VOIP SERVICE.—The term “VOIP
15 service”—

16 (A) means a packet-switched voice commu-
17 nications service that—

18 (i) is offered with or without a fee to
19 the public, or to such classes of users as to
20 be effectively available directly to the pub-
21 lic, regardless of the facilities used; and

22 (ii) enables a subscriber to send or re-
23 ceive voice communications in TCP/IP pro-
24 tocol or a successor protocol over a
25 broadband Internet transmission service to



1 or from any subscriber with a telephone
2 number under the North American Num-
3 bering Plan or such other identification
4 method as designated by the Commission;

5 (B) may include integrated, enhanced fea-
6 tures, functions, and capabilities; and

7 (C) does not include a cable service or a
8 broadband video service.

9 (21) VOIP SERVICE PROVIDER.—The term
10 “VOIP service provider” means any person who pro-
11 vides or offers to provide a VOIP service, either di-
12 rectly or through an affiliate.

13 (22) 1934 ACT.—The term “1934 Act” means
14 the Communications Act of 1934 (47 U.S.C. 151 et
15 seq.).

16 (23) 911 SERVICE.—

17 (A) 911.—The term “911” means a serv-
18 ice that allows a user, by dialing the three-digit
19 code 911, to call a geographically appropriate
20 PSAP operated by a State, local government,
21 Indian tribe, or authorized entity.

22 (B) E-911.—The term “E-911” means a
23 911 service that automatically delivers the 911
24 call to the geographically appropriate PSAP,
25 and provides automatic identification data, in-



1 including the originating number of an emergency
2 call, the physical location of the caller, and the
3 capability for the PSAP to call the user back if
4 the call is disconnected.

5 (b) COMMON TERMINOLOGY.—Except as otherwise
6 provided in subsection (a), terms used in this Act have
7 the meanings provided under section 3 of the 1934 Act
8 (47 U.S.C. 153) and section 602 of the 1934 Act (47
9 U.S.C. 522).

10 **SEC. 3. PURPOSES/PRINCIPLES/FINDINGS.**

11 [to be determined]

12 **TITLE I—BROADBAND INTERNET**
13 **TRANSMISSION SERVICES**

14 **SEC. 101. JURISDICTION.**

15 (a) IN GENERAL.—Except as expressly provided in
16 this Act, and notwithstanding the 1934 Act (47 U.S.C.
17 151 et seq.) or any other provision of law, neither the
18 Commission nor any State or political subdivision thereof
19 may establish or enforce any law, rule, regulation, or other
20 provision having the force of law that—

21 (1) regulates, or requires the approval by the
22 Commission or such State or subdivision of, the
23 rates, charges, terms, or conditions for, or entry into
24 the provision of, any broadband Internet trans-
25 mission service; or



1 (2) imposes any such regulation or requirement
2 on any BITS provider that is registered under sec-
3 tion 102 of this Act.

4 (b) EXCLUSIVE FEDERAL JURISDICTION.—
5 Broadband Internet transmission services are interstate
6 services and are subject to exclusive Federal jurisdiction,
7 except as otherwise expressly provided in this Act.

8 (c) PUBLIC RIGHTS-OF-WAY.—Nothing in this sec-
9 tion affects the authority of a State or local government
10 to manage the public rights-of-way or to require fair and
11 reasonable compensation from a BITS provider or BIT
12 provider, on a competitively neutral and nondiscriminatory
13 basis, for use of public rights-of-way on a nondiscrim-
14 inatory basis, if the compensation required is publicly dis-
15 closed by such government.

16 (d) SPECTRUM AUTHORITY.—Notwithstanding sub-
17 section (a), this Act does not affect the authority of the
18 Commission under title III of the 1934 Act (47 U.S.C.
19 301 et seq.) with respect to the licensing of radio commu-
20 nications, except as expressly provided by this Act.

21 **SEC. 102. REGISTRATION OF BITS PROVIDERS.**

22 (a) FEDERAL AND STATE REGISTRATION.—

23 (1) REGISTRATION REQUIRED.—Any BITS pro-
24 vider offering BITS in any State shall file a BITS
25 registration statement, and any substantive amend-



1 ments thereto, with the Commission, and file a com-
2 plete copy of such statement and amendments with
3 the State commission of such State.

4 (2) PROHIBITION ON SERVICE PENDING REG-
5 ISTRATION.—Subject to paragraph (3), no BITS
6 provider may offer BITS until such provider's reg-
7 istration statement has become effective in accord-
8 ance with subsection (c).

9 (3) TRANSITION.—If a provider was offering
10 BITS prior to the date of enactment of this Act, the
11 Commission shall, in order to provide for a reason-
12 able transition period, provide a temporary waiver of
13 the prohibition in paragraph (2) during which such
14 provider may offer such service prior to the effective
15 date of the provider's registration statement.

16 (b) FEDERAL FORM.—A BITS registration state-
17 ment shall be in such form, contain such information, and
18 be submitted at such time as the Commission shall require
19 by regulation, after consultation with State commissions.

20 (c) EFFECTIVENESS OF REGISTRATION.—

21 (1) NOTICE OF FILING.—No BITS registration
22 statement or any substantial amendment thereof
23 filed with the Commission under this section shall be
24 effective earlier than 30 days following issuance of
25 public notice by the Commission of the acceptance



1 for filing of such registration statement or substan-
2 tial amendment.

3 (2) FAILURE TO SUPPLY INFORMATION.—The
4 Commission may disapprove a BITS registration
5 statement that the Commission determines fails to
6 comply with the requirements of the Commission
7 under subsection (b).

8 (3) OTHER GROUNDS FOR DISAPPROVAL.—The
9 Commission may disapprove a BITS registration
10 statement if—

11 (A) the BITS provider or any of its offi-
12 cers has violated Commission rules, Federal or
13 State law, or has a notice of apparent liability
14 pending at the Commission; and

15 (B) the Commission determines that the
16 BITS provider's offering of BITS would harm
17 consumers.

18 **SEC. 103. INTERCONNECTION.**

19 Each BITS provider has the right and duty to inter-
20 connect and exchange traffic with other requesting BITS
21 providers, BIT providers, and telecommunications car-
22 riers.

23 **SEC. 104. ACCESS TO BITS.**

24 (a) DUTIES OF PROVIDERS.—Subject to subsection
25 (b), each BITS provider has the duty—



1 (1) to provide subscribers with access to lawful
2 content, applications, and services provided over the
3 Internet, and not to block, impair, or interfere with
4 the offering of, access to, or the use of such content,
5 applications, or services;

6 (2) to permit subscribers to connect and use de-
7 vices of their choosing in connection with BITS; and

8 (3) not to install network features, functions, or
9 capabilities that do not comply with the guidelines
10 and standards established pursuant to section 106 of
11 this Act.

12 (b) PRESERVED AUTHORITIES.—Paragraphs (1) and
13 (2) of subsection (a) do not preclude a BITS provider
14 from—

15 (1) offering service plans to subscribers that in-
16 volve varied and reasonable bandwidth or network
17 capacity limitations, or include other value-added
18 consumer protection services, including software for
19 the prevention of unsolicited commercial electronic
20 messages, parental controls, or other similar capa-
21 bilities;

22 (2) taking reasonable measures to—

23 (A) protect the security and integrity of its
24 network and broadband Internet transmission
25 services; or



1 (B) prevent theft of BITS or other unlaw-
2 ful conduct; or

3 (3) carrying or offering—

4 (A) a broadband video service pursuant to
5 title III, or

6 (B) any other premium service that re-
7 quires managing the capabilities of a BITS pro-
8 vider's network to provide enhanced quality of
9 service to subscribers,

10 except that such carrying or offering of such services
11 may not block, or unreasonably impair or interfere
12 with, the offering of, access to, or the use of lawful
13 content, applications, and services provided over the
14 Internet, and may not unreasonably restrict the
15 right of subscribers under subsection (a)(2) to con-
16 nect and use devices.

17 **SEC. 105. TREATMENT AS A TELECOMMUNICATIONS CAR-**
18 **RIER FOR CERTAIN PURPOSES.**

19 A person that is a BITS provider or a BIT provider
20 and that is also a telecommunications carrier shall—

21 (1) for the purpose of paragraphs (3) and (6)
22 of section 251(c) of the 1934 Act, continue to have
23 the same rights regarding access to unbundled net-
24 work elements and colocation as a telecommuni-



1 cations carrier providing a telecommunications serv-
2 ice; and

3 (2) continue to exercise that person’s rights
4 under special access tariffs;
5 without regard to such person’s status as a BITS provider
6 or BIT provider under this Act.

7 **SEC. 106. COORDINATION FOR INTERCONNECTIVITY.**

8 The Commission—

9 (1) shall establish procedures for Commission
10 oversight of coordinated BITS network planning by
11 BITS providers, and the interconnectivity of devices
12 (including devices from unaffiliated providers) with
13 such networks, for the effective and efficient inter-
14 connection of BITS providers’ networks; and

15 (2) may participate in the development by ap-
16 propriate industry standards-setting organizations of
17 BITS network interconnectivity standards that pro-
18 mote interconnection with—

19 (A) BIT and BITS networks; and

20 (B) network capabilities and services by in-
21 dividuals with disabilities.

22 **TITLE II—VOIP SERVICES**

23 **SEC. 201. JURISDICTION.**

24 (a) IN GENERAL.—Except as expressly provided in
25 this Act, and notwithstanding the 1934 Act (47 U.S.C.



1 151 et seq.) or any other provision of law, neither the
2 Commission nor any State or political subdivision thereof
3 may establish or enforce any law, rule, regulation, or other
4 provision having the force of law that—

5 (1) regulates, or requires the approval by the
6 Commission or such State or subdivision of, the
7 rates, charges, terms, or conditions for, or entry into
8 the provision of, any VOIP service; or

9 (2) imposes any such regulation or requirement
10 on any VOIP service provider that is registered
11 under section 202 of this Act.

12 (b) EXCLUSIVE INTERSTATE JURISDICTION.—VOIP
13 services are interstate services and are subject to exclusive
14 Federal jurisdiction, except as otherwise expressly pro-
15 vided in this Act.

16 **SEC. 202. REGISTRATION OF VOIP SERVICE PROVIDERS.**

17 (a) FEDERAL AND STATE REGISTRATION.—

18 (1) REGISTRATION REQUIRED.—Any VOIP
19 service provider offering VOIP service in any State
20 shall file a VOIP service registration statement, and
21 any substantive amendments thereto, with the Com-
22 mission, and file a complete copy of such statement
23 and amendments with the State commission of such
24 State.



1 (2) PROHIBITION ON SERVICE PENDING REG-
2 ISTRATION.—Subject to paragraph (3), no VOIP
3 service provider may offer VOIP service until such
4 provider's registration statement has become effec-
5 tive in accordance with subsection (c).

6 (3) TRANSITION.—If a provider was offering
7 VOIP service prior to the date of enactment of this
8 Act, the Commission shall, in order to provide for a
9 reasonable transition period, provide a temporary
10 waiver of the prohibition in paragraph (2) during
11 which such provider may offer such service prior to
12 the effective date of the provider's registration state-
13 ment.

14 (b) FEDERAL FORM.—A VOIP service registration
15 statement shall be in such form, contain such information,
16 and be submitted at such time as the Commission shall
17 require by regulation, after consultation with State com-
18 missions.

19 (c) EFFECTIVENESS OF REGISTRATION.—

20 (1) NOTICE OF FILING.—No VOIP service reg-
21 istration statement or any substantial amendment
22 thereof filed with the Commission under this section
23 shall be effective earlier than 30 days following
24 issuance of public notice by the Commission of the



1 acceptance for filing of such registration statement
2 or substantial amendment.

3 (2) FAILURE TO SUPPLY INFORMATION.—The
4 Commission may disapprove a VOIP service reg-
5 istration statement that the Commission determines
6 fails to comply with the requirements of the Com-
7 mission under subsection (b).

8 (3) OTHER GROUNDS FOR DISAPPROVAL.—The
9 Commission may disapprove a VOIP service reg-
10 istration statement if—

11 (A) the VOIP service provider or any its
12 officers has violated Commission rules, Federal
13 or State law, or has a notice of apparent liabil-
14 ity pending at the Commission; and

15 (B) the Commission determines that the
16 VOIP service provider's offering of a VOIP
17 service would harm consumers.

18 **SEC. 203. EXCHANGE OF TRAFFIC.**

19 (a) EXCHANGE OF TRAFFIC REQUIRED.—Each
20 VOIP service provider shall have the right and duty to
21 exchange voice communications traffic with other VOIP
22 service providers and telecommunications carriers.

23 (b) COMPENSATION.—

24 (1) COMPENSATION REQUIRED.—A VOIP serv-
25 ice provider shall enter into a reciprocal compensa-



1 tion agreement with a telecommunications carrier
2 with which the VOIP service provider exchanges
3 traffic for compensation for the costs of transport
4 and termination of voice communications traffic.

5 (2) COMMISSION AUTHORITY.—The Commission
6 shall promulgate regulations that determine the rea-
7 sonable rate for such reciprocal compensation. The
8 Commission shall create a unified compensation re-
9 gime in which the same methodology and factors for
10 determining such rate shall apply.

11 (3) BILL-AND-KEEP PERMITTED.—This sub-
12 section shall not be construed to preclude arrange-
13 ments that afford the mutual recovery of costs
14 through the offsetting of reciprocal obligations, in-
15 cluding arrangements that waive mutual recovery
16 (such as bill-and-keep arrangements).

17 **SEC. 204. MEDIATION, ARBITRATION, AND DISPUTE RESO-**
18 **LUTION.**

19 (a) NEGOTIATION AND MEDIATION.—

20 (1) VOLUNTARY NEGOTIATIONS.—A tele-
21 communications carrier and a VOIP service provider
22 shall negotiate in good faith for the purpose of en-
23 tering into a binding agreement with respect to the
24 exchange of voice communications traffic. If an
25 agreement is reached, the agreement shall be sub-



1 mitted to the Commission and to the State commis-
2 sion of each State within which such exchange of
3 traffic will occur.

4 (2) MEDIATION.—Any party negotiating an
5 agreement under this section may, if the parties
6 reach an impasse after negotiating in good faith for
7 not less than 30 days, ask the Commission to medi-
8 ate any differences arising in the course of the nego-
9 tiation, except that if the differences relate to the ex-
10 change of traffic in a single State, such request may
11 be made to the State commission of that State. Any
12 recommendation by the Commission or a State com-
13 mission under this paragraph shall not be binding
14 on either party.

15 (b) AGREEMENTS ARRIVED AT THROUGH COMPUL-
16 SORY ARBITRATION.—

17 (1) ARBITRATION.—After 90 days after the
18 date on which a telecommunications carrier or VOIP
19 service provider receives a request for negotiation
20 under this section, the telecommunications carrier or
21 VOIP service provider may petition the Commission
22 to arbitrate any unresolved issues, except that—

23 (A) if the differences relate to the ex-
24 change of traffic in a single State, such request
25 may be made to the State commission of that



1 State (hereafter in this section referred to as
2 the “appropriate State commission”); but

3 (B) any decision reached by a State com-
4 mission may be appealed to the Commission by
5 either party.

6 (2) OPPORTUNITY TO RESPOND.—A non-peti-
7 tioning party to an arbitration under this section
8 may respond to the other party’s petition and pro-
9 vide such additional information as it wishes within
10 14 days after the petition is filed.

11 (3) ACTION.—

12 (A) The Commission or any appropriate
13 State commission with which a petition is filed
14 shall limit its consideration of any petition
15 under paragraph (1) (and any response thereto)
16 to the issues that are directly related to the ex-
17 change of voice communications traffic and that
18 are set forth in the petition and in the response,
19 if any, filed under paragraph (2).

20 (B) The Commission or any appropriate
21 State commission with which a petition is filed
22 may require the petitioning party and the re-
23 sponding party to provide such information as
24 may be necessary to reach a decision on the un-
25 resolved issues. If any party refuses or fails un-



1 reasonably to respond on a timely basis to any
2 reasonable request from the Commission or any
3 appropriate State commission, then the Com-
4 mission or appropriate State commission may
5 proceed on the basis of the best information
6 available to it from whatever source derived.

7 (C) The Commission or any appropriate
8 State commission with which a petition is filed
9 shall resolve each issue set forth in the petition
10 and the response, if any, and shall conclude,
11 not later than 90 days after the date on which
12 the Commission or appropriate State commis-
13 sion received the petition under paragraph (1),
14 the resolution of any unresolved issues that are
15 directly related to the exchange of voice commu-
16 nications traffic.

17 (4) REFUSAL TO NEGOTIATE.—The refusal of
18 any party to the negotiation to participate further in
19 the negotiations, to cooperate with the Commission
20 or any appropriate State commission with which a
21 petition is filed in carrying out its function as an ar-
22 bitrator, or to continue to negotiate in good faith in
23 the presence, or with the assistance, of the Commis-
24 sion or any appropriate State commission with which



1 a petition is filed shall be considered a failure to ne-
2 gotiate in good faith.

3 (c) COMMISSION TO ACT IF STATE WILL NOT ACT.—

4 If a State commission fails to act to carry out its responsi-
5 bility under this section, then the Commission shall issue
6 an order preempting the State commission's jurisdiction
7 of that proceeding within 60 days after being notified (or
8 taking notice) of such failure, and shall assume the re-
9 sponsibility of the State commission under this section
10 with respect to the proceeding and act for the State com-
11 mission.

12 (d) FILING REQUIRED.—Any agreement adopted by
13 negotiation or arbitration shall be submitted to the Com-
14 mission and any appropriate State commission within 10
15 days of completion. The Commission and each State com-
16 mission shall make a copy of each agreement available for
17 public inspection and copying within 10 days after receiv-
18 ing such agreement. The State commission may charge a
19 reasonable and nondiscriminatory fee to the parties to the
20 agreement or to the party filing the statement to cover
21 the costs of filing such agreement.

22 **SEC. 205. EMERGENCY SERVICES.**

23 (a) 911 AND E-911 SERVICES.—Each VOIP pro-
24 vider has a duty to ensure that 911 and E-911 services
25 are provided to subscribers of VOIP services in accordance



1 with regulations prescribed by the Commission. Such reg-
2 ulations shall take into consideration available industry
3 technological and operational standards.

4 (b) NON-DISCRIMINATORY ACCESS TO CAPABILI-
5 TIES.—Each entity with ownership or control of the nec-
6 essary E-911 infrastructure shall provide any requesting
7 VOIP service provider with nondiscriminatory access to
8 such infrastructure. Such entity shall provide access to the
9 infrastructure at just and reasonable, nondiscriminatory
10 rates, terms, and conditions as determined by the Com-
11 mission. In determining such access terms and conditions,
12 the Commission shall take into consideration appropriate
13 industry standards established by applicable industry
14 standard-setting organizations.

15 (c) STATE AUTHORITY.—Nothing in this Act, the
16 1934 Act, or any Commission regulation or order shall
17 prevent the imposition on or collection from a VOIP serv-
18 ice provider, of any fee or charge specifically designated
19 or presented as dedicated by a State, political subdivision
20 thereof, or Indian tribe on an equitable, and non-discrimi-
21 natory basis for the support of 911 and E-911 services
22 if no portion of the revenue derived from such fee or
23 charge is obligated or expended for any purpose other than
24 support of 911 and E-911 services or enhancements of
25 such services.



1 (d) FEASIBILITY.—In establishing requirements or
2 obligations under subsections (a) and (b), the Commission
3 shall ensure that such standards impose requirements or
4 obligations on providers of VOIP service and entities with
5 ownership or control of necessary E-911 infrastructure
6 that the Commission determines are technologically and
7 operationally feasible.

8 (e) SUBSCRIBER NOTICE.—A portable VOIP service
9 provider, and any other VOIP service provider that is de-
10 termined by the Commission to not be technologically ca-
11 pable of providing 911 and E-911 services, shall provide
12 a clear and conspicuous notice of the unavailability of such
13 services to each subscriber at the time of entering into
14 a contract for VOIP service with that subscriber.

15 (f) PORTABLE VOIP SERVICES.—

16 (1) LOCATION-BASED SOLUTION REQUIRED TO
17 EXTENT FEASIBLE.—The Commission shall require
18 by regulation that providers of a portable VOIP
19 service provide 911 and E-911 service to the extent
20 technologically and operationally feasible.

21 (2) PROCEEDING REQUIRED.—Within 270 days
22 after the date of enactment of this Act, the Commis-
23 sion shall complete a proceeding concerning the tech-
24 nical and operational feasibility of the provision of



1 location information to PSAPs by providers of port-
2 able VOIP services.

3 (3) PROGRESS REPORTS.—To the extent that
4 the initial proceeding conducted by the Commission
5 under paragraph (2) concludes that it is not techno-
6 logically and operationally feasible for the providers
7 of a portable VOIP service to provide location infor-
8 mation to PSAPs, then the Commission shall submit
9 reports to the Committee on Energy and Commerce
10 of the House of Representatives and the Committee
11 on Commerce, Science, and Transportation of the
12 Senate on the progress in attaining and deploying
13 technology for such a location-based solution to the
14 provision of 911 and E-911 service to portable
15 VOIP service subscribers. Such reports shall be sub-
16 mitted quarterly for each of the first 2 quarters
17 after the conclusion of such proceeding, and shall be
18 submitted semiannually thereafter until the Commis-
19 sion concludes that providing location information to
20 PSAPs for portable VOIP services is technologically
21 and operationally feasible. Such reports may include
22 any recommendations the Commission considers ap-
23 propriate to encourage the migration of emergency
24 services to TCP/IP protocol or other advanced serv-
25 ices.



1 (g) ACCESS TO INFORMATION.—The Commission
2 shall have the authority to compile a list of PSAP contact
3 information, testing procedures, and classes and types of
4 services supported by PSAPs, or other information con-
5 cerning the necessary E-911 infrastructure, for the pur-
6 pose of assisting providers in complying with the require-
7 ments of this section.

8 **SEC. 206. REVISION OF UNIVERSAL SERVICE REQUIRE-**
9 **MENTS.**

10 (a) INQUIRY REQUIRED.—Within one month after
11 the date of enactment of this Act, the Commission shall
12 initiate an inquiry to determine if, as subscribers migrate
13 from telecommunications services to VOIP services, the
14 contribution base used to support universal service should
15 be expanded to include VOIP service providers to ensure
16 that contributions to the universal service support mecha-
17 nisms are being made in an equitable and nondiscrim-
18 inatory manner. The Commission shall complete such in-
19 quiry within 180 days after such date of enactment.

20 (b) COMMISSION RULEMAKING.—If at the conclusion
21 of such inquiry the Commission determines that the con-
22 tribution base must be expanded to ensure that contribu-
23 tions to the universal service support mechanisms are eq-
24 uitable and nondiscriminatory, the Commission shall con-
25 duct a proceeding, in consultation with the Federal-State



1 Joint Board on Universal Service, to revise the universal
2 service support mechanisms to impose contribution re-
3 quirements on VOIP service providers that are equitable
4 and nondiscriminatory, and that are specific, predictable,
5 and sufficient to achieve the purposes of universal service.

6 (c) DEADLINE.—If the Commission initiates a rule-
7 making under subsection (b), the Commission shall imple-
8 ment changes to its universal service support mechanism
9 regulations within 180 days after the conclusion of the in-
10 quiry required by subsection (a).

11 **SEC. 207. NUMBER PORTABILITY.**

12 A subscriber to VOIP services and a prospective sub-
13 scriber to such service shall be accorded a right to number
14 portability in accordance with regulations prescribed by
15 the Commission.

16 **SEC. 208. PROVISION OF RELAY SERVICE.**

17 (a) AVAILABILITY OF RELAY SERVICES.—The Com-
18 mission shall ensure that relay services are available to
19 VOIP service subscribers who have a hearing or speech
20 disability, to the extent possible and in the most efficient
21 manner.

22 (b) PROVISION OF SERVICES.—A VOIP service pro-
23 vider shall, not later than 18 months after the date of
24 enactment of this Act, provide relay services throughout
25 the area in which it offers VOIP service, either individ-



1 ually, through a competitively selected vendor, or in con-
2 cert with other service providers, in accordance with regu-
3 lations prescribed by the Commission under this section.
4 Each provider of relay services has the duty not to restrict
5 users of text, voice, video, or other relay services to a sin-
6 gle relay provider, either contractually or technically.

7 (c) RULEMAKING.—Within 6 months after the date
8 of enactment of this Act, the Commission shall prescribe
9 regulations to implement this section. With respect to
10 relay services relied upon by VOIP service providers to
11 meet the requirements of this section, such regulations
12 shall—

13 (1) establish functional requirements, guide-
14 lines, and operating procedures for such relay serv-
15 ices;

16 (2) establish minimum standards for such relay
17 services;

18 (3) require that such relay services operate
19 every day, for 24 hours per day;

20 (4) ensure that users of such relay services pay
21 no more than functionally equivalent services;

22 (5) prohibit operators of such relay services
23 from refusing, limiting, or unreasonably restraining
24 calls;



1 (6) prohibit operators of such relay services
2 from disclosing the content of any relayed conversa-
3 tion;

4 (7) prohibit operators of such relay services
5 from intentionally altering a relayed conversation;
6 and

7 (8) develop enforcement and expedited com-
8 plaint procedures.

9 (d) TECHNOLOGY.—The Commission shall ensure
10 that regulations prescribed to implement this section en-
11 courage the use of new technology and do not discourage
12 or impair the development of improved technology.

13 (e) SAVINGS CLAUSE.—Nothing in this Act shall af-
14 fect the authority of a State to continue a State-operated
15 relay program that is certified under section 225(f) of the
16 1934 Act, regardless of the method of relay transmission.

17 (f) DEFINITION.—For purposes of this section, the
18 term “relay service” means a transmission service that
19 provides the ability for an individual who has a hearing
20 or speech disability to engage in text, voice, or video com-
21 munication by wire or radio with other individuals in a
22 manner that is functionally equivalent to the ability of an
23 individual who does not have a hearing or speech disability
24 to communicate using voice communication services by
25 wire or radio.



1 **TITLE III—VIDEO SERVICES**

2 **SEC. 301. JURISDICTION.**

3 (a) IN GENERAL.—Except as expressly provided in
4 this Act, and notwithstanding the Communications Act of
5 1934 (47 U.S.C. 151 et seq.) or any other provision of
6 law, neither the Commission nor any State or political sub-
7 division thereof may establish or enforce any law, rule,
8 regulation, or other provision having the force of law
9 that—

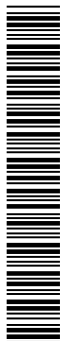
10 (1) regulates, or requires the approval by the
11 Commission or such State or subdivision of, the
12 rates, charges, terms, or conditions for, or entry into
13 the provision of, any broadband video service; or

14 (2) imposes any such regulation or requirement
15 on any broadband video service provider that is reg-
16 istered under section 302 of this Act.

17 (b) EXCLUSIVE FEDERAL JURISDICTION.—
18 Broadband video services are interstate services and are
19 subject to exclusive Federal jurisdiction, except as other-
20 wise expressly provided in this Act.

21 **SEC. 302. REGISTRATION OF BROADBAND VIDEO SERVICE**
22 **PROVIDERS.**

23 (a) FEDERAL AND STATE REGISTRATION.—



1 (1) REGISTRATION REQUIRED.—Any broadband
2 video service provider offering broadband video serv-
3 ice in any State shall—

4 (A) file a broadband video service provider
5 registration statement, and any substantive
6 amendment thereto, with the Commission; and

7 (B) on the same day, file a complete copy
8 of such statement and amendment with the
9 State commission of such State and with each
10 local franchising authority within whose local
11 franchise area such statement or amendment
12 proposes to provide broadband video service (in
13 this section referred to as the “appropriate
14 State commission and local franchising author-
15 ity”).

16 (2) PROHIBITION ON SERVICE PENDING REG-
17 ISTRATION.—Subject to paragraph (3), no
18 broadband video service provider shall be permitted
19 to offer broadband video service in any State or local
20 franchise area until such provider’s registration
21 statement has become effective with respect to such
22 State or franchise area in accordance with sub-
23 section (c).

24 (3) TRANSITION.—If a provider was offering a
25 broadband video service in such State or local fran-



1 chise area prior to the date of enactment of this Act,
2 the Commission shall, in order to provide for a rea-
3 sonable transition period, provide a temporary waiv-
4 er of the prohibition in paragraph (2) during which
5 such provider may offer such service prior to the ef-
6 fective date of the provider's registration statement.

7 (b) FEDERAL FORM.—A broadband video service pro-
8 vider registration statement shall be in such form, contain
9 such information, and be submitted at such time as the
10 Commission shall require by regulation, in consultation
11 with State commissions and local franchising authorities.

12 (c) EFFECTIVENESS OF REGISTRATION.—

13 (1) NOTICE OF FILING.—A broadband video
14 service provider registration statement or any sub-
15 stantial amendment thereof filed with the Commis-
16 sion under this section shall, unless disapproved by
17 the Commission, be effective 30 days following
18 issuance of public notice by the Commission of the
19 acceptance for filing of such registration statement
20 or substantial amendment thereto. The Commission
21 shall—

22 (A) notify each appropriate State commis-
23 sion of the taking effect of such statement or
24 amendment under this paragraph with respect
25 to such State; and



1 (B) notify each appropriate local fran-
2 chising authority of the taking effect of such
3 statement or amendment under this paragraph
4 with respect to the franchise area of such au-
5 thority.

6 (2) FAILURE TO SUPPLY INFORMATION.—The
7 Commission may disapprove a broadband video serv-
8 ice provider registration statement that the Commis-
9 sion determines fails to comply with the require-
10 ments of the Commission under subsection (b).

11 (3) OTHER GROUNDS FOR DISAPPROVAL.—The
12 Commission may disapprove a broadband video serv-
13 ice provider's registration statement if—

14 (A) the broadband video service provider or
15 any of its officers has violated Commission rules,
16 Federal or State law, or has a notice of appar-
17 ent liability pending at the Commission; and

18 (B) the Commission determines that such
19 broadband video service provider's offering of
20 broadband video service would harm consumers.

21 **SEC. 303. BROADBAND VIDEO SERVICE FRANCHISING.**

22 (a) COMMENCEMENT AND DURATION OF FRAN-
23 CHISE.—

24 (1) IN GENERAL.—If the Commission has,
25 under section 302(c)(1)(B) of this Act, notified a



1 local franchising authority that a broadband video
2 service provider registration statement, or a substan-
3 tial amendment thereto, has become effective with
4 respect to the local franchise area of such fran-
5 chising authority, the broadband video service pro-
6 vider's franchise in that local franchise area shall
7 commence 15 days after the local franchising
8 authority's receipt of—

9 (A) any franchise bond payments required
10 under subsection (d);

11 (B) a statement by the provider agreeing
12 to any public, educational, and governmental
13 use designated by the local franchising author-
14 ity under section 304(b) of this Act; and

15 (C) a designation by such provider of a
16 local agent.

17 (2) ABSENCE OF LOCAL FRANCHISING AUTHOR-
18 ITY.—If the broadband video service provider is
19 seeking to provide broadband video service in an
20 area in which there is no local franchising authority,
21 the franchise under this section shall commence 15
22 days after the receipt by the State commission of the
23 State in which the broadband service provider is
24 seeking to commence service of—



1 (A) a notice under section 302(e)(1) of this
2 Act from the Commission that the broadband
3 video service provider registration statement, or
4 amendment thereto, has taken effect; and

5 (B) a designation by such provider of a
6 local agent.

7 (3) DURATION, RENEWAL, TERMINATION, AND
8 TRANSFER OF FRANCHISE.—The Commission shall
9 by regulation—

10 (A) set a uniform term of duration for
11 broadband video service provider franchises
12 under this section; and

13 (B) consistent with the requirements of
14 this title, establish procedures for the renewal,
15 termination, and transfer of franchises under
16 this section.

17 (b) FRANCHISE FEE.—

18 (1) ASSESSMENT BY LOCAL FRANCHISING AU-
19 THORITY PERMITTED.—A local franchising authority
20 may assess a franchise fee on a broadband video
21 service provider for the provision of broadband video
22 service within the local franchise area.

23 (2) AMOUNT.—For any 12-month period, such
24 franchise fee shall not exceed 5 percent of such
25 broadband video service provider’s gross revenues



1 derived in such period from the provision of
2 broadband video service to subscribers in such local
3 franchise area. Nothing in this subsection shall pro-
4 hibit a local franchising authority from requiring
5 that the franchise fee which lawfully could be col-
6 lected for any such 12-month period shall be paid on
7 a prepaid or deferred basis, except that the sum of
8 payments made during the term of the franchise
9 may not exceed the amount, including the time value
10 of money, which would have lawfully been collected
11 if such fee had been paid per year.

12 (3) DISCLOSURE OF BASIS.—The Commission
13 shall by regulation require a broadband video service
14 provider to provide a statement with each payment
15 to a franchise authority under this subsection stat-
16 ing the amount of the fee and the basis for the cal-
17 culation of such amount.

18 (4) DEFINITION OF GROSS REVENUES.—For
19 purposes of this subsection, the term “gross reve-
20 nues” means all consideration of any kind or nature,
21 including (without limitation) cash, credits, property,
22 and in-kind contributions (services or goods) derived
23 by the broadband video service provider from the op-
24 eration of the broadband video service in such local
25 franchising area, but does not include—



1 (A) any revenue not actually received, even
2 if billed, such as bad debt; or

3 (B) refunds, rebates or discounts to sub-
4 scribers, public institutions, or governmental
5 entities.

6 (c) MANAGEMENT OF RIGHTS-OF-WAY.—

7 (1) USE OF RIGHTS-OF-WAYS AND EASE-
8 MENTS.—Any franchise under this section shall be
9 construed to authorize the construction and oper-
10 ation over public rights-of-way, and through ease-
11 ments, of a broadband video service within the area
12 to be served by the broadband video service provider,
13 except that, in using such rights-of-way and ease-
14 ments, the broadband video service provider shall en-
15 sure that—

16 (A) the safety, functioning, and appear-
17 ance of the property and the convenience and
18 the safety of other persons not be adversely af-
19 fected by the installation or construction of fa-
20 cilities necessary for a broadband video service;

21 (B) the cost of the installation, construc-
22 tion, operation, or removal of such facilities be
23 borne by the broadband video service provider
24 or subscriber, or a combination of both; and



1 (C) the owner of the property be justly
2 compensated by the broadband video service
3 provider for any damages caused by the instal-
4 lation, construction, operation, or removal of
5 such facilities by the broadband video service
6 provider.

7 (2) PRESERVATION OF AUTHORITY.—Neither
8 paragraph (1) of this subsection nor any other provi-
9 sion of this title shall be construed to prohibit a local
10 franchising authority or other unit of State or local
11 government—

12 (A) from enforcing the requirements of
13 subparagraphs (A), (B), and (C) of paragraph
14 (1); or

15 (B) from imposing reasonable restrictions
16 on the time, place, and manner by which a
17 broadband video service provider constructs, al-
18 ters, or maintains facilities that use public
19 rights-of-way and easements for the provision of
20 broadband video service, as necessary for the
21 purposes described in paragraph (1)(A).

22 (d) FRANCHISE BONDS, ETC.—In addition to any
23 fees collected under subsection (b), a local franchise au-
24 thority may require a broadband video service provider to
25 obtain bonds, security funds, letters of credit, insurance,



1 or indemnification, or to pay penalties or liquidated dam-
2 ages, to ensure compliance with this title, subject to Com-
3 mission regulations.

4 (e) RESOLUTION OF DISPUTES.—The Commission
5 shall resolve any dispute arising under this section within
6 90 days of filing of the dispute with the Commission.

7 **SEC. 304. APPLICATION OF VIDEO REGULATIONS TO**
8 **BROADBAND VIDEO SERVICE PROVIDERS.**

9 (a) COMPARABLE REQUIREMENTS AND OBLIGA-
10 TIONS.—Each of the following provisions of the 1934 Act,
11 and the regulations under each such provision, that apply
12 to a cable operator shall apply to a broadband video serv-
13 ice provider under this title in accordance with regulations
14 prescribed by the Commission to apply such provisions to
15 such providers in a comparable manner:

16 (1) PROGRAM RATINGS.—Section 303(w)(2) (47
17 U.S.C. 303(w)(2)).

18 (2) FACILITIES FOR CANDIDATES FOR PUBLIC
19 OFFICE.—Section 315 (47 U.S.C. 315).

20 (3) ANNOUNCEMENTS WITH RESPECT TO CER-
21 TAIN MATTER BROADCAST AND DISCLOSURE OF CER-
22 TAIN PAYMENTS.—Sections 317 (47 U.S.C. 317)
23 and 507 (47 U.S.C. 507).

24 (4) RETRANSMISSION.—Section 325 (47 U.S.C.
25 325), and the following provisions of Commission



1 regulations: 47 CFR 76.54 (significantly viewed sig-
2 nals) and 47 CFR 76.92–76.111 (network non-du-
3 plication, syndicated exclusivity, and sports black-
4 out).

5 (5) OWNERSHIP.—Subsections (c), (f), and (h)
6 of section 613 (47 U.S.C. 533(c), (f), (h)).

7 (6) CARRIAGE OF LOCAL COMMERCIAL AND
8 NONCOMMERCIAL EDUCATIONAL TELEVISION SIG-
9 NALS.—Sections 614 and 615 (47 U.S.C. 534, 535).

10 (7) BASIC TIER.—Section 623(b)(7) (47 U.S.C.
11 543(b)(7)), except that rates for the basic tier shall
12 not be regulated.

13 (8) BLOCKING AND SCRAMBLING OF CHAN-
14 NELS.—Sections 624(d)(2) (47 U.S.C. 544(d)(2))
15 and 640 (47 U.S.C. 560).

16 (9) EMERGENCY ALERTS.—Section 624(g) (47
17 U.S.C. 544(g)).

18 (10) DISPOSITION OF WIRING AFTER TERMI-
19 NATION OF SERVICE.—Section 624(i) (47 U.S.C.
20 544(i)).

21 (11) CONSUMER ELECTRONICS EQUIPMENT
22 COMPATIBILITY AND COMPETITIVE AVAILABILITY OF
23 NAVIGATION DEVICES.—Sections 624A (47 U.S.C.
24 544a) and 629 (47 U.S.C. 549).



1 (12) EQUAL EMPLOYMENT OPPORTUNITY.—
2 Section 634 (47 U.S.C. 554).

3 (13) CLOSED CAPTIONING.—Sections 711 (47
4 U.S.C. 611) and 713 (47 U.S.C. 613).

5 (b) PUBLIC, EDUCATIONAL, OR GOVERNMENTAL
6 USE.—

7 (1) REQUIREMENTS.—

8 (A) COMPARABILITY.—A local franchising
9 authority may designate broadband video serv-
10 ice provider capacity for public, educational, or
11 governmental use in the local franchising area,
12 so long as such use is comparable to the obliga-
13 tions the local franchising authority applies—

14 (i) to any cable operator in such local
15 franchising area under section 611 of the
16 1934 Act (47 U.S.C. 531); and

17 (ii) to any other broadband video serv-
18 ice provider in such area.

19 (B) LACK OF OTHER PROVIDERS.—The
20 Commission shall provide by regulation for the
21 designation of capacity in a local franchising
22 area in which neither a cable operator nor an-
23 other broadband video service provider are in
24 operation.



1 (2) INSTITUTIONAL NETWORKS.—A local fran-
2 chising authority may, under this subsection, des-
3 ignate or use broadband video service provider ca-
4 pacity for public, educational, or governmental use
5 on any broadband video service provider institutional
6 networks in the local franchising area, except that
7 the Commission shall not require, or allow States,
8 State commissions, or local franchising authorities to
9 require, the construction by broadband video service
10 providers of institutional networks. With respect to
11 a broadband video service provider that was a cable
12 operator, and that, as a condition of the cable fran-
13 chise, agreed to provide an institutional network,
14 nothing in this title shall be construed to relieve
15 such provider of the obligation to provide such net-
16 work. Notwithstanding any other provision of Fed-
17 eral or State law or any franchise agreement, a local
18 franchising authority that required a person that
19 was a cable operator to provide an institutional net-
20 work shall continue to have the authority to require
21 that person to provide such network.

22 (3) NO EDITORIAL CONTROL.—Neither the
23 Commission nor the broadband video service pro-
24 vider shall exercise any editorial control over any



1 public, educational, or governmental use provided
2 pursuant to this subsection.

3 (4) DEFINITION.—For purposes of this sub-
4 section, “institutional network” means a commu-
5 nication network that is constructed or operated by
6 a cable operator or broadband video service provider
7 and that is generally available only to subscribers
8 who are not residential subscribers.

9 (c) REDLINING.—The Commission shall ensure that
10 a broadband video service provider does not deny access
11 to its broadband video service to any group of potential
12 residential broadband video service subscribers because of
13 the income of that group. If the Commission determines
14 that a broadband video service provider has denied access
15 to its broadband video service to a group of potential resi-
16 dential broadband video service subscribers because of the
17 income of that group, the Commission shall ensure that
18 the broadband video service provider extends access to
19 that group.

20 [(d) BUILD OUT.—To be determined]

21 (e) DEVELOPMENT OF COMPETITION AND DIVERSITY
22 IN VIDEO PROGRAMMING DISTRIBUTION.—

23 (1) APPLICATION OF RIGHTS.—Broadband
24 video service providers shall have comparable rights
25 to those granted multichannel video programming



1 distributors under section 628 of the 1934 Act (47
2 U.S.C. 548).

3 (2) APPLICATION OF REQUIREMENTS.—The re-
4 quirements that apply to cable operators under sec-
5 tion 628 of the 1934 Act (47 U.S.C. 548) shall also
6 apply to broadband video service providers in accord-
7 ance with regulations prescribed by the Commission
8 to apply requirements to such providers in a com-
9 parable manner.

10 (f) NAVIGATIONAL DEVICE NEUTRALITY.—The Com-
11 mission shall by regulation prohibit a broadband video
12 service provider from omitting television broadcast sta-
13 tions or other unaffiliated video programming services car-
14 ried on such system from any navigational device, guide,
15 or menu.

16 **SEC. 305. REGULATION OF CARRIAGE AGREEMENTS.**

17 (a) REGULATIONS REQUIRED.—The Commission
18 shall establish regulations designed to prevent—

19 (1) a broadband video service provider from re-
20 quiring a financial interest in a program service as
21 a condition for carriage;

22 (2) a broadband video service provider from co-
23 ercing a video programming vendor to provide, and
24 from retaliating against such a vendor for failing to
25 provide, exclusive rights against other broadband



1 video service providers or multichannel video pro-
2 gramming distributors as a condition of carriage;
3 and

4 (3) a broadband video service provider from en-
5 gaging in conduct the effect of which is to unreason-
6 ably restrain the ability of an unaffiliated video pro-
7 gramming vendor to compete fairly by discrimi-
8 nating in video programming distribution on the
9 basis of affiliation or nonaffiliation of vendors in the
10 selection, terms, or conditions for carriage of video
11 programming provided by such vendors.

12 (b) EXPEDITED REVIEW.—The Commission shall
13 provide for expedited review of any complaints made by
14 a video programming vendor pursuant to this section.

15 (c) DEFINITION.—As used in this section, the term
16 “video programming vendor” means a person engaged in
17 the production, creation, or wholesale distribution of video
18 programming for sale.

19 **SEC. 306. IMPLEMENTATION.**

20 Within 90 days after the date of enactment of this
21 Act, the Commission shall complete all actions necessary
22 (including any reconsideration) to implement sections 302
23 and 303 of this Act.



1 **TITLE IV—GENERAL**
 2 **PROVISIONS**

3 **SEC. 401. REGULATIONS; AVAILABILITY OF REGISTRATION**
 4 **STATEMENTS.**

5 (a) REGULATIONS.—

6 (1) REGULATIONS AS NECESSARY TO IMPL-
 7 MENT.—The Commission shall prescribe such regu-
 8 lations as are necessary to implement this Act.

9 (2) DEADLINE.—Except as otherwise expressly
 10 provided in this Act, the Commission shall take all
 11 actions necessary (including any reconsideration) to
 12 prescribe the regulations required by paragraph (1)
 13 within 180 days after the date of enactment of this
 14 Act.

15 (b) PUBLIC AVAILABILITY OF REGISTRATION STATE-
 16 MENTS.—The Commission shall provide for the contin-
 17 uous public availability on the Commission’s Internet
 18 website or other electronic facility of all registration state-
 19 ments, and amendments thereto, filed under this Act.

20 **SEC. 402. NATIONAL CONSUMER PROTECTION STANDARDS.**

21 (a) NATIONAL STANDARDS REQUIRED.—The Com-
 22 mission shall by rule establish national consumer protec-
 23 tion standards with respect to BITS, VOIP services, and
 24 broadband video services, individually or collectively. Such
 25 standards shall—



1 (1) require clear, conspicuous, and timely dis-
2 closure of rates, terms, and conditions of service
3 plans (and changes therein), including program line-
4 up changes and rate changes, and may require dis-
5 closure of promotional, geographical, time-of-day, or
6 other limitations;

7 (2) require accurate, complete, clear, and sim-
8 ple statements of the charges for services, and may
9 establish requirements for itemization, refunds, cus-
10 tomer service contacts, late fees, determination of
11 when charges accrue, and liability for theft or loss;

12 (3) prohibit charges for any service or equip-
13 ment that the subscriber has not affirmatively re-
14 quested;

15 (4) establish service termination requirements
16 and procedures, and may limit the penalties imposed
17 on subscribers for early termination;

18 (5) establish customer service standards, includ-
19 ing service appointments and responses to service
20 interruptions and outages;

21 (6) require service providers to maintain sub-
22 scriber records, including records of subscriber com-
23 plaints and actions thereon;

24 (7) require service providers to establish sub-
25 scriber dispute resolution mechanisms, including a



1 requirement that the service provider provide a cost-
2 free domestic telephone mechanism for a subscriber
3 to initiate an inquiry or dispute;

4 (8) prohibit the facsimile of unsolicited commer-
5 cial advertisements to any person without the prior
6 invitation or permission of that person;

7 (9) with respect to VOIP services, prohibit un-
8 wanted solicitations to any person without the prior
9 invitation or permission of that person;

10 (10) prohibit the use of any equipment used for
11 the provision of BITS, VOIP services, and
12 broadband video services for obscene or indecent
13 communication made—

14 (A) with the intent to annoy, abuse,
15 threaten, or harass another person; or

16 (B) knowing that that the recipient is
17 under 18 years of age; and

18 (11) protect consumers from unfair and decep-
19 tive practices.

20 (b) ADDITIONAL CONSUMER PROTECTION LAWS.—

21 (1) TELEPHONE HARASSMENT.—The prohibi-
22 tions contained in section 223(a) of the 1934 Act
23 (47 U.S.C. 223(a)) shall also apply to the use of any
24 equipment used for the provision of BITS, VOIP
25 services, and broadband video services, except that



1 the penalties provided by such section shall not
2 apply under this section.

3 (2) RESTRICTIONS ON USE OF TELEPHONE
4 EQUIPMENT.—The provisions of section 227 of the
5 1934 Act (47 U.S.C. 227) that apply to a telephone
6 call, a telephone solicitation, an automatic dialing
7 system, or an unsolicited advertisement or facsimile
8 advertisement shall apply to VOIP service and BITS
9 under this Act, and persons retain the same rights
10 and remedies for violations as permissible pursuant
11 to section 227 of the 1934 Act.

12 (3) PAY-PER-CALL SERVICES.—The provisions
13 of section 228 of the 1934 Act (47 U.S.C. 228)
14 that—

15 (A) relate to pay-per-call services shall
16 apply to such services offered over BITS, VOIP
17 service, or broadband video service; and

18 (B) impose requirements on common car-
19 riers shall apply to BITS providers and VOIP
20 providers.

21 (4) CAN-SPAM.—The provisions of the regula-
22 tions under section 14 of the CAN-SPAM Act of
23 2003 (15 U.S.C. 7712) pertaining to unwanted mo-
24 bile service messages shall apply to BITS providers
25 and VOIP service providers.



1 (5) AUTHORITY FOR THE COMMISSION TO PRE-
2 SCRIBE COMPARABLE REGULATIONS.—The Commis-
3 sion shall prescribe regulations to apply the provi-
4 sions referenced in paragraphs (1) through (4) to
5 providers of BITS, VOIP services, and broadband
6 video services in manner comparable to their appli-
7 cation to common carriers.

8 (c) STATE ENFORCEMENT OF NATIONAL CONSUMER
9 PROTECTION STANDARDS.—A State commission may
10 issue an order requiring compliance with the rules promul-
11 gated by the Commission under subsection (a), but a State
12 commission may not create any new standard, or expand
13 upon or modify the Commission's standards. Unless ap-
14 pealed to the Commission, such an order of a State com-
15 mission shall be enforced by the Commission under sec-
16 tions 411 and 414. Any such appeal shall be resolved by
17 the Commission within 30 days after receipt of the appeal
18 by the Commission. A State commission may charge a pro-
19 vider of service under this Act a nominal fee to cover the
20 costs of issuing such orders.

21 **SEC. 403. PROTECTION OF CONSUMER PRIVACY.**

22 (a) CONSUMER NOTICE.—At the time of entering
23 into an agreement to provide any service to a subscriber,
24 and at least once a year thereafter, a service provider
25 under this Act shall provide notice in the form of a sepa-



1 rate, written statement to such subscriber which clearly
2 and conspicuously informs the subscriber of—

3 (1) the nature of personally identifiable infor-
4 mation collected or to be collected with respect to
5 the subscriber and the nature of the use of such in-
6 formation;

7 (2) the nature, frequency, and purpose of any
8 disclosure which may be made of such information,
9 including an identification of the types of persons to
10 whom the disclosure may be made;

11 (3) the period during which such information
12 will be maintained by such service provider;

13 (4) the times and place, or mechanism, by
14 which the subscriber may have access to such infor-
15 mation in accordance with subsection (d); and

16 (5) the limitations provided by this section with
17 respect to the collection and disclosure of informa-
18 tion by service provider under this Act and the right
19 of the subscriber under subsection (e) to enforce
20 such limitations.

21 (b) RESTRICTIONS ON COLLECTION OF INFORMA-
22 TION.—

23 (1) CONSENT REQUIRED.—Except as provided
24 in paragraph (2), a service provider under this Act
25 shall not collect personally identifiable information



1 concerning any subscriber without the prior, express
2 written or electronic consent of the subscriber con-
3 cerned. Such consent shall be in the form of an au-
4 thorization separate and distinct from any author-
5 ization or agreement to receive any service from the
6 service provider under this Act.

7 (2) EXCEPTIONS.—A service provider under
8 this Act may collect personally identifiable informa-
9 tion in order to—

10 (A) obtain information necessary to ini-
11 tiate, render, bill, or collect for any service pro-
12 vided by the service provider under this Act; or

13 (B) detect unauthorized use of such pro-
14 vider's services.

15 (c) DISCLOSURE RESTRICTIONS.—

16 (1) CONSENT REQUIRED.—Except as provided
17 in paragraph (2), a service provider under this Act
18 shall not disclose personally identifiable information
19 concerning any subscriber without the prior, express
20 written or electronic consent of the subscriber con-
21 cerned and shall take such actions as are necessary
22 to prevent unauthorized access to such information
23 by a person other than the subscriber or such pro-
24 vider. Such consent shall be in the form of an au-
25 thorization separate and distinct from any author-



1 ization or agreement to receive any service from
2 such provider.

3 (2) EXCEPTIONS.—A service provider under
4 this Act may disclose such information if the disclo-
5 sure is—

6 (A) necessary to initiate, render, bill, or
7 collect for any service provided by such pro-
8 vider;

9 (B) subject to subsection (f), made pursu-
10 ant to a court order authorizing such disclo-
11 sure, if the subscriber is notified of such order
12 by the person to whom the order is directed; or

13 (C) a disclosure of the names and address-
14 es of the subscriber to any service provided by
15 the service provider under this Act, if—

16 (i) such provider has received the au-
17 thorization described in paragraphs (1);

18 (ii) such provider has extended an op-
19 portunity to the subscriber to withdraw
20 such authorization at any time; and

21 (iii) the disclosure does not reveal, di-
22 rectly or indirectly—

23 (I) the nature or extent of any
24 use by the subscriber of the service or
25 services provided by such provider; or



1 (II) the nature of any transaction
2 made by the subscriber using and
3 service provided by such provider.

4 (d) ACCESS BY SUBSCRIBER TO INFORMATION.—A
5 subscriber shall be provided access to all personally identi-
6 fiable information regarding such subscriber which is col-
7 lected and maintained by the service provider under this
8 Act. Such information shall be made available to the sub-
9 scriber at reasonable times and at a convenient place des-
10 ignated by such provider, or through a secure mechanism
11 by which the subscriber may access such information elec-
12 tronically. A subscriber shall be provided a reasonable op-
13 portunity to correct any errors in such information.

14 (e) RIGHTS AND REMEDIES.—The provisions of sub-
15 sections (f) and (h) of section 631 of the 1934 Act that
16 apply to a cable operator shall apply to a provider of serv-
17 ices under this Act.

18 (f) DESTRUCTION OF INFORMATION.—A service pro-
19 vider under this Act shall destroy all personally identifi-
20 able information collected if the information is no longer
21 necessary for the purpose for which it was collected and
22 there are no pending requests or orders for access to such
23 information under subsection (d) or pursuant to court
24 order.



1 (g) PROTECTION OF CUSTOMER PROPRIETARY NET-
2 WORK INFORMATION.—

3 (1) DUTY TO PROTECT INFORMATION.—Every
4 service provider under this Act has a duty to protect
5 the confidentiality of proprietary information of, and
6 relating to, other service provider under this Act,
7 telecommunications carriers, equipment manufactur-
8 ers, and customers, including telecommunications
9 carriers reselling telecommunications services pro-
10 vided by a telecommunications carrier.

11 (2) CONFIDENTIALITY OF CARRIER INFORMA-
12 TION.—A service provider under this Act that re-
13 ceives or obtains proprietary information from an-
14 other service provider under this Act, or tele-
15 communications carrier for purposes of providing
16 any service shall use such information only for such
17 purpose, and shall not use such information for its
18 own marketing efforts.

19 (3) CONFIDENTIALITY OF CUSTOMER PROPRI-
20 ETARY NETWORK INFORMATION.—

21 (A) PRIVACY REQUIREMENTS.—Except as
22 required by law or with the prior, express au-
23 thorization of the customer, a service provider
24 under this Act that receives or obtains customer
25 proprietary network information by virtue of its



1 provision of any service shall only use, disclose,
2 or permit access to individually identifiable cus-
3 tomer proprietary network information in its
4 provision of—

5 (i) the service from which such infor-
6 mation is derived; or

7 (ii) services necessary to, or used in,
8 the provision of such service, including the
9 publishing of directories.

10 (B) DISCLOSURE.—A service provider
11 under this Act shall disclose customer propri-
12 etary network information, upon express writ-
13 ten or electronic request by the customer to any
14 person designated by the customer.

15 (C) AGGREGATE CUSTOMER INFORMA-
16 TION.—A service provider under this Act that
17 receives or obtains customer proprietary net-
18 work information by virtue of its provision of
19 any service may use, disclose, or permit access
20 to aggregate customer information other than
21 for the purposes described in subparagraph (A)
22 only if it provides such aggregate data to other
23 service providers under this Act, and tele-
24 communications carriers or persons upon rea-



1 sonable and nondiscriminatory terms and condi-
2 tions upon reasonable request therefor.

3 (4) GENERAL EXCEPTIONS.—Nothing in this
4 section prohibits a service provider under this Act
5 from using, disclosing, or permitting access to cus-
6 tomer proprietary network information obtained
7 from its customers, either directly or indirectly
8 through its agents—

9 (A) to initiate, render, bill, and collect for
10 any service;

11 (B) to protect the rights or property of the
12 service provider under this Act, or to protect
13 users of services provided by such provider or
14 other service providers under this Act, or tele-
15 communications carriers from fraudulent, abu-
16 sive, or unlawful use of, or subscription to any
17 service;

18 (C) to provide any inbound telemarketing,
19 referral, or administrative services to the cus-
20 tomer for the duration of the call, if such call
21 was initiated by the customer and the customer
22 approves of the use of such information to pro-
23 vide such service; and

24 (D) to provide call location information
25 concerning the user of portable VOIP service—



1 (i) to a PSAP, emergency medical
2 service provider, or emergency dispatch
3 provider, public safety, fire service, or law
4 enforcement official, or hospital emergency
5 or trauma care facility, in order to respond
6 to the user's call for emergency services;

7 (ii) to inform the user's legal guardian
8 or members of the user's immediate family
9 of the user's location in an emergency situ-
10 ation that involves the risk of death or se-
11 rious physical harm; or

12 (iii) to providers of information or
13 database management services solely for
14 purposes of assisting in the delivery of
15 emergency services in response to an emer-
16 gency.

17 (5) SUBSCRIBER LIST INFORMATION.—Notwith-
18 standing paragraphs (1) through (5), a service pro-
19 vider under this Act that provides VOIP services
20 and publishes, either directly or indirectly, sub-
21 scriber list information in any format, shall provide
22 subscriber list information gathered in its capacity
23 as a provider of VOIP service on a timely and
24 unbundled basis, under nondiscriminatory and rea-
25 sonable rates, terms, and conditions, to any person



1 upon request for the purpose of publishing direc-
2 tories in any format.

3 (6) AUTHORITY TO USE LOCATION INFORMA-
4 TION.—For purposes of paragraph (3)(A), without
5 the express prior authorization of the customer, a
6 customer shall not be considered to have approved
7 the use or disclosure of or access to call location in-
8 formation concerning the user of a portable VOIP
9 service, other than in accordance with paragraph
10 (4)(D).

11 (7) SUBSCRIBER LISTED AND UNLISTED INFOR-
12 MATION FOR EMERGENCY SERVICES.—Notwith-
13 standing paragraphs (1) through (5), a service pro-
14 vider under this Act that provides VOIP service
15 shall provide information described in subsection
16 (h)(10)(A) (including information pertaining to sub-
17 scribers whose information is unlisted or unpub-
18 lished) that is in its possession or control (including
19 information pertaining to subscribers of other service
20 provider under this Act or telecommunications car-
21 riers) on a timely and unbundled basis, under non-
22 discriminatory and reasonable rates, terms, and con-
23 ditions to providers of emergency services, and pro-
24 viders of emergency support services, solely for pur-



1 poses of delivering or assisting in the delivery of
2 emergency services.

3 (h) DEFINITIONS.—For the purposes of this section:

4 (1) AGGREGATE INFORMATION.—The term “ag-
5 gregate customer information” means collective data
6 that relates to a group or category of services or
7 customers, from which individual customer identities
8 and characteristics have been removed.

9 (2) ANY SERVICE.—The term “any service” in-
10 cludes any service provided using any of the facilities
11 of a service provider under this Act.

12 (3) BITS PROVIDER.—The term “BITS pro-
13 vider” has the same meaning as defined in section
14 2, but also includes any person who—

15 (A) is owned or controlled by, or under
16 common ownership or control with, a BITS pro-
17 vider; and

18 (B) provides BIT, BITS, VOIP service, or
19 broadband video service.

20 (4) CUSTOMER PROPRIETARY NETWORK INFOR-
21 MATION.—The term “customer proprietary network
22 information” means—

23 (A) information that relates to the quan-
24 tity, technical configuration, type, destination,
25 location, and amount of use of BIT, BITS,



1 VOIP service, or broadband video service sub-
2 scribed to by any customer of a service provider
3 under this Act, or a telecommunications carrier,
4 and that is made available to the such provider
5 or carrier by the customer solely by virtue of
6 the provider-customer relationship; and

7 (B) information contained in the bills per-
8 taining to BIT, BITS, VOIP service, or
9 broadband video services received by a customer
10 of a service provider under this Act, except that
11 such term does not include subscriber list infor-
12 mation.

13 (5) EMERGENCY NOTIFICATION SERVICES.—the
14 term “emergency notification services” means serv-
15 ices that notify the public of an emergency.

16 (6) EMERGENCY SERVICES.—The term “emer-
17 gency services” means 9–1–1 emergency services
18 and emergency notification services.

19 (7) EMERGENCY SUPPORT SERVICES.—The
20 term “emergency support services” means informa-
21 tion or database management services used in sup-
22 port of emergency services.

23 (8) PERSONALLY IDENTIFIABLE INFORMA-
24 TION.—The term “personally identifiable
25 information”—



1 (A) means information that allows a living
2 person to be identified individually;

3 (B) includes the first and last name of an
4 individual, a home or physical address of an in-
5 dividual, date or place of birth, an email ad-
6 dress, a telephone number, a Social Security
7 number, a tax identification number, birth cer-
8 tificate number, passport number, driver's li-
9 cense number, credit card number, bank card
10 number, or any government-issued identification
11 number; and

12 (C) does not include any record of aggre-
13 gate data that does not permit the identifica-
14 tion of particular persons.

15 (9) SERVICE PROVIDER UNDER THIS ACT.—The
16 term “service provider under this Act” means a BIT
17 provider, a BITS provider, a VOIP service provider,
18 and a broadband video service provider.

19 (10) SUBSCRIBER LIST INFORMATION.—The
20 term “subscriber list information” means any
21 information—

22 (A) identifying the listed names of sub-
23 scribers of a VOIP service provider and such
24 subscribers' telephone numbers, addresses, or
25 primary advertising classifications (as such



1 classifications are assigned at the time of the
2 establishment of such service), or any combina-
3 tion of such listed names, numbers, addresses,
4 or classifications; and

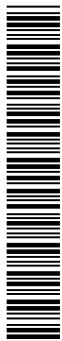
5 (B) that the VOIP service provider or an
6 affiliate has published, caused to be published
7 or accepted for publication in any directory for-
8 mat.

9 **SEC. 404. ACCESS BY PERSONS WITH DISABILITIES.**

10 (a) **MANUFACTURING.**—A manufacturer of equip-
11 ment used for BIT, BITS, VOIP service, or broadband
12 video service shall ensure that equipment designed, devel-
13 oped, or fabricated after the date of enactment of this Act
14 is designed, developed, and fabricated to be accessible to
15 and usable by individuals with disabilities, unless the man-
16 ufacturer demonstrates that taking such steps would re-
17 sult in an undue burden.

18 (b) **SERVICE PROVIDERS.**—A BITS provider, VOIP
19 service provider, or broadband video service provider shall
20 ensure that the service it provides is accessible to and usa-
21 ble by individuals with disabilities, unless the provider
22 demonstrates that taking such steps would result in an
23 undue burden.

24 (c) **COMPATIBILITY.**—Whenever the requirements of
25 subsections (a) or (b) constitute an undue burden, the



1 manufacturer or provider shall ensure that the equipment
2 or service is compatible with peripheral devices or special-
3 ized customer premises equipment widely used by individ-
4 uals with disabilities to achieve access, unless the manu-
5 facturer or provider demonstrates that taking such steps
6 would result in an undue burden.

7 (d) INTERCONNECTION AND INTEROPERABILITY.—
8 Each BITS provider, VOIP service provider, and
9 broadband video provider has the duty not to install net-
10 work features, functions, or capabilities that do not com-
11 ply with the guidelines and standards established pursuant
12 to this section.

13 (e) PERSONS SUBJECT TO DUAL REQUIREMENTS.—
14 Any person that is subject to the requirements of this sec-
15 tion and section 255 of the 1934 Act with respect to the
16 same service or equipment shall, after the effective date
17 of the regulations required by subsection (f), be subject
18 only to the requirements of this section with respect to
19 such service or equipment and not to the requirements of
20 such section 255. This subsection shall not apply with re-
21 spect to equipment fabricated before the effective date of
22 such regulations.

23 (f) REGULATIONS.—

24 (1) DEADLINE.—Within 1 year after the date
25 of enactment of this Act, the Commission, in con-



1 sultation with the Architectural and Transportation
2 Barriers Compliance Board, shall prescribe such reg-
3 ulations as are necessary to implement this section.

4 (2) CONTENTS.—Such regulations shall—

5 (A) prohibit BITS, VOIP service, and
6 broadband video service, any provider of that
7 service, and the equipment used for any such
8 service, from impairing or impeding any closed-
9 captioning or video description that has been
10 incorporated into the content for transmission;

11 (B) require each BITS provider, VOIP
12 service provider, and broadband video service
13 provider to document steps taken to achieve ac-
14 cess, including the provider's efforts to consult
15 with individuals with disabilities and descrip-
16 tions of the accessibility features and compat-
17 ibility of the provider's products or services;
18 and

19 (C) develop enforcement and expedited
20 complaint procedures.

21 (3) REVIEW AND UPDATE.—The Commission
22 shall review and if necessary update such regulations
23 periodically and at least once every four years.

24 (g) REPORT.—Every four years after the date of en-
25 actment of this Act, the Commission shall submit a report



1 to the Committee on Energy and Commerce of the House
2 of Representatives and the Committee on Commerce,
3 Science and Transportation of the Senate. Such report
4 shall assess the level of compliance with this section and
5 evaluate the extent to which any accessibility barriers still
6 exist with respect to BITS, VOIP service, or broadband
7 video service.

8 (h) DEFINITIONS.—For purposes of this section:

9 (1) DISABILITY.—The term “disability” has the
10 meaning given such term by section 3(2)(A) of the
11 Americans with Disabilities Act of 1990 (42 U.S.C
12 12102(2)(A)).

13 (2) UNDUE BURDEN.—The term “undue bur-
14 den” means significant difficulty or expense. In de-
15 termining whether the requirements of this section
16 would result in an undue burden, the factors to be
17 considered include—

18 (A) the nature and cost of the steps re-
19 quired for the manufacturer or provider;

20 (B) the impact on the operation of the
21 manufacturer or provider;

22 (C) the financial resources of the manufac-
23 turer or provider; and

24 (D) the type of operations of the manufac-
25 turer or provider.



1 **SEC. 405. PROHIBITION ON BUYOUTS.**

2 (a) ACQUISITIONS BY LEC-RELATED BITS AND
3 BROADBAND VIDEO SERVICE PROVIDERS.—No BITS
4 provider or broadband video service provider who is owned
5 by, operated by, controlled by, or under common control
6 with an entity that was a local exchange carrier in any
7 area on the date of enactment of this section, or any affil-
8 iate or entity owned by, operated by, controlled by, or
9 under common control with such BITS provider or
10 broadband video service provider may purchase or other-
11 wise acquire directly or indirectly more than a 10 percent
12 financial interest, or any management interest, in any
13 cable operator, BITS provider, or broadband video service
14 provider who is owned by, operated by, controlled by, or
15 under common control with an entity that was a cable op-
16 erator on the date of enactment of this section and pro-
17 viding cable service within the local exchange carrier's
18 telephone service area.

19 (b) ACQUISITIONS BY CABLE-RELATED BITS AND
20 BROADBAND VIDEO SERVICE PROVIDERS.—No BITS
21 provider or broadband video service provider who is owned
22 by, operated by, controlled by, or under common control
23 with an entity that was a cable operator in any area on
24 the date of enactment of this section, or any affiliate or
25 entity owned by, operated by, controlled by, or under com-
26 mon control with such BITS provider or broadband video



1 service provider, may purchase or otherwise acquire di-
2 rectly or indirectly more than a 10 percent financial inter-
3 est, or any management interest, in any BITS provider,
4 broadband video service provider, or local exchange carrier
5 who is owned by, operated by, controlled by, or under com-
6 mon control with any entity that was a local exchange car-
7 rier on the date of enactment of this section and providing
8 telephone exchange service within such cable operator's
9 franchise area.

10 (c) JOINT VENTURES.—A local exchange carrier and
11 a cable operator, whose telephone service area and cable
12 franchise area, respectively, are in the same market on
13 the date of enactment of this section, nor any entity or
14 entities owned by, operated by, controlled by or under
15 common control with such entities, may not enter into any
16 joint venture or partnership to provide BITS or broadband
17 video service within such markets.

18 **SEC. 406. RELIABILITY AND INTEGRITY.**

19 The Commission shall take measures to ensure the
20 reliability and integrity of BITS, VOIP services, and
21 broadband video services.

22 **SEC. 407. ACCESS TO POLES, DUCTS, CONDUITS, AND**
23 **RIGHTS-OF-WAY.**

24 (a) NONDISCRIMINATORY ACCESS.—A utility shall
25 provide a BITS provider, BIT provider, or broadband



1 video service provider with access to any pole, duct, con-
2 duit, or right-of-way owned or controlled by such utility
3 that is nondiscriminatory as compared to access provided
4 to any telecommunications carrier, cable operator, or other
5 BITS provider, BIT provider, or broadband video service
6 provider. A BITS provider, BIT provider, or broadband
7 video service provider shall provide a cable television sys-
8 tem, a telecommunications carrier, or any other BITS pro-
9 vider, BIT provider, or broadband video service provider
10 with access to any pole, duct, conduit, or right-of-way
11 owned or controlled by that provider that is nondiscrim-
12 inatory as compared to access provided to any tele-
13 communications carrier, cable operator, or other BITS
14 provider, BIT provider, or broadband video service pro-
15 vider.

16 (b) CAPACITY EXCEPTION.—Notwithstanding para-
17 graph (1), a utility providing electric service may deny a
18 BITS provider or BIT provider access to its poles, ducts,
19 conduits, or rights-of-way, on a nondiscriminatory basis
20 where there is insufficient capacity and for reasons of
21 safety, reliability, and generally applicable engineering
22 purposes.

23 (c) DEFINITIONS.—For purposes of this section, the
24 terms “utility” and “telecommunications carrier” have the
25 meanings provided in section 224(a) of the 1934 Act.



1 **SEC. 408. STANDARD SETTING DELAYS.**

2 The Commission may investigate and resolve disputes
3 with respect to delays in standards-setting organizations'
4 approval on a timely basis of standards for equipment
5 used in the provision, delivery, or use of services under
6 this Act.

7 **SEC. 409. GOVERNMENT AUTHORITY TO PROVIDE SERV-**
8 **ICES.**

9 (a) IN GENERAL.—Neither the 1934 Act nor any
10 State statute, regulation, or other State legal requirement
11 may prohibit or have the effect of prohibiting any public
12 provider of BITS, VOIP services, or broadband video serv-
13 ices from providing such services to any person or entity.

14 (b) COMPETITION NEUTRALITY.—Any State or polit-
15 ical subdivision thereof, or any agency, authority, or in-
16 strumentality of a State or political subdivision thereof,
17 that is, owns, controls, or is otherwise affiliated with a
18 public provider of BITS, VOIP services, or broadband
19 video services shall not grant any preference or advantage
20 to any such provider. Such entity shall apply its ordi-
21 nances, rules, and policies, including those relating to the
22 use of public rights-of-way, permitting, performance bond-
23 ing, and reporting without discrimination in favor of any
24 such provider as compared to other providers of such serv-
25 ices.

26 [(c) CROSS SUBSIDIZATION.—To be determined.]



1 (d) COMPLIANCE WITH OTHER LAWS NOT AF-
2 FECTED.—Nothing in this section shall exempt a public
3 provider from any law or regulation that applies to pro-
4 viders of BITS, VOIP services, or broadband video serv-
5 ices.

6 (e) DEFINITION OF PUBLIC PROVIDER.—For pur-
7 poses of this section, the term “public provider” means
8 a State or political subdivision thereof, or any agency, au-
9 thority, or instrumentality of a State or political subdivi-
10 sion thereof, that provides BITS, a VOIP service, or a
11 broadband video service, or any entity that is owned, con-
12 trolled, or is otherwise affiliated with such State or polit-
13 ical subdivision thereof, or agency, authority, or instru-
14 mentality of a State or political subdivision thereof.

15 **SEC. 410. PRESERVATION OF EXISTING LAWS.**

16 (a) IN GENERAL.—Nothing in this Act shall preempt
17 the enforcement of any State law of general applicability,
18 including those relating to theft, fraud, tax, law enforce-
19 ment, or fair trade.

20 (b) EMERGENCY COMMUNICATIONS AUTHORITY.—
21 Nothing in this Act shall be construed to restrict or other-
22 wise affect the Commission’s jurisdiction and authority
23 with respect to emergency communications systems, capa-
24 bilities, and requirements, and the Commission shall have
25 the jurisdiction and authority to take actions or issue reg-



1 ulation on providers of services under this Act with respect
2 to emergency communications systems, capabilities, and
3 requirements.

4 (c) FEES.—Nothing in this Act prohibits the Com-
5 mission from imposing or collecting fees under sections 8
6 and 9 of the 1934 Act (47 U.S.C. 158, 159).

7 (d) FOREIGN OWNERSHIP OR CONTROL.—A registra-
8 tion statement under section 102, 202, or 302 of this Act
9 shall be considered to be a station license for purposes
10 of section 310 of the 1934 Act.

11 **SEC. 411. COMPLAINTS TO THE COMMISSION.**

12 (a) FILING AND ANSWERS.—Any person, State, State
13 commission, franchising authority, or other instrumen-
14 tality of a State or local government, may complain to the
15 Commission of anything done or omitted to be done in
16 violation of any duty, obligation, or requirement under this
17 Act. The Commission shall forward the complaint to the
18 relevant party who shall answer the complaint within a
19 reasonable period of time and in a manner to be specified
20 by the Commission.

21 (b) INVESTIGATION.—The Commission shall inves-
22 tigate the matters complained of and issue an order con-
23 cluding such investigation within 6 months after the date
24 on which the complaint was filed.



1 (c) MEDIATION OR ARBITRATION.—The Commission
2 in its discretion may mediate or arbitrate any issue arising
3 under such complaint.

4 (d) DAMAGES.—The Commission is authorized to
5 issue an order directing a provider of services under this
6 Act to pay the damages to a complaining party for a viola-
7 tion of this Act or the regulations thereunder.

8 **SEC. 412. COMMISSION AUTHORITY OVER DOCUMENTS.**

9 The Commission shall have authority to require the
10 filing of any contract, agreement, or arrangement with any
11 party, or any other data, documents or records, related
12 to the provisions of this Act, including or any complaint
13 filed under section 411.

14 **SEC. 413. REVOCATION OF REGISTRATION.**

15 (a) AUTHORITY TO REVOKE REGISTRATION.—The
16 Commission may revoke a registration statement under
17 section 102, 202, or 302—

18 (1) for false statements knowingly made in the
19 registration statement or other materials filed with
20 the Commission in connection with registration or
21 renewal;

22 (2) because of conditions coming to the atten-
23 tion of the Commission for which the Commission
24 would have disapproved of such registration state-
25 ment; or



1 (3) for willful or repeated violations of, or will-
2 ful or repeated omissions of, any duty, obligation, or
3 requirement under this Act or any rule or regulation
4 of the Commission authorized under this Act.

5 (b) PROCEDURE.—

6 (1) SHOW CAUSE ORDER.—Before revoking a
7 registration under this Act, the Commission shall
8 issue an order to the registered person to show
9 cause why an order of revocation should not be
10 issued which shall require the person to answer or
11 appear (or both) before the Commission.

12 (2) REVOCATION ORDER.—If the Commission
13 determines that an order of revocation should issue,
14 it shall issue such order, which shall include a state-
15 ment of the findings of the Commission and the
16 grounds and reasons for the revocation.

17 (3) NOTICE TO OTHER AUTHORITIES.—The
18 Commission shall notify the appropriate State com-
19 mission of such revocation and, if such registration
20 concerns a broadband video service provider, shall
21 notify each local franchising authority for which
22 such registration is effective, of such revocation.

23 **SEC. 414. ADDITIONAL REMEDIES.**

24 This Act shall be enforced by the Commission under
25 titles IV and V of the 1934 Act (47 U.S.C. 401, 501 et



1 seq.). A violation of any provision of this Act shall be
2 treated as a violation of the 1934 Act, and a violation of
3 a regulation issued under this Act shall be treated as a
4 violation of a regulation issued under the 1934 Act.

