

109TH CONGRESS  
1ST SESSION

**S.** \_\_\_\_\_

To promote the widespread availability of communications services and the integrity of communication facilities, and to encourage investment in communication networks.

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IN THE SENATE OF THE UNITED STATES

Mr. DEMINT introduced the following bill; which was read twice and referred to the Committee on

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**A BILL**

To promote the widespread availability of communications services and the integrity of communication facilities, and to encourage investment in communication networks.

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 “Digital Age Communications Act of 2005”.

6 (b) **TABLE OF CONTENTS.**—The table of contents for  
7 this Act is as follows:

- Sec. 1. Short title; table of contents.
- Sec. 2. Definitions.

TITLE I—REGULATORY FRAMEWORK

- Sec. 101. Findings and policy.
- Sec. 102. Prohibition of unfair methods of competition.
- Sec. 103. Actions for complaints.
- Sec. 104. Time limits on Commission action.
- Sec. 105. Additional powers of the Commission.

TITLE II—TRANSFER OR ASSIGNMENT OF PERMITS, LICENSES,  
OR CERTIFICATES

- Sec. 201. Findings.
- Sec. 202. Modification of authority to deny or condition licenses.

TITLE III—UNIVERSAL SERVICE

- Sec. 301. Applicability of Communications Act of 1934.
- Sec. 302. Principles of universal service.
- Sec. 303. Definition of basic electronic communications services.
- Sec. 304. Contribution mechanism.
- Sec. 305. Universal service block grant program.
- Sec. 306. Waiver authority.
- Sec. 307. State universal service programs not preempted.
- Sec. 308. Report to Congress.

TITLE IV—GENERAL PROVISIONS

- Sec. 401. Findings and policy regarding allocation of Federal, State, and local responsibility.
- Sec. 402. Rulemaking and delegation of authority.
- Sec. 403. Judicial review of decisions.
- Sec. 404. Right-of-way authority.
- Sec. 405. State regulation of basic local rates.
- Sec. 406. Retention of additional State authority.
- Sec. 407. Preemption of State authority.
- Sec. 408. Transition and sunset of existing agreements.
- Sec. 409. Effective date.

1 **SEC. 2. DEFINITIONS.**

2 (a) IN GENERAL.—In this Act, the following defini-  
3 tions shall apply:

4 (1) ANTITRUST LAWS.—The term “antitrust  
5 laws” includes—

6 (A) the Act entitled “An Act to protect  
7 trade and commerce against unlawful restraints  
8 and monopolies”, approved July 2, 1890;

9 (B) sections 73 through 76 of an Act enti-  
10 tled “An Act to reduce taxation, to provide rev-

1           enue for the Government, and for other pur-  
2           poses”, approved August 27, 1894;

3           (C) the Act entitled “An Act to amend sec-  
4           tions 73 and 76 of the Act of August 27, 1894,  
5           entitled An Act to reduce taxation, to provide  
6           revenue for the Government, and for other pur-  
7           poses”, approved February 12, 1913; and

8           (D) the Act entitled “An Act to supple-  
9           ment existing laws against unlawful restraints  
10          and monopolies, and for other purposes”, ap-  
11          proved October 15, 1914.

12          (2) COMMISSION.—The term “Commission”  
13          means the Federal Communications Commission.

14          (3) ELECTRONIC COMMUNICATIONS NET-  
15          WORK.—The term “electronic communications net-  
16          work” means—

17                 (A) a transmission system; and

18                 (B) where applicable, switching or routing  
19                 equipment and other facilities which permit the  
20                 conveyance of signals by wire, radio, optical, or  
21                 other electromagnetic means, over satellite,  
22                 cable, or other facilities, whether fixed or mo-  
23                 bile, to the extent that such facilities are used  
24                 for the purpose of transmitting signals, irre-  
25                 spective of the type of information conveyed.

1 (4) ELECTRONIC COMMUNICATIONS SERVICE.—

2 The term “electronic communications service”  
3 means a service normally provided for remuneration  
4 which consists wholly or mainly in the conveyance of  
5 signals on electronic communications networks.

6 (5) HOUSEHOLD.—The term “household” in-  
7 cludes—

8 (A) all the persons who occupy a housing  
9 unit; and

10 (B) housing units located in Indian lands  
11 (as such term is defined in section 4(4) of the  
12 Indian Gaming Regulatory Act (25 U.S.C.  
13 2703)).

14 (6) HOUSING UNIT.—The term “housing unit”  
15 means—

16 (A) a house;

17 (B) an apartment;

18 (C) a mobile home;

19 (D) a group of rooms; or

20 (E) a single room that is occupied as sepa-  
21 rate living quarters.

22 (7) JOINT BOARD.—The term “Joint Board”  
23 means the Federal-State Joint Board on universal  
24 service required under section 254(a) of the Commu-  
25 nications Act of 1934 (47 U.S.C. 254(a)).

1           (8) LOW-INCOME HOUSEHOLD.—The term  
2 “low-income household” means a family whose in-  
3 come does not exceed 80 percent of the median in-  
4 come for the area, as determined by the Commis-  
5 sion, with adjustments for family size, except that  
6 the Commission may establish an income ceiling  
7 higher or lower than 80 percent of the median for  
8 the area if the Commission finds that such a vari-  
9 ation is necessary because of prevailing levels of con-  
10 struction costs or unusually high or low family in-  
11 comes

12           (9) SEPARATE LIVING QUARTERS.—

13           (A) IN GENERAL.—The term “separate liv-  
14 ing quarters” means an area in which the occu-  
15 pants of that area—

16           (i) live and eat separately from any  
17 other person in the building in which the  
18 area is located; and

19           (ii) have direct access to such area—

20           (I) from the outside of the build-  
21 ing in which the area is located; or

22           (II) through a common hall.

23           (B) OCCUPANTS.—For purposes of sub-  
24 paragraph (A), the term “occupants” in-  
25 cludes—

- 1 (i) a single family;  
2 (ii) 1 person living alone;  
3 (iii) 2 or more families living together;  
4 or  
5 (iv) any other group of related or un-  
6 related persons who share living arrange-  
7 ments.

8 (10) UNFAIR METHODS OF COMPETITION.—

9 (A) IN GENERAL.—The term “unfair  
10 methods of competition” means—

11 (i) practices that present a threat of  
12 abuse of significant and nontransitory  
13 market power as determined by the Com-  
14 mission consistent with the application of  
15 jurisprudential principles grounded in mar-  
16 ket-oriented competition analysis such as  
17 those commonly employed by the Federal  
18 Trade Commission and the United States  
19 Department of Justice in enforcing the  
20 Federal Trade Commission Act (15 U.S.C.  
21 41 et seq.) and the antitrust laws of the  
22 United States; and

23 (ii) with respect to interconnection,  
24 practices that pose a substantial and non-  
25 transitory risk to consumer welfare by ma-

1           terially and substantially impeding the  
2           interconnection of public communications  
3           facilities and services in circumstances in  
4           which the Commission determines that  
5           marketplace competition is not sufficient to  
6           adequately protect consumer welfare.

7           (B) INTERCONNECTION DETERMINA-  
8           TION.—In making any determination under  
9           subparagraph (A)(ii), the Commission shall con-  
10          sider whether requiring interconnection will ad-  
11          versely affect investment in facilities and inno-  
12          vation in services.

13          (b) COMMON TERMINOLOGY.—Except as otherwise  
14          provided in subsection (a), terms used in this Act shall  
15          have the same meaning given to such terms under sections  
16          3, 254, and 602 of the Communications Act of 1934 (47  
17          U.S.C. 153, 254, and 522).

18                   **TITLE I—REGULATORY**  
19                   **FRAMEWORK**

20          **SEC. 101. FINDINGS AND POLICY.**

21          (a) FINDINGS.—Congress finds that—

22                  (1) in 1996, Congress enacted and the Presi-  
23          dent signed into law the Telecommunications Act of  
24          1996, which was intended to provide a procom-  
25          petitive, deregulatory framework designed to facili-

1       tate the continuing transition to a more competitive  
2       communications market;

3           (2) since the enactment and implementation of  
4       the Telecommunications Act of 1996, rapid advances  
5       in technology and marketplace developments have  
6       further increased the existence of competition in all  
7       communications markets and the likelihood of the  
8       continuing existence and increasing intensity of com-  
9       petition;

10          (3) competition in a dynamic communications  
11       marketplace is the most effective and efficient means  
12       for protecting consumers and enhancing the con-  
13       sumer welfare of all the people of the United States  
14       in terms of achieving the optimum mix of price,  
15       quality, and consumer choice; and

16          (4) unnecessary regulation regarding protection  
17       of consumers and enhancement of consumer welfare  
18       deters—

19           (A) investment in new and advanced com-  
20       munications facilities; and

21           (B) the development of new services and  
22       applications.

23       (b) POLICY.—It shall be the policy of the United  
24       States Government—

1           (1) to promote the widespread availability of  
2           communications services for all Americans in order  
3           to assure that the American people have access to a  
4           diversity of information sources necessary for demo-  
5           cratic government;

6           (2) to promote the integrity, reliability, and ef-  
7           ficiency of communications facilities in a manner  
8           consistent with—

9                   (A) the encouragement of investment in  
10           advanced communications networks; and

11                   (B) innovation in communications services  
12           and applications;

13           (3) that economic regulation of communications  
14           markets should be presumed unnecessary absent cir-  
15           cumstances that demonstrate the existence of a sig-  
16           nificant threat of abuse of market power that poses  
17           a substantial and nontransitory risk to consumer  
18           welfare; and

19           (4) that in order to ensure that the actions of  
20           the Federal Communications Commission are con-  
21           sistent with the findings in subsection (a), and to ef-  
22           fectuate the deregulatory policy declared in this sub-  
23           section, the decisions of the Commission should be  
24           based on jurisprudential principles grounded in mar-  
25           ket-oriented competition analysis such as those com-



1 as the Commission determines necessary to prevent  
2 any methods, acts, or practices prohibited by this  
3 section.

4 (3) LIMITATION.—

5 (A) IN GENERAL.—Notwithstanding para-  
6 graph (1) and except as provided in subpara-  
7 graph (B), the Commission shall have no au-  
8 thority to issue rules that declare unlawful an  
9 act or practice on the grounds that such act or  
10 practice is an unfair method of competition or  
11 unfair or deceptive act or practice.

12 (B) EXCEPTION.—The Commission may  
13 declare an act or practice unlawful if the Com-  
14 mission determines, based on a showing of clear  
15 and convincing evidence presented in a rule-  
16 making proceeding, that—

17 (i) marketplace competition is not suf-  
18 ficient to adequately protect consumer wel-  
19 fare; and

20 (ii) such act or practice—

21 (I) causes or is likely to cause  
22 substantial injury to consumers; and

23 (II) is not—

24 (aa) avoidable by consumers  
25 themselves; and

1 (bb) outweighed by counter-  
2 vailing benefits to consumers or  
3 to competition.

4 (4) SUNSET OF RULES.—Any rule promulgated  
5 under paragraph (1) shall terminate on the day that  
6 is 5 years after the date on which such rule became  
7 effective unless the Commission, in a proceeding in  
8 which the public is afforded notice and an oppor-  
9 tunity to comment, makes an affirmative determina-  
10 tion, based on a showing of clear and convincing evi-  
11 dence presented in such proceeding, that the rule  
12 continues to be necessary because marketplace com-  
13 petition is not sufficient to adequately protect con-  
14 sumers from substantial injury which is not—

15 (A) avoidable by consumers themselves;  
16 and

17 (B) outweighed by countervailing benefits  
18 to consumers or to competition.

19 **SEC. 103. ACTIONS FOR COMPLAINTS.**

20 The Commission shall have authority—

21 (1) to hear complaints from any party injured  
22 by a violation of the prohibitions established under  
23 section 102; and

1           (2) to award damages to such injured party if  
2           the Commission determines that a violation of that  
3           section has occurred.

4 **SEC. 104. TIME LIMITS ON COMMISSION ACTION.**

5           (a) **120-DAY LIMIT FOR APPLICATIONS WITH SUP-**  
6 **PORTING TESTIMONY.**—If an application is filed with the  
7 Commission under this or any other Act, and such applica-  
8 tion is accompanied by supporting testimony from the ap-  
9 plicant or a detailed summary of that testimony, together  
10 with exhibits, if any, the Commission shall issue a decision  
11 on such application not later than 120 days after the ap-  
12 plication is deemed complete (as the Commission shall, by  
13 rule, determine).

14           (b) **210-DAY LIMIT FOR APPLICATIONS WITHOUT**  
15 **SUPPORTING TESTIMONY.**—If an application is filed with  
16 the Commission under this or any other Act, and such  
17 application is not accompanied by supporting testimony  
18 and exhibits, the Commission shall issue a decision on  
19 such application not later than 210 days after the applica-  
20 tion is deemed complete (as the Commission shall, by rule,  
21 determine).

22           (c) **WAIVER.**—The time limits specified in subsections  
23 (a) and (b)—

24           (1) may be waived by an applicant; and

1           (2) if so waived, shall not be binding on the  
2 Commission.

3           (d) **EXTENSION OF TIME.**—The Commission, in par-  
4 ticular cases, under extraordinary conditions, and after  
5 notice and a hearing at which the existence of such condi-  
6 tions are established, may extend the time limits specified  
7 in subsections (a) and (b) for a period not to exceed an  
8 additional 90 days.

9 **SEC. 105. ADDITIONAL POWERS OF THE COMMISSION.**

10           The Commission shall have authority—

11           (1) to research and investigate, from time to  
12 time, the organization, business, conduct, or prac-  
13 tices of—

14                   (A) any person or entity engaged in, or  
15 whose business affects, the operation of elec-  
16 tronic communications networks; and

17                   (B) any provider of electronic communica-  
18 tions service;

19           (2) to require any person or entity that owns or  
20 operates an electronic communications networks, or  
21 any class of such persons or entities, to file, in such  
22 form, in such manner, and at such time as the Com-  
23 mission may determine, reports or answers to spe-  
24 cific questions regarding the organization, business,  
25 conduct, or practices of such person or entity, such

1 reports or answers shall be in writing and made  
2 under penalty of perjury;

3 (3) to make public, from time to time, in such  
4 form, and in such manner as the Commission deter-  
5 mines—

6 (A) such portions of the information ob-  
7 tained under paragraph (1) as are in the public  
8 interest; and

9 (B) the reports and answers described  
10 under paragraph (2), except that the Commis-  
11 sion—

12 (i) may not make public any trade se-  
13 cret or any privileged or confidential com-  
14 mercial or financial information obtained  
15 from such reports or answers; and

16 (ii) may disclose such trade secrets or  
17 information to officers and employees of an  
18 appropriate Federal or State law enforce-  
19 ment agency upon prior certification by an  
20 officer of that Federal or State law en-  
21 forcement agency that such trade secrets  
22 or information shall—

23 (I) be maintained in confidence;

24 and

1 (II) be used only for official law  
2 enforcement purposes; and

3 (4) to make annual and special reports to Con-  
4 gress and to submit with such reports recommenda-  
5 tions for additional legislation.

6 **TITLE II—TRANSFER OR ASSIGN-**  
7 **MENT OF PERMITS, LI-**  
8 **CENSES, OR CERTIFICATES**

9 **SEC. 201. FINDINGS.**

10 Congress finds the following:

11 (1) The process by which the Federal Commu-  
12 nications Commission currently reviews, and imposes  
13 conditions upon, the transfer or assignment of per-  
14 mits, licenses, or certificates in the context of a  
15 merger, or other conveyance of corporate control, is  
16 in need of reform.

17 (2) Currently, the review of telecommunications  
18 industry mergers by the Commission often results in  
19 undue delay and introduces uncertainty into the  
20 marketplace because of the unpredictability of that  
21 review under the nonspecific public interest standard  
22 established in the Communications Act of 1934 (47  
23 U.S.C. 151 et seq.).

24 (3) The Commission has unnecessarily invoked  
25 its authority under the nonspecific public interest

1 standard to allow it to impose terms and conditions  
2 on the assignment and transfer of permits, licenses,  
3 or certificates unrelated to any competitive impacts  
4 of the proposed transaction.

5 (4) The Department of Justice and the Federal  
6 Trade Commission have extensive institutional ex-  
7 pertise in analyzing issues relating to industry con-  
8 centration and its effects on competition.

9 (5) It is inefficient, burdensome, and costly to  
10 the Federal Government and to the private sector,  
11 and unnecessary for the protection of consumers or  
12 for the enhancement of consumer welfare, for the  
13 Commission in a review of a transfer or assignment  
14 of licenses to duplicate the work performed by the  
15 Department of Justice or the Federal Trade Com-  
16 mission.

17 (6) The Commission should only deny, and  
18 should impose only those conditions on, the transfer  
19 or assignment of permits, licenses, or certificates as  
20 is necessary to ensure that applicants for such trans-  
21 fer and assignment authority are in compliance with  
22 existing Commission rules and regulations.

1 **SEC. 202. MODIFICATION OF AUTHORITY TO DENY OR CON-**  
2 **DITION LICENSES.**

3 (a) **IN GENERAL.**—In any proceeding under the Com-  
4 munications Act of 1934 (47 U.S.C. 151 et seq.) to ap-  
5 prove an application to assign or transfer control of a li-  
6 cense, permit, or certificate, the Commission—

7 (1) may not deny such application unless—

8 (A) the assignment or transfer of control  
9 would result in a violation of the—

10 (i) Communications Act of 1934 (47  
11 U.S.C. 151 et. seq); or

12 (ii) any rule or regulations established  
13 by the Commission in effect on the date  
14 such application is received by the Com-  
15 mission; and

16 (B) a violation described in subparagraph  
17 (A) cannot be cured by the conditional approval  
18 of the assignment or transfer of control under  
19 the provisions of paragraph (2);

20 (2) may not condition approval of such applica-  
21 tion except, to the extent necessary, to—

22 (A) ensure that the assignee or transferee  
23 is in compliance with all Commission rules and  
24 regulations in effect on the date of such ap-  
25 proval; or

1 (B) permit the orderly disposition of assets  
2 to comply with such rules and regulations; and

3 (3) notwithstanding section 104, shall complete  
4 all action on any such application not later than 90  
5 days after the date of receipt by the Commission of  
6 the application, unless the applicant requests an ex-  
7 tension.

8 (b) EFFECTIVE DATE.—Subsection (a) shall apply to  
9 any application for a transfer of a permit, license, or per-  
10 mit that is pending on, or submitted to the Commission  
11 on or after, the date of enactment of this Act.

12 (c) DEADLINES FOR PENDING APPLICATIONS.—If an  
13 application for a transfer of a permit, license, or permit  
14 is pending before the Commission for more than 30 days,  
15 as of the date of enactment of this Act, the Commission  
16 shall complete all action on such application not later that  
17 60 days after such date of enactment, unless the applicant  
18 requests an extension.

## 19 **TITLE III—UNIVERSAL SERVICE**

### 20 **SEC. 301. APPLICABILITY OF COMMUNICATIONS ACT OF** 21 **1934.**

22 The provisions of section 214(e) and 254 of the Com-  
23 munications Act of 1934 (47 U.S.C. 214(e) and 254) are  
24 repealed as of the date that is 3 years after the date of  
25 enactment of this Act.

1 **SEC. 302. PRINCIPLES OF UNIVERSAL SERVICE.**

2 The policy of the United States Government regard-  
3 ing the preservation and advancement of universal service  
4 shall be based on the following principles:

5 (1) **AFFORDABILITY.**—Quality basic electronic  
6 communications services shall be affordable to—

7 (A) all low-income households; and

8 (B) households in high cost areas of the  
9 Nation.

10 (2) **EFFICIENCY.**—Universal service support  
11 and contribution mechanisms for the provision of af-  
12 fordable basic electronic communications services  
13 shall burden the economy no more than is necessary.

14 (3) **NEUTRALITY.**—Neither the distribution of  
15 universal service support for basic electronic commu-  
16 nications services nor the collection of universal serv-  
17 ice contributions shall discriminate in favor of or  
18 against any company or technology.

19 (4) **TRANSPARENCY.**—

20 (A) **RULES.**—Rules governing universal  
21 service mechanisms shall be clear and enforce-  
22 able.

23 (B) **GOALS.**—The goals of universal service  
24 support shall be clearly defined and identified.

1 **SEC. 303. DEFINITION OF BASIC ELECTRONIC COMMUNICA-**  
2 **TIONS SERVICES.**

3 (a) **IN GENERAL.**—For purposes of this title, the  
4 term “basic electronic communications services” shall  
5 have the same meaning as the term “supported services”  
6 in section 54.101(a) of title 47, Code of Federal Regula-  
7 tions.

8 (b) **MODIFICATION OF DEFINITION.**—

9 (1) **JOINT BOARD ACTION.**—The Joint Board  
10 may, from time to time, recommend to the Commis-  
11 sion modifications as to which basic electronic com-  
12 munications services are to be supported by Federal  
13 universal service support mechanisms.

14 (2) **COMMISSION ACTION.**—Not later than 1  
15 year after receiving recommendations from the Joint  
16 Board under paragraph (1), the Commission shall  
17 complete any proceeding to consider whether to im-  
18 plement, in whole or in part, such recommendations.

19 (3) **CONSIDERATIONS.**—The Joint Board in rec-  
20 ommending, and the Commission in implementing,  
21 any modifications of the basic electronic communica-  
22 tions services that are supported by Federal uni-  
23 versal service support mechanisms shall—

24 (A) consider the extent to which—

25 (i) basic electronic communications  
26 services have, through the operation of

1 market choices by customers, been already  
2 subscribed to by a substantial majority of  
3 residential consumers that do not receive  
4 any universal service support;

5 (ii) unaffordable, prevailing basic elec-  
6 tronic communications services relies on  
7 underlying infrastructure located in high  
8 cost areas; and

9 (iii) universal service support under  
10 section 305 is necessary to ensure that the  
11 underlying infrastructure remains available  
12 to provide such basic electronic commu-  
13 nications services; and

14 (B) publish a report in the Federal Reg-  
15 ister that details the considerations made under  
16 subparagraph (A).

17 (4) LIMITATION.—The Commission shall not in-  
18 crease the amount of total universal service support  
19 following any modification under this subsection  
20 without express Congressional authorization.

21 **SEC. 304. CONTRIBUTION MECHANISM.**

22 (a) IN GENERAL.—Not later than 6 months after the  
23 date of enactment of this Act, the Commission shall—

1           (1) complete a proceeding to promulgate rules  
2           to reform the universal services contribution mecha-  
3           nism; and

4           (2) adopt a new mechanism based upon the as-  
5           signment of numbers in the North American Num-  
6           bering Plan or any successor methodology.

7           (b) **CONTENT OF RULES.**—The rules required under  
8           subsection (a) shall—

9           (1) include an exemption from universal service  
10           contributions for low-income households; and

11           (2) require that all assigned telephone numbers  
12           be assessed an equivalent amount for such contribu-  
13           tions on a technologically neutral basis, except that  
14           there shall be a discounted contribution rate for pag-  
15           ing services.

16           (c) **AUTHORITY TO MODIFY.**—The Commission shall,  
17           by rule, adopt an alternative contribution mechanism to  
18           supplement the universal service fund if there is evidence  
19           of material, inefficient bypass of the numbers-based con-  
20           tribution mechanism.

21           **SEC. 305. UNIVERSAL SERVICE BLOCK GRANT PROGRAM.**

22           (a) **SINGLE UNIVERSAL SERVICE FUND.**—

23           (1) **IN GENERAL.**—Not later than 3 years after  
24           the date of enactment of this Act, the Commission  
25           shall revise its current universal service fund system

1 to establish a single universal service fund (in this  
2 title referred to as the "Fund").

3 (2) FEDERAL SYSTEM.—The Fund established  
4 under paragraph (1) shall be the exclusive Federal  
5 universal service support mechanism.

6 (3) CAP ON DISTRIBUTIONS.—The Commission  
7 may not award grants out of the Fund in any 1 fis-  
8 cal year in excess of \$3,650,000,000.

9 (4) INFLATION ADJUSTMENTS.—The limitation  
10 under paragraph (3) shall be adjusted annually by  
11 an inflation index and by a fixed factor for produc-  
12 tivity improvements, as determined by the Commis-  
13 sion.

14 (5) OTHER ADJUSTMENTS.—The limitation  
15 under paragraph (3) may also be adjusted by the  
16 Commission to account for—

17 (A) changes in population size in each eli-  
18 gible State; and

19 (B) exogenous cost changes in the provi-  
20 sion of basic electronic communications services  
21 directly related to intercarrier compensation re-  
22 form.

23 (b) GRANTS AUTHORIZED.—

24 (1) IN GENERAL.—Not later than 3 years after  
25 the date of enactment of this Act, and annually

1       thereafter, the Commission shall grant from the  
2       Fund to each eligible State performance-based block  
3       grants to support the provision of those basic elec-  
4       tronic communications services which have been de-  
5       fined under section 303 to be eligible for universal  
6       service support.

7               (2) AWARD BASIS.—

8                       (A) IN GENERAL.—Not later than 18  
9                       months after the date of enactment of this Act,  
10                      the Commission shall initiate a rulemaking pro-  
11                      ceeding to establish initial guidelines regarding  
12                      the distribution of performance-based block  
13                      grants from the Fund.

14                     (B) CONTENT OF GUIDELINES.—The  
15                     guidelines required under subparagraph (A)  
16                     shall include—

17                               (i) model distribution mechanisms and  
18                               regulations for the support of low-income  
19                               households and households in high cost  
20                               areas;

21                               (ii) the national performance level,  
22                               measured by household subscription to  
23                               basic electronic communications services,  
24                               that is necessary for each eligible State to

1 retain unused block grant funds under  
2 subsection (g);

3 (iii) the initial amount of block grant  
4 funds that are available for each eligible  
5 State, such amounts to be based upon a  
6 formula—

7 (I) developed by the Commission  
8 using any appropriate data from the  
9 Census Bureau; and

10 (II) that reflects a comparative  
11 analysis of affordability of basic elec-  
12 tronic communications services across  
13 States;

14 (iv) rules and regulations, including  
15 quality of service requirements, regarding  
16 the—

17 (I) designation of a carrier of  
18 last resort; and

19 (II) relinquishment of basic elec-  
20 tronic communications services by a  
21 carrier eligible to receive such funds  
22 under subsection (e)(4) in high cost  
23 areas; and

24 (v) any other rules or regulations nec-  
25 essary for the administration, monitoring,

1 record keeping, reporting, and enforcement  
2 of the performance-based block grant pro-  
3 gram established under paragraph (1), in-  
4 cluding provisions—

5 (I) designed to protect against  
6 fraud; and

7 (II) any additional guidelines to  
8 assist eligible States in implementing  
9 and adopting the guidelines required  
10 by subparagraph (A).

11 (C) EFFECTIVE DATE, LIMITATION, AND  
12 MODIFICATION.—The guidelines required under  
13 subparagraph (A)—

14 (i) shall take effect on the date that  
15 is 3 years after the date of enactment of  
16 this Act;

17 (ii) shall be sufficiently flexible so as  
18 to allow eligible States to experiment with  
19 alternative market-based distribution  
20 mechanisms, including voucher programs  
21 and auctions; and

22 (iii) may be modified by the Commis-  
23 sion any time thereafter subject to the pro-  
24 visions of this title.

25 (3) DEFINITION OF ELIGIBLE STATE.—

1           (A) IN GENERAL.—For purposes of this  
2           section, the term “eligible State” means any  
3           State that has certified in writing to the Com-  
4           mission that it has met or will meet the require-  
5           ments of this section.

6           (B) FAILURE TO SUBMIT CERTIFI-  
7           CATION.—If a State fails to submit to the Com-  
8           mission a written certification under subpara-  
9           graph (A), such State shall not be eligible to re-  
10          ceive grants under paragraph (1).

11          (c) TRANSITION PERIOD.—

12          (1) IN GENERAL.—For the period beginning on  
13          the date of enactment of this Act and ending on the  
14          date that is 3 years after the date of enactment of  
15          this Act, universal service support for any eligible  
16          telecommunications carrier, as such term is defined  
17          in section 214(e) of the Communications Act of  
18          1934 (47 U.S.C. 214(e)), shall be capped at the per-  
19          line support levels in effect on the date of enactment  
20          of this Act.

21          (2) NO NEW ELIGIBLE CARRIERS.—During the  
22          3-year period described in paragraph (1), an eligible  
23          State may not exercise its authority under section  
24          214(e) of the Communications Act of 1934 (47  
25          U.S.C. 214(e)) to designate additional eligible tele-

1       communications carrier, except if such State makes  
2       such a designation in accordance with section  
3       54.203(a) of title 47, Code of Federal Regulations.

4           (3) OTHER RULES.—During the 3-year period  
5       described in paragraph (1), all rules, regulations,  
6       and orders of the Commission with respect to the  
7       provision of universal service under section 254 of  
8       the Communications Act of 1934 (47 U.S.C. 254),  
9       including the provision of Lifeline and Link-up as-  
10      sistance, shall remain in effect.

11       (d) APPLICATION.—An eligible State seeking a grant  
12      under this section shall submit an application to the Com-  
13      mission at such time, in such manner, and containing such  
14      information as the Commission may require.

15       (e) CONDITIONS.—Not later than 18 months after  
16      the publication of the guidelines required under subsection  
17      (a)(2), each eligible State seeking a grant under this sec-  
18      tion shall—

19           (1) conduct proceedings to identify high cost  
20      areas within that State;

21           (2) promulgate rules and regulations regarding  
22      the distribution of performance-based block grant  
23      amounts to low-income households;

1           (3) establish distribution mechanisms for per-  
2           formance-based block grant amounts received under  
3           this section; and

4           (4) by rule, determine which carriers are eligi-  
5           ble to receive universal support from that eligible  
6           State.

7           (f) USE OF FUNDS.—

8           (1) IN GENERAL.—A performance-based block  
9           grant awarded to an eligible State shall be used to—

10           (A) provide a single connection to basic  
11           electronic communications services to all low-in-  
12           come households and households in high cost  
13           areas;

14           (B) provide support for households or for  
15           the underlying infrastructure used to provide  
16           basic electronic communications services in high  
17           cost areas; and

18           (C) fund or reimburse carriers eligible to  
19           receive such funds under subsection (e)(4) for  
20           the provision, maintenance, and upgrading of  
21           services of basic electronic communications  
22           services to low-income households and house-  
23           holds in high cost areas.

24           (2) COMMISSION NEEDS.—Consistent with the  
25           principles established under section 302 and with

1 the results of audits performed under subsection (i),  
2 the Commission may redirect a portion of the  
3 amounts in the Fund to meet additional staffing and  
4 administrative needs of the Commission.

5 (g) UNUSED FUNDS.—

6 (1) IN GENERAL.—If an eligible State does not  
7 use all of its allotted performance-based block grant  
8 funds in a given year, such State shall, in writing,  
9 inform the Commission of that unused amount.

10 (2) PERFORMANCE LEVEL ACHIEVEMENT.—If  
11 an eligible State meets the performance level stand-  
12 ards established under subsection (b)(2)(B)(ii), such  
13 State—

14 (A) may retain any unused block grant  
15 funds; and

16 (B) shall direct such unused funds to-  
17 wards—

18 (i) service not designated as basic  
19 electronic communications services; or

20 (ii) public safety infrastructure im-  
21 provements, including the upgrading,  
22 maintenance, and support of E911 sys-  
23 tems.

24 (3) OFFSET.—If an eligible State does not meet  
25 the performance level standards established under

1 subsection (b)(2)(B)(ii), the Commission shall offset  
2 any unused funds by that State in a given year  
3 against that State's block grant allotment in the fol-  
4 lowing calendar year.

5 (h) COMMISSION AUTHORITY.—The Commission may  
6 withhold performance-based block grant funds from any  
7 eligible State that fails to comply with any rule or guide-  
8 line established by the Commission under this section.

9 (i) AUDITS.—

10 (1) IN GENERAL.—The Commission shall, from  
11 time to time, conduct audits of the use and distribu-  
12 tion performance-based block grant amounts by each  
13 eligible State and eligible communications carriers.

14 (2) NUMBER OF AUDITS TO BE CONDUCTED.—  
15 The number of audits conducted by the Commission  
16 under paragraph (1) shall be of such number, as de-  
17 termined by the Commission, to allow the Commis-  
18 sion, for purposes of the report required under sec-  
19 tion 308, to provide a detailed analysis on the effi-  
20 ciency of universal service distribution mechanisms  
21 employed by eligible States.

22 (j) CONSULTATION WITH JOINT BOARD.—

23 (1) IN GENERAL.—The Joint Board based upon  
24 the experience of eligible States and consistent with  
25 the principles established under section 302 may,

1 from time to time, recommend to the Commission  
2 modifications to guidelines required under subsection  
3 (b)(2).

4 (2) COMMISSION ACTION.—Not later than 1  
5 year after receiving recommendations from the Joint  
6 Board under paragraph (1), the Commission shall  
7 complete any proceeding to consider whether to im-  
8 plement, in whole or in part, such recommendations.

9 **SEC. 306. WAIVER AUTHORITY.**

10 (a) IN GENERAL.—An eligible State may submit a  
11 petition to the Commission, in such manner and con-  
12 taining such information as the Commission may require,  
13 to adopt a distribution mechanism that is not based on  
14 the model distribution mechanisms outlined in the guide-  
15 lines required by section 305(b)(2)(B)(i).

16 (b) TIMING.—Not later than 90 days after the date  
17 that a petition is submitted under subsection (a), the Com-  
18 mission shall issue a decision on whether to grant or deny  
19 such petition.

20 (c) GRANT OF PETITION.—The Commission may  
21 grant any petition submitted under subsection (a), if such  
22 petition is consistent with the universal service principles  
23 established under section 302.

1 **SEC. 307. STATE UNIVERSAL SERVICE PROGRAMS NOT PRE-**  
2 **EMPTED.**

3 (a) **IN GENERAL.**—Nothing in this title shall preempt  
4 or be construed to preempt an eligible State from adopting  
5 laws, rules, or regulations to ensure that quality basic elec-  
6 tronic communications services are universally available to  
7 all low-income households and households in high cost  
8 areas at affordable rates, so long as such laws, rules, or  
9 regulations are consistent with, and not in violation of,  
10 the principles established under section 302 and any other  
11 applicable provision of this title.

12 (b) **FEDERAL REVIEW.**—The Commission may—

13 (1) review any law, rule, or regulation adopted  
14 by an eligible State to determine if such law, rule,  
15 or regulation is in compliance with the requirements  
16 of subsection (a); and

17 (2) withhold from any eligible State perform-  
18 ance-based block grant funds awarded under section  
19 305, if the Commission determines that such laws,  
20 rules, or regulations fail to comply with the require-  
21 ments of subsection (a).

22 **SEC. 308. REPORT TO CONGRESS.**

23 Not later than 3 years after the date of enactment  
24 of this Act, and every 3 years thereafter, the Commission  
25 shall report to Congress—

1           (1) an analysis of the costs and benefits of the  
2           universal service program established under section  
3           305, including an evaluation of whether, and to what  
4           extent, such universal service program has caused  
5           improvements in affordability;

6           (2) a summary of findings from the audits the  
7           Commission undertook as required under section  
8           305(i);

9           (3) a summary of best practices employed by el-  
10          igible States which have adopted laws, rules, or reg-  
11          ulations regarding universal service in compliance  
12          with section 307;

13          (4) an evaluation of, and recommendations re-  
14          garding, the contribution mechanism established  
15          under section 304; and

16          (5) an analysis of the continuing need for uni-  
17          versal service support based upon—

18                 (A) the experience of the eligible States;  
19                 and

20                 (B) technological and marketplace develop-  
21                 ments, including recommendations regarding  
22                 the limitation on the size of the funding cap  
23                 under section 305(a).

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

3   **SEC. 401. FINDINGS AND POLICY REGARDING ALLOCATION**  
4                   **OF FEDERAL, STATE, AND LOCAL RESPONSI-**  
5                   **BILITY.**

6           (a) FINDINGS.—Congress finds that—

7               (1) technological and market forces are chang-  
8               ing the nature and delivery of electronic communica-  
9               tions services;

10              (2) these technological and market changes  
11              have altered the necessary roles for Federal, State,  
12              and local authorities in regulating electronic commu-  
13              nications services;

14              (3) in many cases, responsibility to regulate ac-  
15              tivities relating to communications has been allo-  
16              cated to a State or local jurisdiction based on wheth-  
17              er such activities were deemed to occur within that  
18              State or jurisdiction;

19              (4) as electronic communications services and  
20              technologies become increasingly digital and packet-  
21              based, it has become difficult, and often impossible,  
22              to rely on jurisdictional boundaries as the basis for  
23              allocating regulatory responsibility among jurisdic-  
24              tions;

1           (5) a regulatory regime enforced by multiple ju-  
2           risdictions, based on disparate laws, may result in  
3           inconsistent, unpredictable, and onerous rules that  
4           inhibit investment, innovation, and competition;

5           (6) the Telecommunications Act of 1996, which  
6           made substantial changes in the allocation of respon-  
7           sibilities among regulators in different jurisdictions,  
8           nonetheless did not adopt a framework that address-  
9           es fully the challenges posed by the rapid techno-  
10          logical and marketplace evolution of electronic com-  
11          munications networks and services; and

12          (7) given these shortcomings, new statutory  
13          guidance for allocating Federal, State, and local re-  
14          sponsibility is necessary to achieve the purposes of  
15          regulating electronic communications networks and  
16          services.

17          (b) POLICY.—It shall be the policy of the United  
18 States Government—

19           (1) to integrate Federal, State, and local regu-  
20           lation of electronic communications networks;

21           (2) that electronic communications networks  
22           and services be governed by a single, unified, mini-  
23           mally pervasive regulatory regime determined and  
24           generally implemented at the Federal level;

1           (3) to eliminate rate regulation and rate-setting  
2           where market conditions adequately protect the in-  
3           terests of consumers in obtaining reasonable rates;

4           (4) to eliminate regulation based on techno-  
5           logical or functional distinctions among communica-  
6           tions services and networks;

7           (5) to avoid extending legacy regulation to addi-  
8           tional services, networks, or providers; and

9           (6) to create incentives to invest in new tech-  
10          nologies and to encourage the deployment of ad-  
11          vanced electronic communications services.

12 **SEC. 402. RULEMAKING AND DELEGATION OF AUTHORITY.**

13          (a) **RULEMAKING.**—Except as otherwise specifically  
14          provided in this Act, the Commission shall have exclusive  
15          jurisdiction and authority to adopt or enforce rules, regu-  
16          lations, or obligations, or conduct rulemakings or adju-  
17          dications to implement the provisions of this Act.

18          (b) **DELEGATION.**—

19               (1) **IN GENERAL.**—The Commission may dele-  
20          gate to a State, or any general purpose political sub-  
21          division of a State, for matters occurring wholly  
22          within the jurisdiction of that State or political sub-  
23          division, the authority—

24                       (A) to enforce any rules, regulations, or  
25                       obligations adopted under subsection (a); or

1 (B) to adjudicate disputes between pro-  
2 viders of electronic communications services  
3 that relate to such rules, regulations, or obliga-  
4 tions.

5 (2) INVALID DELEGATION.—

6 (A) IN GENERAL.—A delegation of author-  
7 ity under paragraph (1) shall be invalid if a  
8 State, or any general purpose political subdivi-  
9 sion of a State, does not certify, and the Com-  
10 mission does not concur, that such State or po-  
11 litical subdivision is legally and practically com-  
12 petent to execute such authority.

13 (B) NO REVIEW.—Any determination  
14 made by the Commission under subparagraph  
15 (A) as to the competence of a State, or any  
16 general purpose political subdivision of a State,  
17 shall not be subject—

18 (i) to review by any court of com-  
19 petent jurisdiction;

20 (ii) to collateral attack; or

21 (iii) to interlocutory appeal.

22 (3) REVERSION OF AUTHORITY.—If a State, or  
23 any general purpose political subdivision of a State,  
24 declines to accept, lacks authority, or otherwise fails  
25 to execute a delegation of authority under paragraph

1 (1), the Commission, upon public notice, shall as-  
2 sume back such authority.

3 (4) CLARIFICATION OF AUTHORITY.—

4 (A) IN GENERAL.—A State, or any general  
5 purpose political subdivision of a State, may pe-  
6 tition the Commission—

7 (i) to clarify the scope of a delegation  
8 of authority under paragraph (1); or

9 (ii) to obtain a waiver from any ex-  
10 press or implied limitations on such delega-  
11 tion.

12 (B) TIMING.—

13 (i) IN GENERAL.—Not later than 120  
14 days after the date that a petition is sub-  
15 mitted under subparagraph (A), and after  
16 affording any interested party the oppor-  
17 tunity for comment, the Commission shall  
18 issue a decision on whether to grant or  
19 deny such petition.

20 (ii) EXPIRATION OF 120-DAY PE-  
21 RIOD.—If the Commission does not issue a  
22 decision within the time-period described in  
23 subparagraph (A), the petition shall be  
24 deemed granted.

25 (5) REQUEST FOR DELEGATION.—

1 (A) IN GENERAL.—In the absence of a del-  
2 egation of authority under paragraph (1), a  
3 State, or any general purpose political subdivi-  
4 sion of a State, may, for matters occurring  
5 wholly within the jurisdiction of that State or  
6 political subdivision, petition the Commission to  
7 enforce any rules, regulations, or obligations en-  
8 acted under subsection (a).

9 (B) TIMING.—

10 (i) IN GENERAL.—Not later than 90  
11 days after the date that a petition is sub-  
12 mitted under subparagraph (A), and after  
13 affording any interested party the oppor-  
14 tunity for comment, the Commission shall  
15 issue a decision on whether to grant or  
16 deny such petition.

17 (ii) EXPIRATION OF 90-DAY PERIOD.—  
18 If the Commission does not issue a deci-  
19 sion within the time-period described in  
20 subparagraph (A), the petition shall be  
21 deemed denied.

22 **SEC. 403. JUDICIAL REVIEW OF DECISIONS.**

23 Except as otherwise specifically provided in this Act,  
24 any interested party may appeal any decision of the Com-  
25 mission or any State, or any general purpose political sub-

1 division of a State, made under section 402 to the United  
2 States Court of Appeals for the District of Columbia.

3 **SEC. 404. RIGHT-OF-WAY AUTHORITY.**

4 A provider of electronic communications services shall  
5 be authorized to construct or operate an electronic com-  
6 munications network—

7 (1) over public rights-of-way; and

8 (2) through easements within a State, except  
9 that in using such easements, such provider shall en-  
10 sure that—

11 (A) the installation or construction of fa-  
12 cilities necessary for the electronic communica-  
13 tions network shall not adversely affect—

14 (i) the safety, function, and appear-  
15 ance of the property described in the ease-  
16 ment; and

17 (ii) the convenience and safety of any  
18 person who has a right to use such ease-  
19 ment;

20 (B) the cost of installation, construction,  
21 operation, or removal of such facilities be borne  
22 by—

23 (i) such provider;

24 (ii) the subscriber; or

25 (iii) a combination of both; and

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

6 **SEC. 405. STATE REGULATION OF BASIC LOCAL RATES.**

7 (a) **GRANDFATHER CLAUSE.**—Except as provided in  
8 subsections (b) through (d), a State may continue to regu-  
9 late the rates for basic stand-alone local service, if prior  
10 to the date of enactment of this Act, such service was—

11 (1) offered separately from any other services  
12 to customers who are not providers of electronic  
13 communications services;

14 (2) of the type defined in section 254(c)(1) of  
15 the Communications Act of 1934 (47 U.S.C. 254  
16 (c)(1)), as interpreted under section 54.101(a) of  
17 title 47, Code of Federal Regulations, as those provi-  
18 sions existed on the date of enactment of this Act;

19 (3) provided via a circuit-switched telephone  
20 network; and

21 (4) lawfully regulated by that State.

22 (b) **LIMITATION ON STATE REGULATION OF ANCIL-**  
23 **LARY OR VERTICAL SERVICES.**—The authority of a State  
24 to regulate rates under subsection (a) shall not—

1           (1) extend to any ancillary or vertical services  
2           offered in connection with the provision of basic  
3           stand-alone local service; or

4           (2) apply to any service bundles that contain  
5           basic stand-alone local service as a component of  
6           such bundle.

7           (c) RETAIL OR END-USER SERVICES ARE TO BE UN-  
8 REGULATED.—Except as provided otherwise in this Act,  
9 neither the Commission nor any State shall have authority  
10 to regulate the rates of any other retail or end-user elec-  
11 tronic communications service.

12          (d) PETITION TO ELIMINATE EXISTING STATE REG-  
13 ULATIONS.—

14           (1) IN GENERAL.—Any interested party may  
15           submit a petition to the appropriate State agency, as  
16           determined by that State, to modify or eliminate any  
17           rate regulations on services grandfathered under  
18           subsection (a).

19           (2) TIMING.—

20           (A) IN GENERAL.—Not later than 270  
21           days after the date that a petition is submitted  
22           under paragraph (1), the appropriate State  
23           agency shall issue a decision on whether to  
24           grant or deny such petition.

1           (B) EXPIRATION OF 270-DAY PERIOD.—If  
2           the appropriate State agency does not issue a  
3           decision within the time-period described in  
4           subparagraph (A), the petition shall be deemed  
5           granted.

6           (3) CONTENT OF DECISION.—Any decision that  
7           denies a petition under paragraph (2) shall include  
8           a written explanation of—

9                   (A) how the regulation described in the pe-  
10                  tition satisfies the requirements of subsection  
11                  (a); and

12                   (B) why the economic benefits of such reg-  
13                  ulation outweigh the economic harms of such  
14                  regulation.

15           (e) FEDERAL AGENCY REVIEW OF STATE DECI-  
16           SIONS.—

17                   (1) IN GENERAL.—An interested party may  
18                  submit a petition to the Commission to overturn the  
19                  denial of a petition by an appropriate State agency  
20                  under subsection (d).

21                   (2) SPECIAL EMPHASIS FOR REVIEW.—In decid-  
22                  ing whether or not to overturn the denial of a peti-  
23                  tion under paragraph (1), the Commission shall  
24                  place special emphasis on whether the regulation de-  
25                  scribed in the petition remedies or serves to alleviate

1 methods, acts, or practices deemed unlawful under  
2 section 102.

3 (3) TIMING.—

4 (A) IN GENERAL.—Not later than 180  
5 days after the date that a petition is submitted  
6 under paragraph (1), the Commission shall  
7 issue a decision on whether to grant or deny  
8 such petition.

9 (B) EXPIRATION OF 180-DAY PERIOD.—If  
10 the Commission does not issue a decision within  
11 the time-period described in subparagraph (A),  
12 the petition shall be deemed denied.

13 (f) FEDERAL COURT REVIEW.—An interested party  
14 may appeal the grant or denial of a petition under sub-  
15 section (e) directly to the United States Court of Appeals  
16 for the District of Columbia.

17 **SEC. 406. RETENTION OF ADDITIONAL STATE AUTHORITY.**

18 (a) IN GENERAL.—Notwithstanding section 402, a  
19 State, or any general purpose political subdivision of a  
20 State, shall retain jurisdiction to enact and implement  
21 rules or regulations that such State or political subdivision  
22 determines, after notice and an opportunity for public  
23 comment, are minimally and directly necessary—

24 (1) to prohibit unfair or deceptive acts or prac-  
25 tices that would negatively affect consumers from

1 using electronic communications services, including  
2 the concealment of the terms and conditions affect-  
3 ing the price and quality of such services;

4 (2) to protect the public safety and homeland  
5 security; and

6 (3) to manage public rights-of-way and execute  
7 traditional police powers with respect to public  
8 spaces, provided that any fees imposed by such State  
9 or political subdivision for access to rights-of-way  
10 shall not exceed the actual direct costs incurred by  
11 such State or political subdivision in managing the  
12 use of such rights-of-way by electronic communica-  
13 tions service providers.

14 (b) RULE OF CONSTRUCTION.—Nothing in sub-  
15 section (a) shall be construed to grant a State, or any gen-  
16 eral purpose political subdivision of a State, the author-  
17 ity—

18 (1) absent a delegation under section 403, to  
19 enact or enforce rules, regulations, or obligations, or  
20 conduct rulemakings or adjudications to implement  
21 the provisions of this Act;

22 (2) except as otherwise specifically provided, to  
23 enact—

24 (A) regulations relating to—

25 (i) rates; or

- 1 (ii) quality-of-service; or  
2 (B) any other economic regulation; or  
3 (3) to impose any other requirements on a pro-  
4 vider of electronic communications services to the ex-  
5 tent that such provider relies on networks that con-  
6 nect to customers primarily through use of electro-  
7 magnetic spectrum or other non-physical means.

8 **SEC. 407. PREEMPTION OF STATE AUTHORITY.**

9 Except as provided in sections 405 and 406, or under  
10 a delegation of authority under section 402, this Act su-  
11 persedes any provision of a statute, regulation, or rule,  
12 and any other requirement, prohibition or remedy under  
13 State law or the law of any general purpose political sub-  
14 division of a State, if the Commission concludes that—

15 (1) such statute, regulation, or rule, require-  
16 ment, prohibition, or remedy is or would be incon-  
17 sistent with the provisions of this Act;

18 (2) there are substantial and clear efficiencies  
19 to be gained by preempting the regulatory approach  
20 of such State or political subdivision;

21 (3) a single Federal regulatory approach is  
22 clearly optimal over all other regulatory approaches;

23 (4) there is a clear showing that the costs of  
24 abiding by a diverse set of regulatory approaches  
25 outweighs the benefits of allowing States or political

1 subdivisions thereof to experiment with innovative  
2 regulatory approaches;

3 (5) abiding by a diverse set of regulatory ap-  
4 proaches materially inhibits any provider of elec-  
5 tronic communications services from effectively of-  
6 fering such service; or

7 (6) such State or political subdivision has im-  
8 posed any tax solely on some or all providers of elec-  
9 tronic communications services.

10 **SEC. 408. TRANSITION AND SUNSET OF EXISTING AGREE-**  
11 **MENTS.**

12 (a) **EXISTING FRANCHISE AGREEMENTS.**—Any fran-  
13 chise agreement entered into by a franchising authority  
14 and a provider of electronic communications services  
15 under section 621 of the Communications Act of 1934 (47  
16 U.S.C. 541), as of the date of enactment of this Act, shall  
17 be exempt from the provisions of this Act until the earlier  
18 of—

19 (1) the date of expiration of the terms of such  
20 agreement; or

21 (2) the date that is 4 years after the date of en-  
22 actment of this Act.

23 (b) **LIMITATION.**—A State, or any general purpose  
24 political subdivision of a State, may not renew, extend,  
25 or otherwise enforce the terms of an any franchise agree-

1 ment described in subsection (a) beyond the time-periods  
2 established in that subsection.

3 (c) CONTRIBUTIONS BY COMPETING VIDEO SERV-  
4 ICES.—Until an existing franchise agreement is termi-  
5 nated under subsection (a), a State, or any general pur-  
6 pose political subdivision of a State, may require any pro-  
7 vider of competing video services to contribute an equi-  
8 table portion of costs associated with—

9 (1) any fees directly attributable to such agree-  
10 ment; and

11 (2) the provision of any public access channels  
12 required by such agreement.

13 **SEC. 409. EFFECTIVE DATE.**

14 Except as otherwise specifically provided, this Act  
15 shall take effect 2 years after the date of enactment of  
16 this Act.