



Legislative Bulletin.....June 8, 2006

Contents:

H.R. 5252—Communications Opportunity, Promotion, and Enhancement Act

Summary of the Bills Under Consideration Today:

Total Number of New Government Programs: 0

Total Cost of Discretionary Authorizations: \$7 million over five years

Effect on Revenue: \$0

Total Change in Mandatory Spending: \$0

Total New State & Local Government Mandates: At least seven

Total New Private Sector Mandates: At least two

Number of Bills Without Committee Reports: 0

Number of Reported Bills that Don't Cite Specific Clauses of Constitutional Authority: 0

H.R. 5252—Communications Opportunity, Promotion, and Enhancement Act (Barton, R-TX)

Order of Business: The bill is scheduled to be considered on Thursday, June 8th, subject to a structured rule (H.Res. 850). The eight amendments made in order under the rule will be summarized in a separate RSC document.

Summary: H.R. 5252 would promote the deployment of broadband services by reducing restrictions on entering the video services market. Highlights of the bill by title are as follows:

Title I—National Cable Franchising

- Creates a national franchising system for the provision of cable services that would overlay the existing local franchising regime and apply to new market entrants and existing cable providers. [In other words, cable providers would be able to get one franchise from the FCC to provide cable service in many localities, instead of getting many franchises from many localities to provide cable service in many localities.]
- Allows any cable provider wishing to offer cable service in a local franchise area to file a publicly available certification (including details about the services to be offered, where, when, to whom, etc.) for a national franchise with the Federal Communications Commission (FCC), which would automatically take effect 30 days after filing and would remain effective for ten years (and automatically renewed every ten years thereafter).
- Makes an entity already providing cable service in a local franchise area eligible for a national franchise in that locality once a new entrant begins providing cable service in that area. If two cable providers are offering service in a local franchise area before this legislation is enacted, both would be immediately eligible for national franchises.
- Prohibits local franchising authorities (LFAs) from *requiring* that an entity with a national franchise obtain a local franchise to provide cable services in a locality, but still allows an LFA or a state franchising authority and a cable provider to negotiate a local franchise that would trump the national franchise held by that new entrant.
- Requires that applicants for national franchises notify each LFA where cable services will be offered.
- Requires that cable operators, at the request of a franchising authority, participate in a public hearing (in the last year of the ten-year national franchise) on the cable providers performance and legal requirements in the franchise area.
- Provides for revocations (either permanent or temporary) of national franchises for a local area for:
 - willful or repeated violation of any federal or state law, or any FCC regulation, relating to the provision of cable service in such local franchise area;
 - false statements or material omissions knowingly made in any filing with the FCC relating to the provision of cable service in such local franchise area;
 - willful or repeated violations of the rights-of-way management laws or regulations of any franchising authority in such franchise area; or
 - willful or repeated violations of antidiscrimination requirements with respect to such franchise area (see below).
- Allows LFAs to petition the FCC for the termination of the national franchise of a cable provider in a local franchise area where no cable competition exists (e.g. if a previous competitor leaves the cable market). Such a petition would lay over for one

year (to allow for new competition to enter the market in the locality) before the FCC could make a decision on the petition.

- Requires that cable operators with national franchises pay each LFA (where providing service) an annual franchise fee of up to 5% of the national franchisee's gross revenues from the provision of cable service in the local franchise area.
- Requires national franchisees to carry the "PEG" channels (for public, educational, and governmental use) in a local franchise area "that is not less than the channel capacity required of the cable operator with the most subscribers in such franchise area" on the national franchise's effective date or that is in line with what the FCC deems appropriate (when there is no other cable operator). The level of PEG carriage would be subject to review and possible increase every ten years.
- Requires national franchisees to pay 1% of gross annual revenues to LFAs to support PEG channels and institutional networks (I-NETs) used for public safety and other governmental purposes.
- Sets out a series of requirements for the carriage of PEG channels so that national franchisees must treat PEG channels like any other channel (except that they are non-revenue-generating for the cable operator).
- Maintains public rights-of-way for national franchisees for the construction of cable systems but gives management authority over such rights-of-way to a state or local government (including an LFA).
- An LFA (or a state or local government) could impose on a national franchisee charges for the management of rights-of-way and requirements designed to protect safety and property—on a "reasonable, competitively neutral, and nondiscriminatory basis."
- Directs the FCC to promulgate national consumer protection and customer service standards for national franchisees, addressing such matters as billing disputes, loss of service quality, channel lineup changes, and parental control options. LFAs could enforce the national standards (and charge national franchisees a "nominal fee" to do so), but could not impose different requirements.
- Prohibits a cable operator with a national franchise from denying access to its cable service in a local franchise area to any group of potential residential subscribers because of the income of that group. LFAs could file complaints with the FCC (and noticing the cable operator) about possible violations of this prohibition.
- Requires national franchisees to submit a report to the FCC and each LFA 180 days after the effective date of its national franchise, and twice a year thereafter, identifying the areas in each local franchise area they are serving and their progress in extending ["building out" to] those areas.

- Authorizes the FCC to require a cable operator to disclose to the FCC information and documents related to a complaint investigation, but must keep those materials confidential. Any antidiscrimination dispute must be resolved within 60 days after receiving a complaint; and if the FCC finds a violation, it must ensure access is extended to the discriminated group “within a reasonable period of time.”
- Sets the maximum fine for anti-discrimination violations at \$500,000 per day (payable to the LFA).
- Directs the FCC to promulgate (within 180 days of this legislation’s enactment) regulations requiring national franchisees to prevent the distribution of child pornography over their networks.
- Applies to national franchisees the existing requirements to carry programming from qualified minority programming sources and ensures that state and local governments will still be able to access the emergency alert systems of cable operators.
- Authorizes the FCC and LFAs to audit a cable operator’s books once every 12 months to ensure payment of the fees in this legislation in accordance with procedures (including fee recovery) established by the FCC.
- Prohibits a video content provider owned by a cable operator from denying a national franchisee access to programming solely because the cable operator shares its head-end with other cable operators. *[A head-end is a cable company’s local facility that originates and communicates cable services to subscribers. A head-end also contains a cable modem termination system, a system of devices that allows cable operators to offer high-speed Internet access to home computers.]*
- Includes Internet protocol-based wireline video services in the definitions of cable operator and cable service.
- Directs the FCC to issue an annual report on the deployment of cable service (including details on availability, pricing, demography, etc.).

Title II—Enforcement of Broadband Policy Statement [Net Neutrality]

- Gives the FCC authority to enforce its Broadband Policy Statement issued in September 2005, which is as follows:
 - To encourage broadband deployment and preserve and promote the open and interconnected nature of the public Internet, consumers are entitled to access the lawful Internet content of their choice.
 - To encourage broadband deployment and preserve and promote the open and interconnected nature of the public Internet, consumers are entitled to run applications and use services of their choice, subject to the needs of law enforcement.

- To encourage broadband deployment and preserve and promote the open and interconnected nature of the public Internet, consumers are entitled to connect their choice of legal devices that do not harm the network.
 - To encourage broadband deployment and preserve and promote the open and interconnected nature of the public Internet, consumers are entitled to competition among network providers, application and service providers, and content providers.
- Allows the FCC to enforce the Statement—NOT by promulgating regulations (which is explicitly prohibited in the bill)—but only by adjudicating complaints on a case-by-case basis (each adjudicatory proceeding would have to be completed within 90 days and could result in the FCC ordering an entity to comply with the Statement, subject to a maximum \$500,000 fine per violation). The FCC could only promulgate regulations on the procedures for the adjudicatory proceedings.
 - Directs the FCC to report to Congress (within 180 days of enactment) on whether the objectives of the Broadband Policy Statement are being met.

Title III—VOIP/ 911

- States that “each VOIP service provider has a duty to ensure that 911 and E-911 services are provided to subscribers of VOIP services.” [VOIP stands for “Voice over Internet Protocol,” which is telephone service using the Internet instead of regular telephone lines.] The FCC would determine to what extent the provision of such service is “technologically and operationally feasible.”
- Requires local exchange carriers or appropriate government entities to give VOIP providers nondiscriminatory access to the infrastructure and databases necessary for them to provide E-911 services to consumers.
- Requires VOIP service providers to make 911 service available to new customers within a “reasonable” period of time.
- Instructs a VOIP service provider to notify customers, prior to providing VOIP services, that each customer should arrange with his or her emergency response system provider, if any, to test such system after installation; each customer should notify his or her emergency response system provider after VOIP service is installed; and a battery backup is required for customer premises equipment installed in connection with the VOIP service in order for the signaling of such system to function during a power outage.
- Directs the National 911 Implementation and Coordination Office to report on whether the U.S. should migrate to an IP-enabled emergency network capable of receiving and responding to all citizen-activated emergency communications.
- Ensures that VOIP providers can assert the “rights, duties, and obligations” of telecommunications carriers for the purpose of interconnecting with telecommunications carriers.

Title IV—Municipal Provision of Services

- Prohibits the federal government and states from stopping local governments from providing telecommunications, information, or cable services.
- Provides that municipal-owned communications services must abide by the same laws and regulations as commercial providers of such services and that localities may not give preferential treatment (regarding permitting, rights-of-way, etc.) to its municipal services.
- Directs the FCC to report to Congress within a year on the provision of telecommunication, information, and cable services by states and localities.

Title V—Broadband Service

- Prohibits a broadband service provider from requiring a subscriber, as a condition of purchasing any broadband service the provider offers, to purchase any cable, telecommunications, or VOIP service offered by the provider.
- Directs the FCC to report to Congress within 90 days of enactment on the interference potential of broadband over power line systems.

Title VI—Seamless Mobility

- Directs the FCC to further the development of “seamless mobility,” defined as “the ability of a communications device to select between and utilize multiple Internet protocol-enabled technology platforms, facilities, and networks in a real-time manner to provide a unified service.”
- Instructs the FCC (within 120 days of enactment) to implement a process for streamlined review and authorization of multi-mode devices that permit seamless mobility.
- Directs the FCC report to Congress on the barriers to seamless mobility and its recommendations for the elimination of such barriers.

Additional Background: The base bill does not contain the “net neutrality” language that many large Internet content providers, Silicon Valley companies, and liberal groups like MoveOn.org have requested. Such language would have required the FCC to promulgate regulations to prohibit cable providers from offering tiered services and pricing on their networks. In other words, true “net neutrality” would have the federal government prohibit private companies from offering the services they want and charge the prices that they want on their own property (their networks). Instead, the base bill includes an adjudicatory (instead of regulatory) approach to equity on cable networks, allowing the FCC to hear complaints

about alleged departures from a set of four broad Internet freedom principles (see summary for Title II above).

Many of the private-sector mandates in this bill that apply to national franchisees mirror those that apply to local franchisees currently.

Committee Action: The bill was referred to the Energy & Commerce Committee on May 1, 2006, which reported the bill to the full House on May 17, 2006.

Administration Position: Although a Statement of Administration Policy (SAP) is not yet available, sources indicate that the Administration supports this bill.

Cost to Taxpayers: CBO estimates that this bill would authorize \$2 million in FY2007 and a total of \$7 million over the FY2007-FY2011 period (mainly for rule-developing and enforcement). The bill could have an insignificant effect on mandatory spending and revenues.

Does the Bill Expand the Size and Scope of the Federal Government?: To the extent that the federal government already regulates telecommunications as interstate commerce, this bill does not expand the size and scope of the federal government. However, to the extent that this bill preempts state and local authorities in certain areas, it can be seen as increasing the scope of the federal government.

Does the Bill Contain Any New State-Government, Local-Government, or Private-Sector Mandates?: Yes. CBO reports the following mandates:

Intergovernmental:

- Eliminates the authority, in certain circumstances, of local entities to issue franchises for cable providers;
- Prohibits intergovernmental entities--primarily municipal governments--from imposing certain fees on providers of cable services;
- Requires public safety access points to make their systems accessible to the providers of a type of telephone service known as VOIP and to make certain information available to the FCC;
- Limits the fees that local governments can charge VOIP providers for access to emergency 911 services;
- Preempts state and local consumer protection laws;
- Preempts local government authority over municipal rights of way; and
- Preempts state laws prohibiting local governments from offering certain services to provide Internet access.

Private-sector:

- Prohibits broadband service providers from requiring subscribers to purchase other services as a bundle; and

- Requires certain entities that own 911 components to allow VOIP providers access to their infrastructure.

Constitutional Authority: The Energy & Commerce Committee, in House Report 109-470, cites constitutional authority in Article I, Section 8, Clause 3 (the congressional power to regulate interstate commerce).

Outside Organizations: Supporters of this legislation include: the National Cable and Telecommunications Association, USTelecom, Americans for Tax Reform, Microsoft, Qwest, AT&T, BellSouth, EarthLink, The U.S. Chamber of Commerce, and the National Association of Manufacturers.

RSC Staff Contact: Paul S. Teller, paul.teller@mail.house.gov, (202) 226-9718