



Legislative Bulletin.....June 8, 2006

Contents:

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

H.R. 5252, the Communications Opportunity, Promotion, and Enhancement Act, is scheduled to be considered on the House floor on Thursday, June 8th, subject to the structured rule H.Res. 850.

The rule makes the following eight amendments in order, each debatable for 10 minutes, unless otherwise noted. **Note:** the summaries below, while based on what is provided on the Rules Committee website, are perfected by RSC staff's review of actual amendment text. For a summary of the underlying bill (H.R. 5252), see a separate RSC document circulated on June 8th.

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1. Barton (R-TX). Clarifies the following: (1) what constitutes a franchise area; (2) that a person or group seeking authority to provide service under a national franchise must agree to comply with all requirements the FCC promulgates pursuant to the consumer protection and customer service provisions in the bill; (3) that anyone with a national franchise shall be subject to all the cable operator provisions of Title VI of the Communications Act except for the ones specifically excepted in the bill; and (4) that nothing in the legislation affects existing pole-attachment law (47 U.S.C. 224). Makes a variety of other clarifying, technical, and conforming changes.

Energy & Commerce Committee Chairman Joe Barton (R-TX): Supports
National Cable & Telecommunications Association (NCTA): Supports
USTelecom: Neutral

2. Jackson-Lee (D-TX). Reduces from 1% to 0.5% of gross annual revenues the fee paid to local franchise authorities (LFAs) for the support of public-educational-government (PEG) channels and institutional networks (I-NETS) by cable operators that are small businesses owned and controlled by women or by socially and economically disadvantaged people.

Chairman Barton: Neutral
NCTA: Neutral
USTelecom: Neutral

3. Wynn (D-MD). Increases from 30 to 90 days the timeframe in which appeals of LFA orders requiring compliance with the FCC’s revised consumer protection rules must be resolved. Allows LFAs to initiate complaints with the FCC about violations of the consumer protection rules.

Chairman Barton: Supports
NCTA: Neutral
USTelecom: Neutral

4. Johnson (D-TX). Increases the maximum penalty from \$500,000 to \$750,000 per day for a cable operator that does not provide cable service to residents allegedly because of the income of such residents.

Chairman Barton: Supports
NCTA: Supports
USTelecom: Neutral

5. Rush (D-IL). Establishes a complaint process to resolve fee disputes between an LFA and a cable operator regarding franchise fees or PEG/I-NET support. The complaint initiator would first have to provide written notice to the alleged violator, get together within 30 days, and seek to solve the problem within 90 days. If the dispute has not been resolved after 90 days, then both parties could petition the FCC to resolve the complaint, which would have 90 days to resolve the fee dispute.

Chairman Barton: Supports
NCTA: Neutral
USTelecom: Neutral

6. Smith (R-TX). Clarifies that the bill’s “net neutrality” language does not affect the applicability of existing antitrust laws to cases involving network neutrality or the jurisdiction of the courts to hear such cases.

Chairman Barton: Supports
NCTA: Supports
USTelecom: Supports

7. Markey (D-MA)/Eshoo (D-CA)/Boucher (D-VA)/Inslee (D-WA). (Debatable for 20 minutes)

- Strikes the “net neutrality” language in the underlying bill (section 201), which would explicitly allow the FCC to adjudicate complaints of violating four broad principles.
- States that it is U.S. policy to:
 - “maintain and enhance the vibrant and competitive free market that presently exists for the Internet and Internet services, upon which Internet commerce relies;
 - “preserve and promote the open and interconnected nature of the Internet and consumer empowerment and choice;

- “foster innovation, investment, and competition among network providers, as well as application, content, and service providers;
 - “ensure vigorous and prompt enforcement of this section’s requirements to safeguard innovation, consumer protection, and marketplace certainty; and
 - “preserve the security and reliability of the Internet and the services that enable consumers to access content, applications, and services over the Internet.”
- States that each broadband network has the **duty**:
 - “not to block, impair, degrade, discriminate against, or interfere with the ability of any person to use a broadband connection to access, use, send, receive, or offer lawful content, applications, or services over the Internet;
 - “to operate its broadband network in a nondiscriminatory manner so that any person can offer or provide content, applications, and services through, or over, such broadband network with equivalent or better capability than the provider extends to itself or affiliated parties, and without the imposition of a charge for such nondiscriminatory network operation; *(emphasis added)*
 - “if the provider prioritizes or offers enhanced quality of service to data of a particular type, to prioritize or offer enhanced quality of service to all data of that type (regardless of the origin of such data) without imposing a surcharge or other consideration for such prioritization or enhanced quality of service; *(emphasis added)*
 - “to enable a user to attach and use any device to the operator’s network that does not physically damage, make unauthorized use of, or materially degrade other users’ utilization of, the network; and
 - “to clearly and conspicuously disclose to users, in plain language, accurate information about the speed, nature, and limitations of their broadband connection.”
 - States that this amendment should not be construed as limiting a broadband network provider from taking “reasonable and nondiscriminatory measures” to do such things as manage its network security, offer varied service plans to users at varying levels of bandwidth and prices, offer consumer protection services like parental controls, offer cable service (as long as not bundled with any other service), prioritize emergency communications, or comply with law enforcement.
 - Directs the FCC to promulgate regulations (within 180 days of this bill’s enactment) providing for the expedited review (within 30 days) of any complaints alleging a violation of these provisions above.
 - Clarifies that this amendment does not affect the applicability of existing antitrust laws to cases involving network neutrality.

Chairman Barton: Opposes

NCTA: Opposes

USTelecom: Opposes

8. Gutknecht (R-MN)/ Boyd (D-FL)/ Skelton (D-MO)/ Herseth (D-SD)/ Stupak (D-MI)/ Peterson (R-PA). States that nothing in this legislation should be construed to exempt Voice-over-

Internet-Protocol (VOIP) providers from requirements imposed by the FCC or a state commission on all VOIP providers to pay “appropriate” compensation for the transmission of a VOIP service over the facilities and equipment of another provider OR to contribute on an “equitable and nondiscriminatory” basis to the “preservation and advancement of universal service.”

Chairman Barton: Neutral

NCTA: Opposes

USTelecom: Supports

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