

107TH CONGRESS
2D SESSION

S. 2863

To provide for deregulation of consumer broadband services.

IN THE SENATE OF THE UNITED STATES

AUGUST 1, 2002

Mr. MCCAIN introduced the following bill; which was read twice and referred to the Committee on Commerce, Science, and Transportation

A BILL

To provide for deregulation of consumer broadband services.

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; AMENDMENT OF COMMUNICA-**
4 **TIONS ACT OF 1934; TABLE OF CONTENTS.**

5 (a) SHORT TITLE.—This Act may be cited as the
6 “Consumer Broadband Deregulation Act”.

7 (b) AMENDMENT OF COMMUNICATIONS ACT OF
8 1934.—Except as otherwise expressly provided, whenever
9 in this Act an amendment or repeal is expressed in terms
10 of an amendment to, or repeal of, a section or other provi-
11 sion, the reference shall be considered to be made to a

1 section or other provision of the Communications Act of
2 1934 (47 U.S.C. 151 et seq.).

3 (c) TABLE OF CONTENTS.—The table of contents for
4 this Act is as follows:

Sec. 1. Short title; amendment of Communications Act of 1934; table of con-
tents.

Sec. 2. Findings.

Sec. 3. Deregulation of consumer broadband services.

Sec. 4. Unbundled access and collocation requirements.

Sec. 5. National clearinghouse for high-speed Internet access.

Sec. 6. Enforcement.

Sec. 7. Spectrum reform study.

Sec. 8. Study on ways to promote broadband through e-government.

5 **SEC. 2. FINDINGS AND PURPOSE.**

6 (a) FINDINGS.—The Congress finds the following:

7 (1) All consumer broadband service markets
8 should be open to competition.

9 (2) Consumer broadband service can be pro-
10 vided over numerous different platforms.

11 (3) All providers of consumer broadband serv-
12 ices should be able to provide such services and be
13 subject to harmonized regulation when offering such
14 services.

15 (4) Consumer broadband services can enhance
16 the quality of life for Americans and promote eco-
17 nomic development, job creation, and international
18 competitiveness.

19 (5) Advancements in the nation's Internet in-
20 frastructure will enhance the public welfare by help-
21 ing to speed the delivery of services such as tele-

1 medicine, distance learning, remote medical services,
2 and distribution of health information.

3 (6) Government regulations that affect high-
4 speed Internet access should promote investment
5 and innovation in all technological platforms.

6 (b) PURPOSE.—It is the purpose of this Act to allow
7 market forces to introduce investment and innovation in
8 consumer broadband services for the benefit of all Ameri-
9 cans.

10 **SEC. 3. DEREGULATION OF CONSUMER BROADBAND SERV-**
11 **ICES.**

12 (a) IN GENERAL.—The Act is amended—

13 (1) by redesignating title VII as title VIII;

14 (2) by redesignating sections 701 through 714
15 as sections 801 through 814, respectively;

16 (3) by striking “section 714” in section
17 309(j)(8)(C)(iii) and inserting “section 814”;

18 (4) by striking “section 705” in section 712(b)
19 and inserting “section 805”; and

20 (5) by inserting after title VI the following:

21 **“TITLE VII—CONSUMER**
22 **BROADBAND SERVICES**

23 **“SEC. 701. RETAIL CONSUMER BROADBAND SERVICE.**

24 “(a) FREEDOM FROM REGULATION.—Except as pro-
25 vided in subsection (c), neither the Commission, nor any

1 State, shall have authority to regulate the rates, charges,
2 terms, or conditions for the retail offering of consumer
3 broadband service.

4 “(b) OTHER SERVICES AND FACILITIES.—Nothing in
5 this section precludes the Commission, or a State or local
6 government, from regulating the provision of any service
7 other than consumer broadband service, even if that serv-
8 ice is provided over the same facilities as are used to pro-
9 vide consumer broadband service.

10 “(c) SERVICE QUALITY.—

11 “(1) COMMISSION DETERMINATION RE-
12 QUIRED.—The Commission shall initiate a study
13 within 2 years after the date of enactment of the
14 Consumer Broadband Deregulation Act to determine
15 whether State regulation of consumer broadband
16 service quality is appropriate or necessary for the
17 protection of consumers.

18 “(2) REGULATIONS; STATE ENFORCEMENT.—If
19 the Commission determines that State regulation of
20 consumer broadband service quality is appropriate or
21 necessary for the protection of consumers, the Com-
22 mission shall promulgate regulations establishing
23 uniform national guidelines regulating consumer
24 broadband service quality that may be enforced by
25 States. Any regulations promulgated under this

1 paragraph may not take effect before the date that
2 is 2 years after the date of enactment of the Con-
3 sumer Broadband Deregulation Act.

4 “(3) PREEMPTION OF OTHER STATE SERVICE
5 QUALITY REGULATION.—

6 “(A) IN GENERAL.—Unless the Commis-
7 sion promulgates regulations under paragraph
8 (2), no State may regulate the quality of con-
9 sumer broadband services provided to its citi-
10 zens or residents.

11 “(B) LIMITATION.—If the commission pro-
12 mulgates regulations under paragraph (2), no
13 State may regulate the quality of consumer
14 broadband services provided to its citizens or
15 residents except as provided in those regula-
16 tions.

17 “(4) NO INFERENCE.—Nothing in this section
18 shall affect a State’s ability to enforce consumer
19 protection laws and regulations unrelated to the
20 technical provision of consumer broadband service.

21 **“SEC. 702. WHOLESALE CONSUMER BROADBAND SERVICE.**

22 “(a) IN GENERAL.—Except as provided in subsection
23 (b), neither the Commission nor any State or political sub-
24 division thereof shall have authority to require a consumer
25 broadband service provider to afford an Internet service

1 provider access to its facilities or services for the purpose
2 of offering a consumer broadband service.

3 “(b) EXCEPTION.—To the extent that any entity is
4 required by the Commission to afford an Internet service
5 provider access to its facilities or services for the purpose
6 of providing consumer broadband service on the date of
7 enactment of the Consumer Broadband Deregulation Act,
8 the Commission may require that entity to continue to af-
9 ford such access.

10 “(c) REPORT.—The Commission shall report to the
11 Senate Committee on Commerce, Science, and Transpor-
12 tation and the House of Representatives Committee on
13 Energy and Commerce within 2 years after the date of
14 enactment of the Consumer Broadband Deregulation Act
15 on the state of the wholesale market for consumer
16 broadband services and its effect on retail competition for
17 these services.

18 “(d) SUNSET PROVISION.—Subsection (b) shall cease
19 to be effective 5 years after the date of enactment of such
20 Act, unless the Commission finds that the continued exer-
21 cise of its authority under that subsection is necessary to
22 preserve and protect competition in the provision of con-
23 sumer broadband services.

1 **“SEC. 703. LIMIT ON STATE AND LOCAL AUTHORITY; PUB-**
2 **LIC RIGHTS-OF-WAY CHARGES.**

3 “(a) REMOVAL OF BARRIERS TO ENTRY.—No State
4 or local statute or regulation, or other State or local legal
5 requirement, may prohibit or have the effect of prohibiting
6 the ability of any entity to provide any consumer
7 broadband service.

8 “(b) COST-BASED COMPENSATION FOR RIGHTS-OF-
9 WAY.—A State or local government may not require com-
10 pensation from consumer broadband service providers for
11 access to, or use of, public rights-of-way that exceeds the
12 direct and actual costs reasonably allocable to the adminis-
13 tration of access to, or use of, public rights-of-way.

14 “(c) PUBLIC DISCLOSURE.—A State or local govern-
15 ment shall disclose to the public, on a timely basis and
16 in an easily understood format, any compensation required
17 from consumer broadband service providers for access to,
18 of use of, public rights-of-way.

19 **“SEC. 704. ACCESS BY PERSONS WITH DISABILITIES.**

20 “(a) MANUFACTURERS.—A manufacturer of equip-
21 ment used for consumer broadband services shall ensure
22 that equipment is designed, developed, and fabricated to
23 be accessible to and usable by persons with disabilities,
24 unless the manufacturer demonstrates that taking such
25 steps would result in an undue burden.

1 “(b) CONSUMER BROADBAND SERVICE PRO-
2 VIDERS.—A provider of consumer broadband services shall
3 ensure that its services are accessible to and usable by
4 persons with disabilities, unless the provider demonstrates
5 that taking such steps would result in an undue burden.

6 “(c) COMPATIBILITY.—Whenever the requirements of
7 subsections (a) and (b) constitute an undue burden, a
8 manufacturer or provider shall ensure that the equipment
9 or service is compatible with existing peripheral devices
10 or specialized customer premises equipment commonly
11 used by persons with disabilities to achieve access, unless
12 the manufacturer or provider demonstrates that taking
13 such steps would result in an undue burden.

14 “(d) REGULATIONS.—Within 18 months after the
15 date of enactment of the Consumer Broadband Deregula-
16 tion Act, the Commission shall prescribe such regulations
17 as are necessary to implement this section. The regula-
18 tions shall ensure consistency across multiple service plat-
19 forms with respect to access by persons with disabilities.
20 The regulations also shall provide that neither broadband
21 services, broadband access services, nor the equipment
22 used for such services may impair or impede the accessi-
23 bility of information content when accessibility has been
24 incorporated in that content for transmission through
25 broadband services, access services, or equipment.

1 “(e) DEFINITIONS.—In this section—

2 “(1) DISABILITY.—The term ‘disability’ has the
3 meaning given to it by section 3(2)(A) of the Ameri-
4 cans with Disabilities Act of 1990 (42 U.S.C.
5 12102(2)(A)).

6 “(2) UNDUE BURDEN.—The term ‘undue bur-
7 den’ means significant difficulty or expense. In de-
8 termining whether the requirements of this para-
9 graph would result in an undue burden, the factors
10 to be considered include—

11 “(A) the nature and cost of the steps re-
12 quired for the manufacturer or provider;

13 “(B) the impact on the operation of the
14 manufacturer or provider;

15 “(C) the financial resources of the manu-
16 facturer or provider; and

17 “(D) the type of operations of the manu-
18 facturer or provider.

19 **“SEC. 705. RELATIONSHIP TO TITLES II, III, AND VI.**

20 “If the application of any provision of title II, III,
21 or VI of this Act is inconsistent with any provision of this
22 title, then to the extent the application of both provisions
23 would conflict with or frustrate the application of the pro-
24 vision of this title—

25 “(1) the provision of this title shall apply; and

1 “(2) the inconsistent provision of title II, III, or
2 VI shall not apply.”.

3 (b) CONSUMER BROADBAND SERVICES DEFINED.—
4 Section 3 (47 U.S.C. 153) is amended by inserting after
5 paragraph (12) the following:

6 “(12A) CONSUMER BROADBAND SERVICES.—

7 “(A) IN GENERAL.—The term ‘consumer
8 broadband services’ means interstate residential
9 high-speed Internet access services.

10 “(B) HIGH-SPEED.—The Commission shall
11 establish by rule the criterion, in terms of
12 megabits per second, to be used for the purpose
13 of determining whether residential Internet
14 services are high-speed Internet services. In es-
15 tablishing that criterion, the Commission shall
16 consider whether the speed is sufficient to sup-
17 port existing applications and to encourage the
18 development of new applications. The Commis-
19 sion shall revise the criterion as necessary and
20 shall review any criterion established by it no
21 less frequently than each 18 months.

22 “(C) INTERNET ACCESS SERVICE.—The
23 term ‘Internet access service’ means a service
24 that combines computer processing, information
25 storage, protocol conversion, and routing with

1 telecommunications to enable users to access
2 Internet content and services.”.

3 **SEC. 4. UNBUNDLED ACCESS AND COLLOCATION REQUIRE-**
4 **MENTS.**

5 (a) UNBUNDLED ACCESS.—Section 251(c)(3) (47
6 U.S.C. 251(c)(3)) is amended to read as follows:

7 “(3) UNBUNDLED ACCESS.—

8 “(A) IN GENERAL.—The duty to provide,
9 to any requesting telecommunications carrier
10 for the provision of a telecommunications serv-
11 ice, nondiscriminatory access to network ele-
12 ments on an unbundled basis at any technically
13 feasible point on rates, terms, and conditions
14 that are just, reasonable, and nondiscriminatory
15 in accordance with the terms and conditions of
16 the agreement and the requirements of this sec-
17 tion and section 252. An incumbent local ex-
18 change carrier shall provide such unbundled
19 network elements in a manner that allows re-
20 questing carriers to combine such elements in
21 order to provide such telecommunications serv-
22 ice.

23 “(B) EXCEPTION.—The duty to provide
24 access under subparagraph (A) does not require
25 an incumbent local exchange carrier to provide

1 access to a fiber local loop or fiber feeder
2 subloop to a requesting carrier to enable the re-
3 questing carrier to provide a telecommuni-
4 cations service that is an input to a consumer
5 broadband service unless the incumbent local
6 exchange carrier has removed or rendered use-
7 less a previously existing cooper loop necessary
8 to provide such services.”.

9 (b) COLLOCATION.—Section 251(c)(6) (47 U.S.C.
10 251(c)(6)) is amended to read as follows:

11 “(6) COLLOCATION.—

12 “(A) IN GENERAL.—The duty to provide,
13 on rates, terms, and conditions that are just,
14 reasonable, and nondiscriminatory, for physical
15 collocation of equipment necessary for inter-
16 connection or access to unbundled network ele-
17 ments at the premises of the local exchange car-
18 rier, except that the carrier may provide for vir-
19 tual collocation if the local exchange carrier
20 demonstrates to the State commission that
21 physical collocation is not practical for technical
22 reasons or because of space limitations.

23 “(B) EXCEPTION.—The duty to provide
24 for collocation under subparagraph (A) does not

1 require an incumbent local exchange carrier to
2 provide for collocation in a remote terminal.”.

3 **SEC. 5. NATIONAL CLEARINGHOUSE FOR HIGH-SPEED**
4 **INTERNET ACCESS.**

5 (a) **IN GENERAL.**—The Secretary of Commerce shall
6 establish a national clearinghouse within the Department
7 of Commerce that allows communities throughout the
8 United States, particularly rural communities, to find data
9 and information relating to the deployment of facilities ca-
10 pable of supporting high-speed Internet services.

11 (b) **EXCHANGE FUNCTION.**—The Secretary shall so-
12 licit and accept data, information, and advice from com-
13 munities that have succeeded in attracting the deployment
14 of broadband services and infrastructure in order to make
15 that data, information, and advice available to other com-
16 munities that are seeking to deploy high-speed Internet
17 services.

18 **SEC. 6. ENFORCEMENT.**

19 (a) **CEASE AND DESIST AUTHORITY.**—Section 501 of
20 the Communications Act of 1934 (47 U.S.C. 501) is
21 amended—

22 (1) by striking “Any person” and inserting “(a)
23 **FINES AND IMPRISONMENT.**—Any person”;

24 (2) by adding at the end the following new sub-
25 section:

1 “(b) CEASE AND DESIST ORDERS.— If, after a hear-
 2 ing, the Commission determines that any common carrier
 3 or consumer broadband service provider is engaged in an
 4 act, matter, or thing prohibited by this Act, or is failing
 5 to perform any act, matter, or thing required by this Act,
 6 the Commission may order such common carrier or pro-
 7 vider to cease or desist from such action or inaction.”.

8 (b) FORFEITURE PENALTIES.—Section 503(b) of the
 9 Communications Act of 1934 (47 U.S.C. 503(b)) is
 10 amended—

11 (1) in paragraph (2)(B)—

12 (A) by striking “exceed \$100,000” and in-
 13 serting “exceed \$1,000,000”; and

14 (B) by striking “of \$1,000,000” and in-
 15 serting “of \$10,000,000”;

16 (2) in paragraph (2)(C), by striking “subpara-
 17 graph (A) or (B)” and inserting “subparagraph (A),
 18 (B), or (C)”;

19 (3) by redesignating subparagraphs (C) and
 20 (D) of paragraph (2) as subparagraphs (D) and (E),
 21 respectively;

22 (4) by inserting after subparagraph (B) of
 23 paragraph (2) the following new subparagraph:

24 “(C) If a common carrier or consumer broadband
 25 service provider has violated a cease and desist order or

1 has previously been assessed a forfeiture penalty for a vio-
2 lation of a provision of this Act or of any rule, regulation,
3 or order issued by the Commission, and if the Commission
4 or an administrative law judge determines that such com-
5 mon carrier has willfully violated the same provision, rule,
6 regulation, that this repeated violation has caused harm
7 to competition, and that such common carrier or consumer
8 broadband service provider has been assessed a forfeiture
9 penalty under this subsection for such previous violation,
10 the Commission may assess a forfeiture penalty not to ex-
11 ceed \$2,000,000 for each violation or each day of con-
12 tinuing violation; except that the amount of such forfeiture
13 penalty shall not exceed \$20,000,000.”; and

14 (5) in paragraph (6)(B), by striking “1 year”
15 and inserting “2 years”.

16 **SEC. 7. WIRELESS BROADBAND STUDY.**

17 (a) IN GENERAL.—The Federal Communications
18 Commission shall conduct a study—

19 (1) on wireless technology to determine the ap-
20 propriate role of the Federal government in facili-
21 tating greater consumer access to consumer
22 broadband services using evolving advanced tech-
23 nology; and

24 (2) what, if any, action by the Federal govern-
25 ment is needed to increase the deployment of new

1 wireless technology to facilitate high-speed Internet
2 access.

3 (b) FOCUS.—In conducting the study, the Commis-
4 sion shall focus on consumer broadband services utilizing
5 wireless technology.

6 (c) CONSIDERATION OF WIRELESS INDUSTRY
7 VIEWS.—In conducting the study, the Commission shall
8 consider the views of, among other interested parties, rep-
9 resentatives of the telecommunications industry (as de-
10 fined in section 714(k)(3) of the Communications Act of
11 1934 (47 U.S.C. 614(k)(3)) involved in wireless commu-
12 nications.

13 (d) REPORT.—

14 (1) IN GENERAL.—The Commission shall trans-
15 mit a report, containing its findings, conclusions,
16 and recommendations from the study to the Senate
17 Committee on Commerce, Science, and Transpor-
18 tation and the House of Representatives Committee
19 on Energy and Commerce within 18 months after
20 the date of enactment of this Act.

21 (2) REPORT TO BE AVAILABLE TO PUBLIC.—
22 The Commission shall make its report available to
23 the public.

1 **SEC. 8. STUDY ON WAYS TO PROMOTE BROADBAND**
2 **THROUGH E-GOVERNMENT.**

3 The Secretary of Commerce, in consultation with the
4 Director of the Office of Management and Budget, shall
5 transmit a report to the Senate Committee on Commerce,
6 Science, and Transportation and the House of Represent-
7 atives Committee on Energy and Commerce within 6
8 months after the date of enactment of this Act on how
9 the Federal government can promote the use of broadband
10 services through e-government, including—

- 11 (1) online delivery of government services;
- 12 (2) video-streaming of government press events
13 and open public events, such as announcements and
14 administrative proceedings;
- 15 (3) e-health and online education initiatives;
- 16 (4) access to government documents; and
- 17 (5) the ramifications of enhanced government
18 online services on user privacy and the security of
19 the Federal government's electronic infrastructure.

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