

110TH CONGRESS
1ST SESSION

S. 1853

To promote competition, to preserve the ability of local governments to provide broadband capability and services, and for other purposes.

IN THE SENATE OF THE UNITED STATES

JULY 23, 2007

Mr. LAUTENBERG (for himself, Mr. SMITH, Mr. KERRY, Mr. MCCAIN, Mrs. MCCASKILL, Ms. SNOWE, Mr. STEVENS, and Mr. INOUE) introduced the following bill; which was read twice and referred to the Committee on Commerce, Science, and Transportation

A BILL

To promote competition, to preserve the ability of local governments to provide broadband capability and services, and for other purposes.

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.**

4 This Act may be cited as the “Community Broadband
5 Act of 2007”.

1 **SEC. 2. LOCAL GOVERNMENT PROVISION OF ADVANCED**
2 **TELECOMMUNICATIONS CAPABILITY AND**
3 **SERVICES.**

4 No State or local government statute, regulation, or
5 other State or local government legal requirement may
6 prohibit, or have the effect of prohibiting, any public pro-
7 vider from providing advanced telecommunications capa-
8 bility, or services using advanced telecommunications ca-
9 pability, to any person or any public or private entity.

10 **SEC. 3. SAFEGUARDS.**

11 (a) ADMINISTRATION.—To the extent any public pro-
12 vider regulates competing providers of advanced tele-
13 communications capability or services, such public pro-
14 vider shall apply its ordinances and rules and policies, in-
15 cluding those relating to the use of public rights-of-way,
16 permitting, performance bonding, and reporting, without
17 discrimination in favor of itself or any other provider of
18 advanced telecommunications capability or service that
19 such provider owns or with which such provider is affili-
20 ated.

21 (b) APPLICATION OF GENERAL LAWS.—Nothing in
22 this Act exempts a public provider that offers advanced
23 telecommunications capability or services to the public
24 from any Federal communications law or regulation that
25 applies to all providers of advanced telecommunications
26 capability or services to the public.

1 **SEC. 4. PUBLIC-PRIVATE PARTNERSHIPS ENCOURAGED.**

2 Each public provider that intends to provide ad-
 3 vanced telecommunications capability or services to the
 4 public is encouraged to consider the potential benefits of
 5 a public-private partnership prior to providing such capa-
 6 bility or services.

7 **SEC. 5. PUBLIC INPUT.**

8 (a) NOTICE AND OPPORTUNITY TO BE HEARD.—Be-
 9 fore a public provider may provide advanced telecommuni-
 10 cations capability or services to the public, either directly
 11 or through a public-private partnership, such public pro-
 12 vider shall—

13 (1) publish notice of its intention to do so;

14 (2) generally describe the capability or services
 15 to be provided and the proposed coverage area for
 16 such capability or services;

17 (3) identify any special capabilities or services
 18 to be provided in low-income areas or other demo-
 19 graphically or geographically defined areas; and

20 (4) provide local citizens and private-sector en-
 21 tities with an opportunity to be heard on the costs
 22 and benefits of the project and potential alternatives
 23 to the project.

24 (b) APPLICATION TO EXISTING PROJECTS AND
 25 PENDING PROPOSALS.—Subsection (a) shall not apply
 26 to—

1 (1) any contract or other arrangement under
2 which a public provider is providing advanced tele-
3 communications capability or services to the public
4 as of the date of enactment of this Act; and

5 (2) any public provider proposal to provide ad-
6 vanced telecommunications capability or services to
7 the public that, as of the date of enactment of this
8 Act—

9 (A) is in the request-for-proposals process;

10 (B) is in the process of being built; or

11 (C) has been approved by referendum.

12 **SEC. 6. EXEMPTIONS.**

13 The requirements of sections 3 and 5 shall not
14 apply—

15 (1) when a public provider provides advanced
16 telecommunications capabilities or services other
17 than to the public or to such classes of users as to
18 be effectively available to the public; or

19 (2) during an emergency declared by the Presi-
20 dent, the Governor of the State in which the public
21 provider is located, or any other elected local official
22 authorized by law to declare a state of emergency in
23 the jurisdiction in which the public provider is lo-
24 cated.

1 **SEC. 7. DEFINITIONS.**

2 In this Act:

3 (1) **ADVANCED TELECOMMUNICATIONS CAPA-**
4 **BILITY.**—The term “advanced telecommunications
5 capability” has the meaning given that term by sec-
6 tion 706(e)(1) of the Telecommunications Act of
7 1996 (47 U.S.C. 157 note).

8 (2) **PUBLIC PROVIDER.**—The term “public pro-
9 vider” means a State or political subdivision thereof,
10 any agency, authority, or instrumentality of a State
11 or political subdivision thereof, or an Indian tribe
12 (as defined in section 4(e) of the Indian Self-Deter-
13 mination and Education Assistance Act (25 U.S.C.
14 450b(e)), or any entity that is owned, controlled, or
15 otherwise affiliated with a State, political subdivision
16 thereof, agency, authority, or instrumentality, or In-
17 dian tribe.

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