

109TH CONGRESS
1ST SESSION

S. _____

To promote deployment of competitive video services, eliminate redundant and unnecessary regulation, and further the development of next generation broadband networks.

IN THE SENATE OF THE UNITED STATES

Mr. SMITH (for himself and Mr. ROCKEFELLER) introduced the following bill; which was read twice and referred to the Committee on

A BILL

To promote deployment of competitive video services, eliminate redundant and unnecessary regulation, and further the development of next generation broadband 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.**

4 This Act may be cited as the “Video Choice Act of
5 2005”.

6 **SEC. 2. FINDINGS.**

7 Congress finds the following:

8 (1) Cable rates continue to rise substantially
9 faster than the overall rate of inflation.

1 (2) Wire-based competition in video services is
2 limited to very few markets. According to the Fed-
3 eral Communications Commission, only 2 percent of
4 all cable subscribers have the opportunity to choose
5 between 2 or more wire-based video service pro-
6 viders.

7 (3) It is only through wire-based video competi-
8 tion that price competition exists. The Government
9 Accountability Office has confirmed that where wire-
10 based competition exists, cable rates are 15 percent
11 lower than in markets without competition.

12 (4) It is in the public interest to further wire-
13 based competition in the video services market in
14 order to provide greater consumer choice and lower
15 prices for video services.

16 (5) To spur competition in the communications
17 industry, Congress has decreased the regulatory bur-
18 den on new entrants, thereby increasing entry into
19 the market and creating competition.

20 (6) The United States continues to fall behind
21 in broadband deployment rates. According to a re-
22 cent study by the International Telecommunications
23 Union, the United States is now ranked 16th in the
24 world in broadband deployment.

1 (7) The deployment of advanced high capacity
2 networks would greatly spur economic development
3 in rural America.

4 (8) The deployment of advanced networks that
5 can offer substantially higher capacity are critical to
6 the long-term competitiveness of the United States.

7 **SEC. 3. AMENDMENT TO COMMUNICATIONS ACT.**

8 Title VI of the Communication Act of 1934 (47
9 U.S.C. 521 et seq.) is amended by adding at the end the
10 following:

11 **“PART VI—VIDEO CHOICE**

12 **“SEC. 661. DEFINITION.**

13 “In this part, the term ‘competitive video services
14 provider’ means any provider of video programming, inter-
15 active on-demand services, other programming services, or
16 any other video services who has any right, permission,
17 or authority to access public rights-of-way independent of
18 any cable franchise obtained pursuant to section 621 or
19 pursuant to any other Federal, State, or local law.

20 **“SEC. 662. REGULATORY FRAMEWORK.**

21 “(a) **REDUNDANT FRANCHISES PROHIBITED.**—Not-
22 withstanding any other provision of this Act, no competi-
23 tive video services provider may be required, whether pur-
24 suant to section 621 or to any other provision of Federal,
25 State, or local law, to obtain a franchise in order to pro-

1 vide any video programming, interactive on-demand serv-
2 ices, other programming services, or any other video serv-
3 ices in any area where such provider has any right, per-
4 mission, or authority to access public rights-of-way inde-
5 pendent of any cable franchise obtained pursuant to sec-
6 tion 621 or pursuant to any other Federal, State, or local
7 law.

8 “(b) FEES.—

9 “(1) IN GENERAL.—Any competitive video serv-
10 ices provider who provides a service that otherwise
11 would qualify as a cable service provided over a cable
12 system shall be subject to the payment of fees to a
13 local franchise authority based on the gross revenues
14 of such provider that are attributable to the provi-
15 sion of such service within such provider’s service
16 area.

17 “(2) CONSIDERATIONS.—In determining the
18 fees required by this subsection—

19 “(A)(i) the rate at which fees are imposed
20 shall not exceed the rate at which franchise fees
21 are imposed on any cable operator providing
22 cable service in the franchise area, as deter-
23 mined in accordance with section 622 and any
24 related regulations; or

1 “(ii) in any jurisdiction in which no cable
2 operator provides service, the rate at which
3 franchise fees are imposed shall not exceed the
4 statewide average; and

5 “(B) the only revenues that shall be con-
6 sidered are those attributable to services that
7 would be considered in calculating franchise
8 fees if such provider were deemed a cable oper-
9 ator for purposes of section 622 and any re-
10 lated regulations.

11 “(3) BILLING.—A competitive video services
12 provider shall designate that portion of the bill of a
13 subscriber attributable to the fee under paragraph
14 (2) as a separate item on the bill.

15 “(c) TERMS OF SERVICE.—A competitive video serv-
16 ices provider shall—

17 “(1) be subject to the retransmission consent
18 provisions of section 325(b);

19 “(2)(A) carry, within each local franchise area,
20 any public, educational, or governmental use chan-
21 nels that are carried by cable operators within such
22 franchise area pursuant to section 611; or

23 “(B) provide, in any jurisdiction in which no
24 cable operator provides service, reasonable public,

1 educational and government access facilities pursu-
2 ant to section 611;

3 “(3) be subject to the must-carry provisions of
4 section 614;

5 “(4) carry noncommercial, educational channels
6 as required by section 615;

7 “(5) be considered a multichannel video pro-
8 gramming distributor for purposes of section 628
9 and be entitled to the benefits and protection of that
10 section;

11 “(6) protect the personally identifiable informa-
12 tion of its subscribers as required in section 631;

13 “(7) comply with any consumer protection and
14 customer service requirements promulgated by the
15 Commission pursuant to section 632;

16 “(8) not be subject to any other provisions of
17 this title; and

18 “(9) not deny services to any group of potential
19 residential subscribers because of the income of the
20 residents of the local area in which such group re-
21 sides.

22 “(d) REGULATORY TREATMENT.—Except to the ex-
23 tent expressly provided in this part, neither the Commis-
24 sion nor any State or political subdivision thereof may reg-
25 ulate the rates, charges, terms, conditions for, entry into,

1 exit from, deployment of, provision of, or any other aspect
2 of the services provided by a competitive video services
3 provider.

4 “(e) STATE AND LOCAL GOVERNMENT AUTHOR-
5 ITY.—Except as provided in subsection (a), nothing in this
6 section affects the authority of a State or local government
7 to manage the public rights-of-way or to enact or enforce
8 any consumer protection law.”.

9 **SEC. 4. REGULATION OF COMMON CARRIERS.**

10 Section 651(a)(3) of the Federal Communications
11 Act (47 U.S.C. 571(a)(3)) is amended—

12 (1) in subparagraph (A), by striking “or” after
13 the semicolon;

14 (2) in subparagraph (B), by striking the period
15 and inserting “; or”; and

16 (3) by adding at the end the following:

17 “(C) if such carrier is a competitive video
18 services provider providing video programming
19 pursuant to part VI of this title, such carrier
20 shall not be subject to the requirements of this
21 title but instead shall be subject only to the
22 provisions of part VI of this title.”.

23 **SEC. 5. EXISTING FRANCHISE AGREEMENTS.**

24 Any franchise agreement entered into by a fran-
25 chising authority and a competitive video service provider

1 for the provision of video service prior to the date of enact-
2 ment of this Act shall be exempt from the provisions of
3 this Act for the term of such agreement.