

112TH CONGRESS
1ST SESSION

H. R. 1746

To amend the Communications Act of 1934 to establish signal quality and content requirements for the carriage of public, educational, and governmental channels, to preserve support of such channels, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

MAY 5, 2011

Ms. BALDWIN (for herself and Mr. LATOURETTE) introduced the following bill; which was referred to the Committee on Energy and Commerce

A BILL

To amend the Communications Act of 1934 to establish signal quality and content requirements for the carriage of public, educational, and governmental channels, to preserve support of such channels, 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 Access
5 Preservation Act” or the “CAP Act”.

1 **SEC. 2. PEG SIGNAL QUALITY AND CONTENT; PRESERVA-**
2 **TION OF SUPPORT OF PEG USE.**

3 (a) IN GENERAL.—Section 611 of the Communica-
4 tions Act of 1934 (47 U.S.C. 531) is amended—

5 (1) by redesignating subsection (f) as sub-
6 section (h); and

7 (2) by inserting after subsection (e) the fol-
8 lowing new subsections:

9 “(f) SIGNAL QUALITY AND CONTENT.—

10 “(1) IN GENERAL.—A cable operator that oper-
11 ates a cable system with channel capacity designated
12 under subsection (b) or that is required to provide
13 channel capacity under subsection (g)(7) shall, with
14 respect to such channel capacity—

15 “(A) carry signals for public, educational,
16 or governmental use from the point of origin of
17 such signals to subscribers without material
18 degradation and without altering or removing
19 content or data provided as part of the public,
20 educational, or governmental use;

21 “(B) provide such signals to, and make
22 such signals viewable by, every subscriber of the
23 cable system without additional service or
24 equipment charges; and

25 “(C) provide to the appropriate local gov-
26 ernment subdivision, free of charge, any trans-

1 mission services and the use of any trans-
2 mission facilities that are necessary to meet the
3 requirements of subparagraph (A).

4 “(2) ENFORCEMENT.—The requirements of this
5 subsection may be enforced by—

6 “(A) a local government subdivision; or

7 “(B) a State.

8 “(3) LIMITATION ON ADDITIONAL REQUIRE-
9 MENTS.—A local government subdivision may not
10 impose on a cable operator requirements relating to
11 public, educational, or governmental use of a cable
12 system that are in addition to the requirements of
13 this subsection and subsection (g) unless—

14 “(A) such requirements are not incon-
15 sistent with this section; and

16 “(B) either—

17 “(i) such local government subdivision
18 is authorized by State law to impose such
19 requirements; or

20 “(ii) such local government subdivi-
21 sion is the franchising authority with re-
22 spect to such cable system at the time such
23 requirements are imposed.

24 “(g) PRESERVATION OF SUPPORT OF PUBLIC, EDU-
25 CATIONAL, AND GOVERNMENTAL USE.—

1 “(1) STUDY.—Not later than 180 days after
2 the date of enactment of the Community Access
3 Preservation Act, the Commission shall submit to
4 Congress a report containing—

5 “(A) an analysis of the impact of the en-
6 actment of State video service franchising laws
7 since 2005 on public, educational, and govern-
8 mental use of cable systems;

9 “(B) an analysis of the impact of the con-
10 version from analog to digital transmission
11 technologies on public, educational, and govern-
12 mental use of cable systems;

13 “(C) recommendations for changes to this
14 section required to preserve and advance local-
15 ism and public, educational, and governmental
16 use of advanced communications systems, in-
17 cluding broadband systems; and

18 “(D) recommendations for changes to this
19 section, after cable systems have converted to a
20 fully digital delivery system, relating to require-
21 ments for the accessibility of public, edu-
22 cational, or governmental channel capacity and
23 the placement of such channel capacity, except
24 that such recommendations may not include al-
25 lowing cable operators to impose additional

1 charges on subscribers with respect to the qual-
2 ity, accessibility, functionality, or placement of
3 such channel capacity.

4 “(2) LEVEL OF SUPPORT REQUIRED.—In a
5 State that adopts legislation affecting cable system
6 franchising requirements relating to support for
7 public, educational, or governmental use of a cable
8 system that becomes effective after May 31, 2005,
9 notwithstanding such legislation, a cable operator
10 owes to any local government subdivision in which
11 the operator provides cable service during a year be-
12 ginning after the date of enactment of the Commu-
13 nity Access Preservation Act an amount for such
14 year to be determined by the local government sub-
15 division, but not to exceed the greatest of the fol-
16 lowing:

17 “(A) The amount of support provided in
18 the last calendar year ending before the effec-
19 tive date of such State legislation.

20 “(B) The average annual amount of sup-
21 port provided over the term of the franchise
22 under which the cable operator was operating
23 on the day before the effective date of such
24 State legislation.

1 “(C) The amount of support that the cable
2 operator is required to provide to such local
3 government subdivision under such State legis-
4 lation during the year involved.

5 “(D) An amount of support equal to 2 per-
6 cent of the gross revenues of the cable operator
7 from the operation of the cable system to pro-
8 vide cable services in such local government
9 subdivision during the year involved.

10 “(3) FORMS OF SUPPORT.—For purposes of
11 paragraph (2), support for public, educational, or
12 governmental use of a cable system means all cash
13 payments, in-kind support, and free services that the
14 operator of the cable system, or its predecessor, pro-
15 vides to the local government subdivision for such
16 use of the cable system.

17 “(4) ADJUSTMENT FOR INFLATION.—For a
18 year beginning on or after the effective date de-
19 scribed in subparagraphs (A) and (B) of paragraph
20 (2), on the date that the Gross National Product
21 Price Index is first published by the Bureau of Eco-
22 nomic Analysis after the end of June of such year,
23 the amounts specified in such subparagraphs shall
24 be increased by the percentage increase, if any, in
25 the Index published on such date from the Index

1 first published after the end of June of the pre-
2 ceding year.

3 “(5) CASH PAYMENTS.—A cable operator that
4 owes amounts under paragraph (2) shall, beginning
5 not later than 30 days after the date of enactment
6 of the Community Access Preservation Act, pay such
7 amounts in cash—

8 “(A) in accordance with the schedule for
9 payment of franchise fees, communications
10 taxes, or other similar assessments under any
11 applicable franchise; or

12 “(B) if there is no payment schedule for
13 such assessments under an applicable franchise,
14 in accordance with the most frequent payment
15 schedule for such assessments under applicable
16 State or local law.

17 “(6) USES; DISPUTES.—

18 “(A) USES.—Support provided to any local
19 government subdivision under this subsection
20 shall be dedicated to public, educational, or gov-
21 ernmental use of channel capacity.

22 “(B) DISPUTES.—

23 “(i) MEDIATION.—If there is a dis-
24 pute as to amounts owed under this sub-
25 section, undisputed amounts shall be paid

1 to the local government subdivision, dis-
2 puted amounts shall be paid into an escrow
3 account, and the parties shall submit to
4 nonbinding mediation.

5 “(ii) COURT PROCEEDINGS.—If the
6 dispute cannot be settled using mediation,
7 either party may seek relief from a court
8 of competent jurisdiction.

9 “(7) CHANNELS.—In a State that adopts legis-
10 lation affecting cable system franchising require-
11 ments relating to the number of channels for public,
12 educational, or governmental use of a cable system
13 that becomes effective after May 31, 2005, a cable
14 operator shall, notwithstanding such legislation, pro-
15 vide in a local government subdivision at least the
16 greater of the following number of channels for such
17 use:

18 “(A) The number of channels for such use
19 that the operator was providing in the local gov-
20 ernment subdivision on the day before the effec-
21 tive date of such State legislation.

22 “(B) If the operator provided fewer than 3
23 channels for such use in the local government
24 subdivision on the day before the effective date
25 of such State legislation, a number specified by

1 the local government subdivision, but not to ex-
2 ceed 3.

3 “(8) ENFORCEMENT.—The requirements of this
4 subsection may be enforced by—

5 “(A) a local government subdivision; or

6 “(B) a State.”.

7 (b) DEFINITIONS.—

8 (1) CABLE SERVICE.—Section 602(6) of the
9 Communications Act of 1934 (47 U.S.C. 522(6)) is
10 amended by striking “means” and inserting “means,
11 regardless of the technology or transmission protocol
12 used in the provision of service”.

13 (2) LOCAL GOVERNMENT SUBDIVISION.—Sec-
14 tion 602 of such Act (47 U.S.C. 522) is amended—

15 (A) by redesignating paragraphs (16)
16 through (20) as paragraphs (17) through (21),
17 respectively; and

18 (B) by inserting after paragraph (15) the
19 following new paragraph:

20 “(16) the term ‘local government subdivision’
21 means—

22 “(A) except as provided in subparagraph
23 (B), a franchising authority that derives its
24 power to grant a franchise from State or local
25 law; and

1 “(B) in a State that adopts legislation af-
2 fecting cable system franchising requirements
3 relating to support for public, educational, or
4 governmental use of a cable system that be-
5 comes effective after May 31, 2005, an entity
6 that was considered a franchising authority de-
7 riving its power to grant a franchise from State
8 or local law as of the day before the effective
9 date of such State legislation;”.

10 (3) FRANCHISE FEE.—Section 622(g)(2) of
11 such Act (47 U.S.C. 542(g)(2)) is amended—

12 (A) in subparagraph (B), by striking “in
13 the case of any franchise in effect on the date
14 of enactment of this title,”;

15 (B) by striking subparagraph (C); and

16 (C) by redesignating subparagraphs (D)
17 and (E) as subparagraphs (C) and (D), respec-
18 tively.

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