

**SEMINOLE COUNTY GOVERNMENT
AGENDA MEMORANDUM**

SUBJECT: Legislative – Agenda 2006 (Proposed Federal)

DEPARTMENT: County Managers Office DIVISION: _____

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AUTHORIZED BY: Don Fisher Contact: Sally A. Sherman **EXT. 7224**

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| Agenda Date <u>01/10/06</u> | Regular <input checked="" type="checkbox"/> | Consent <input type="checkbox"/> | Work Session <input type="checkbox"/> | Briefing <input type="checkbox"/> |
| | Public Hearing – 1:30 <input type="checkbox"/> | | Public Hearing – 7:00 <input type="checkbox"/> | |

Staff is seeking direction from the Board on the federal legislative priorities to guide the County’s lobbying activities for 2006. Efforts have been underway to solicit legislative appropriation requests from each County Commissioner and from staff. The attached document represents a compilation of proposed federal legislative funding requests.

The attached information represents the legislative funding projects that have been identified by the Board of County Commissioners and staff.

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| Reviewed by: Co Atty: _____ DFS: _____ Other: _____ DCM: <u>SS</u> CM: _____ File No. <u>LEG02</u> |
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Federal Legislative Program 2006 - DRAFT

Top Federal Legislative Priorities

1. Oppose any bills that preempt local government authority.

S.2113 Title: A bill to promote the widespread availability of communications services and the integrity of communication facilities, and to encourage investment in communication networks.

Sponsor: Sen DeMint, Jim [SC] (introduced 12/15/2005) Cosponsors (1)
(Attachment A Page 5)

Latest Major Action: 12/15/2005 Referred to Senate committee. Status: Read twice and referred to the Committee on Commerce, Science, and Transportation.

LEGISLATIVE ISSUES



Federal Legislative Program 2006 - DRAFT

Top Federal Funding Request

1. Cross Florida Greenways Trail (\$2,500,000) – realignment in Winter Springs.
2. State Road 46 – Regional Evacuation Route (\$8,000,000 PD&E) – From CR 415 to US 1.
3. Pedestrian Overpass (Howell Branch Road/426)
4. Computer Aided Dispatch System (\$900,000) – System that is capable of providing a level of service that the current system is incapable of providing. Due to the complex nature of our first response system and the increased call activity, improved technology is required to effectively and efficiently dispense the proper resources for a variety of scenarios.
5. Community Health Clinic (\$3,000,000)
6. Replacement of Large Print Library Books (\$100,000) – Fund the recurring cost associated with replacement of large print book and enhance collection.
7. Regional Alternative Water Supply Testing Program (\$2,400,000) - Completion of test and monitoring wells and necessary permitting for Phase I of regional alternative water supply facility for potable water.
8. Upsala Landfill Restoration (\$7,000,000)
9. Eastern Connector (\$500,000,000) - **Support** Congressman Mica – Connector to run from SR 417 south of Sanford to I-95 in Volusia. FDOT would be recipient.

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Federal Legislative Program 2006 - DRAFT

Top Federal Legislative Issues for Monitoring

- A. **Support** – Funding for the FIRE Act and the County’s grant application
- B. **Support** – Funding for the State Homeland Security Grant Program
- C. **Support** – County’s grant application for the Pre-Disaster Mitigation Program
- D. **Support** – County’s grant application for the Hazard Mitigation Grant Program
- E. **Support** – Funding as “universal service contributions” under Section 254 of the Communications Act of 1934
- F. **Support** – Funding of the Community Service Block Grant (CSBG) program
- G. **Support** – County’s grant application for a Health Community Access Program (HCAP) Grant

ISSUES FOR MONITORING

Except from Web:

Attachment A
Vol. 37, No. 24 December 26, 2005

**County
News ONLINE**

National Association of Counties • Washington, D.C.

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the courage to defend public interest”*

WWW.COUNTYNEWS.ORG

Assault continues on franchising rights

*By Jeff Arnold
Deputy Legislative Director*

Just before the holiday recess, Sen. Jim DeMint (R-S.C.) introduced S. 2113, the Digital Age Communications Act (DACA). This is another in a series of bills introduced in the 109th Congress that would strip local governments of the right to enter into local franchise agreements with video providers, both new entrants and renewal of incumbent operators. This is a clear preemption of local authority, and NACo has strong policy opposing such legislation.

Of primary concern, DACA would eliminate all video franchises over four years. Sec. 408 states, "Those in existing franchise agreements at the date of enactment of this Act shall be exempt from this act until either (1) the date of expiration of the franchise agreement or (2) four years after the date of enactment of this Act, whichever is earlier." Franchise agreements prohibited beyond this point."

Title IV in the General Provisions states that, "All communications shall be governed by a single, unified, minimally-pervasive regulatory regime determined and generally implemented at the Federal level."

DACA also assaults local governments' rights-of-way management authority. In Sec. 404 of the bill, *Rights-of-Way Authority*, it states, "All communications service providers shall be authorized to construct or operate an electronic communications network over public rights-of-way and through easements as long as it would not affect the safety, function or appearance of the property, the convenience and safety of any person who has a right to use such easement and the cost of the installation is born by the provider. The owner of the easement must be justly compensated."

While compensation is required it is unclear what this provision really means. This legislation also puts the FCC in exclusive charge of adopting and enforcing rules related to the act, if enacted.

Sec. 402, Rulemaking and Delegation of Authority states, "Unless delegated, the FCC shall have exclusive authority to adopt or enforce rules related to this Act."

As mentioned, this is the latest attack on local franchising. S. 1504, the Broadband Investment and Consumer Choice Act of 2005 was introduced by Sen. John Ensign (R-Nev.) and S. 1349, the Video Choice Act of 2005, was introduced by Sen. Gordon Smith (R-Ore.) earlier this year. Both bills would eliminate the local franchise process. Rep. Marsha Blackburn (R-Tenn.) introduced a companion bill (H.R. 3146) in the House of Representatives.

Before the recess, the bipartisan staff of the House Energy and Commerce Committee were working on a third "staff draft" of telecommunications legislation, which at this writing would still eliminate local franchising of video services. This draft is expected to be introduced immediately upon the return of Congress from its holiday recess in late January.

The battle is far from over, and it appears the Senate will be taking on the telecommunications rewrite in January as the Senate Commerce Committee begins an aggressive series of hearings with video franchising at the top of their list.

Digital Age Communication Act

S 2113 IS

109th CONGRESS
1st Session
S. 2113

To promote the widespread availability of communications services and the integrity of communication facilities, and to encourage investment in communication networks.

IN THE SENATE OF THE UNITED STATES

December 15, 2005

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

A BILL

To promote the widespread availability of communications services and the integrity of communication facilities, and to encourage investment in communication networks.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

(a) Short Title- This Act may be cited as the 'Digital Age Communications Act of 2005'.

(b) Table of Contents- The table of contents for this Act is as follows:

Sec. 1. Short title; table of contents.

Sec. 2. Definitions.

TITLE I--REGULATORY FRAMEWORK

Sec. 101. Findings and policy.

Sec. 102. Prohibition of unfair methods of competition.

Sec. 103. Actions for complaints.

Sec. 104. Time limits on Commission action.

Sec. 105. Additional powers of the Commission.

TITLE II--TRANSFER OR ASSIGNMENT OF PERMITS, LICENSES, OR CERTIFICATES

Sec. 201. Findings.

Sec. 202. Modification of authority to deny or condition licenses.

TITLE III--UNIVERSAL SERVICE

Sec. 301. Applicability of Communications Act of 1934.

Sec. 302. Principles of universal service.

Sec. 303. Definition of basic electronic communications services.

- Sec. 304. Contribution mechanism.
- Sec. 305. Universal service block grant program.
- Sec. 306. Waiver authority.
- Sec. 307. State universal service programs not preempted.
- Sec. 308. Report to Congress.

TITLE IV--GENERAL PROVISIONS

- Sec. 401. Findings and policy regarding allocation of Federal, State, and local responsibility.
- Sec. 402. Rulemaking and delegation of authority.
- Sec. 403. Judicial review of decisions.
- Sec. 404. Right-of-way authority.
- Sec. 405. State regulation of basic local rates.
- Sec. 406. Retention of additional State authority.
- Sec. 407. Preemption of State authority.
- Sec. 408. Transition and sunset of existing agreements.
- Sec. 409. Effective date.

SEC. 2. DEFINITIONS.

- (a) In General- In this Act, the following definitions shall apply:
 - (1) ANTITRUST LAWS- The term `antitrust laws' includes--
 - (A) the Act entitled `An Act to protect trade and commerce against unlawful restraints and monopolies', approved July 2, 1890;
 - (B) sections 73 through 76 of an Act entitled `An Act to reduce taxation, to provide revenue for the Government, and for other purposes', approved August 27, 1894;
 - (C) the Act entitled `An Act to amend sections 73 and 76 of the Act of August 27, 1894, entitled An Act to reduce taxation, to provide revenue for the Government, and for other purposes', approved February 12, 1913; and
 - (D) the Act entitled `An Act to supplement existing laws against unlawful restraints and monopolies, and for other purposes', approved October 15, 1914.
 - (2) COMMISSION- The term `Commission' means the Federal Communications Commission.
 - (3) ELECTRONIC COMMUNICATIONS NETWORK- The term `electronic communications network' means--
 - (A) a transmission system; and
 - (B) where applicable, switching or routing equipment and other facilities which permit the conveyance of signals by wire, radio, optical, or other electromagnetic means, over

satellite, cable, or other facilities, whether fixed or mobile, to the extent that such facilities are used for the purpose of transmitting signals, irrespective of the type of information conveyed.

- (4) ELECTRONIC COMMUNICATIONS SERVICE- The term `electronic communications service' means a service normally provided for remuneration which consists wholly or mainly in the conveyance of signals on electronic communications networks.
- (5) HOUSEHOLD- The term `household' includes--
- (A) all the persons who occupy a housing unit; and
 - (B) housing units located in Indian lands (as such term is defined in section 4(4) of the Indian Gaming Regulatory Act (25 U.S.C. 2703)).
- (6) HOUSING UNIT- The term `housing unit' means--
- (A) a house;
 - (B) an apartment;
 - (C) a mobile home;
 - (D) a group of rooms; or
 - (E) a single room that is occupied as separate living quarters.
- (7) JOINT BOARD- The term `Joint Board' means the Federal-State Joint Board on universal service required under section 254(a) of the Communications Act of 1934 (47 U.S.C. 254(a)).
- (8) LOW-INCOME HOUSEHOLD- The term `low-income household' means a family whose income does not exceed 80 percent of the median income for the area, as determined by the Commission, with adjustments for family size, except that the Commission may establish an income ceiling higher or lower than 80 percent of the median for the area if the Commission finds that such a variation is necessary because of prevailing levels of construction costs or unusually high or low family incomes.
- (9) SEPARATE LIVING QUARTERS-
- (A) IN GENERAL- The term `separate living quarters' means an area in which the occupants of that area--
 - (i) live and eat separately from any other person in the building in which the area is located; and
 - (ii) have direct access to such area--
 - (I) from the outside of the building in which the area is located; or
 - (II) through a common hall.
 - (B) OCCUPANTS- For purposes of subparagraph (A), the term `occupants' includes--

- (i) a single family;
- (ii) 1 person living alone;
- (iii) 2 or more families living together; or
- (iv) any other group of related or unrelated persons who share living arrangements.

(10) UNFAIR METHODS OF COMPETITION-

(A) IN GENERAL- The term `unfair methods of competition' means--

(i) practices that present a threat of abuse of significant and nontransitory market power as determined by the Commission consistent with the application of jurisprudential principles grounded in market-oriented competition analysis such as those commonly employed by the Federal Trade Commission and the United States Department of Justice in enforcing the Federal Trade Commission Act (15 U.S.C. 41 et seq.) and the antitrust laws of the United States; and

(ii) with respect to interconnection, practices that pose a substantial and nontransitory risk to consumer welfare by materially and substantially impeding the interconnection of public communications facilities and services in circumstances in which the Commission determines that marketplace competition is not sufficient to adequately protect consumer welfare.

(B) INTERCONNECTION DETERMINATION- In making any determination under subparagraph (A)(ii), the Commission shall consider whether requiring interconnection will adversely affect investment in facilities and innovation in services.

(b) Common Terminology- Except as otherwise provided in subsection (a), terms used in this Act shall have the same meaning given to such terms under sections 3, 254, and 602 of the Communications Act of 1934 (47 U.S.C. 153, 254, and 522).

TITLE I--REGULATORY FRAMEWORK

SEC. 101. FINDINGS AND POLICY.

(a) Findings- Congress finds that--

(1) in 1996, Congress enacted and the President signed into law the Telecommunications Act of 1996, which was intended to provide a procompetitive, deregulatory framework designed to

facilitate the continuing transition to a more competitive communications market;

(2) since the enactment and implementation of the Telecommunications Act of 1996, rapid advances in technology and marketplace developments have further increased the existence of competition in all communications markets and the likelihood of the continuing existence and increasing intensity of competition;

(3) competition in a dynamic communications marketplace is the most effective and efficient means for protecting consumers and enhancing the consumer welfare of all the people of the United States in terms of achieving the optimum mix of price, quality, and consumer choice; and

(4) unnecessary regulation regarding protection of consumers and enhancement of consumer welfare deters--

(A) investment in new and advanced communications facilities; and

(B) the development of new services and applications.

(b) Policy- It shall be the policy of the United States Government--

(1) to promote the widespread availability of communications services for all Americans in order to assure that the American people have access to a diversity of information sources necessary for democratic government;

(2) to promote the integrity, reliability, and efficiency of communications facilities in a manner consistent with--

(A) the encouragement of investment in advanced communications networks; and

(B) innovation in communications services and applications;

(3) that economic regulation of communications markets should be presumed unnecessary absent circumstances that demonstrate the existence of a significant threat of abuse of market power that poses a substantial and nontransitory risk to consumer welfare; and

(4) that in order to ensure that the actions of the Federal Communications Commission are consistent with the findings in subsection (a), and to effectuate the deregulatory policy declared in this subsection, the decisions of the Commission should be based on jurisprudential principles grounded in market-oriented competition analysis such as those commonly employed by the Federal Trade Commission and the Department of Justice in enforcing the Federal Trade Commission Act (15 U.S.C. 41 et seq.) and the antitrust laws of the United States.

SEC. 102. PROHIBITION OF UNFAIR METHODS OF COMPETITION.

(a) In General- It shall be unlawful for any provider of electronic communications service, including any State, or any general purpose political subdivision of a State, to engage or participate, or to attempt to engage or participate, in--

(1) unfair methods of competition in or affecting electronic communications networks and electronic communications services; or

(2) unfair or deceptive practices in or affecting electronic communications networks and electronic communications services.

(b) Rulemaking Authority-

(1) IN GENERAL- The Commission may, by rule, define with specificity, the acts or practices that shall constitute unfair methods of competition or unfair or deceptive acts or practices as described in subsection (a).

(2) CONTENT OF RULES- Rules promulgated under paragraph (1) may include such requirements as the Commission determines necessary to prevent any methods, acts, or practices prohibited by this section.

(3) LIMITATION-

(A) IN GENERAL- Notwithstanding paragraph (1) and except as provided in subparagraph (B), the Commission shall have no authority to issue rules that declare unlawful an act or practice on the grounds that such act or practice is an unfair method of competition or unfair or deceptive act or practice.

(B) EXCEPTION- The Commission may declare an act or practice unlawful if the Commission determines, based on a showing of clear and convincing evidence presented in a rulemaking proceeding, that--

(i) marketplace competition is not sufficient to adequately protect consumer welfare; and

(ii) such act or practice--

(I) causes or is likely to cause substantial injury to consumers; and

(II) is not--

(aa) avoidable by consumers themselves; and

(bb) outweighed by countervailing benefits to consumers or to competition.

(4) SUNSET OF RULES- Any rule promulgated under paragraph (1) shall terminate on the day that is 5 years after the date on

which such rule became effective unless the Commission, in a proceeding in which the public is afforded notice and an opportunity to comment, makes an affirmative determination, based on a showing of clear and convincing evidence presented in such proceeding, that the rule continues to be necessary because marketplace competition is not sufficient to adequately protect consumers from substantial injury which is not--

- (A) avoidable by consumers themselves; and
- (B) outweighed by countervailing benefits to consumers or to competition.

SEC. 103. ACTIONS FOR COMPLAINTS.

The Commission shall have authority--

- (1) to hear complaints from any party injured by a violation of the prohibitions established under section 102; and
- (2) to award damages to such injured party if the Commission determines that a violation of that section has occurred.

SEC. 104. TIME LIMITS ON COMMISSION ACTION.

(a) 120-DAY LIMIT FOR APPLICATIONS WITH SUPPORTING TESTIMONY- If an application is filed with the Commission under this or any other Act, and such application is accompanied by supporting testimony from the applicant or a detailed summary of that testimony, together with exhibits, if any, the Commission shall issue a decision on such application not later than 120 days after the application is deemed complete (as the Commission shall, by rule, determine).

(b) 210-DAY LIMIT FOR APPLICATIONS WITHOUT SUPPORTING TESTIMONY- If an application is filed with the Commission under this or any other Act, and such application is not accompanied by supporting testimony and exhibits, the Commission shall issue a decision on such application not later than 210 days after the application is deemed complete (as the Commission shall, by rule, determine).

(c) Waiver- The time limits specified in subsections (a) and (b)--

- (1) may be waived by an applicant; and
- (2) if so waived, shall not be binding on the Commission.

(d) Extension of Time- The Commission, in particular cases, under extraordinary conditions, and after notice and a hearing at which the existence of such conditions are established, may extend the time limits specified in subsections (a) and (b) for a period not to exceed an additional 90 days.

SEC. 105. ADDITIONAL POWERS OF THE COMMISSION.

The Commission shall have authority--

(1) to research and investigate, from time to time, the organization, business, conduct, or practices of--

(A) any person or entity engaged in, or whose business affects, the operation of electronic communications networks; and

(B) any provider of electronic communications service;

(2) to require any person or entity that owns or operates an electronic communications networks, or any class of such persons or entities, to file, in such form, in such manner, and at such time as the Commission may determine, reports or answers to specific questions regarding the organization, business, conduct, or practices of such person or entity, such reports or answers shall be in writing and made under penalty of perjury;

(3) to make public, from time to time, in such form, and in such manner as the Commission determines--

(A) such portions of the information obtained under paragraph (1) as are in the public interest; and

(B) the reports and answers described under paragraph (2), except that the Commission--

(i) may not make public any trade secret or any privileged or confidential commercial or financial information obtained from such reports or answers; and

(ii) may disclose such trade secrets or information to officers and employees of an appropriate Federal or State law enforcement agency upon prior certification by an officer of that Federal or State law enforcement agency that such trade secrets or information shall--

(I) be maintained in confidence; and

(II) be used only for official law enforcement purposes; and

(4) to make annual and special reports to Congress and to submit with such reports recommendations for additional legislation.

TITLE II--TRANSFER OR ASSIGNMENT OF PERMITS, LICENSES, OR CERTIFICATES

SEC. 201. FINDINGS.

Congress finds the following:

(1) The process by which the Federal Communications Commission currently reviews, and imposes conditions upon, the

transfer or assignment of permits, licenses, or certificates in the context of a merger, or other conveyance of corporate control, is in need of reform.

(2) Currently, the review of telecommunications industry mergers by the Commission often results in undue delay and introduces uncertainty into the marketplace because of the unpredictability of that review under the nonspecific public interest standard established in the Communications Act of 1934 (47 U.S.C. 151 et seq.).

(3) The Commission has unnecessarily invoked its authority under the nonspecific public interest standard to allow it to impose terms and conditions on the assignment and transfer of permits, licenses, or certificates unrelated to any competitive impacts of the proposed transaction.

(4) The Department of Justice and the Federal Trade Commission have extensive institutional expertise in analyzing issues relating to industry concentration and its effects on competition.

(5) It is inefficient, burdensome, and costly to the Federal Government and to the private sector, and unnecessary for the protection of consumers or for the enhancement of consumer welfare, for the Commission in a review of a transfer or assignment of licenses to duplicate the work performed by the Department of Justice or the Federal Trade Commission.

(6) The Commission should only deny, and should impose only those conditions on, the transfer or assignment of permits, licenses, or certificates as is necessary to ensure that applicants for such transfer and assignment authority are in compliance with existing Commission rules and regulations.

SEC. 202. MODIFICATION OF AUTHORITY TO DENY OR CONDITION LICENSES.

(a) In General- In any proceeding under the Communications Act of 1934 (47 U.S.C. 151 et seq.) to approve an application to assign or transfer control of a license, permit, or certificate, the Commission--

(1) may not deny such application unless--

(A) the assignment or transfer of control would result in a violation of the--

(i) Communications Act of 1934 (47 U.S.C. 151 et seq); or

(ii) any rule or regulations established by the Commission in effect on the date such application is received by the Commission; and

(B) a violation described in subparagraph (A) cannot be cured by the conditional approval of the assignment or transfer of control under the provisions of paragraph (2);
(2) may not condition approval of such application except, to the extent necessary, to--

(A) ensure that the assignee or transferee is in compliance with all Commission rules and regulations in effect on the date of such approval; or

(B) permit the orderly disposition of assets to comply with such rules and regulations; and

(3) notwithstanding section 104, shall complete all action on any such application not later than 90 days after the date of receipt by the Commission of the application, unless the applicant requests an extension.

(b) Effective Date- Subsection (a) shall apply to any application for a transfer of a permit, license, or permit that is pending on, or submitted to the Commission on or after, the date of enactment of this Act.

(c) Deadlines for Pending Applications- If an application for a transfer of a permit, license, or permit is pending before the Commission for more than 30 days, as of the date of enactment of this Act, the Commission shall complete all action on such application not later than 60 days after such date of enactment, unless the applicant requests an extension.

TITLE III--UNIVERSAL SERVICE

SEC. 301. APPLICABILITY OF COMMUNICATIONS ACT OF 1934.

The provisions of section 214(e) and 254 of the Communications Act of 1934 (47 U.S.C. 214(e) and 254) are repealed as of the date that is 3 years after the date of enactment of this Act.

SEC. 302. PRINCIPLES OF UNIVERSAL SERVICE.

The policy of the United States Government regarding the preservation and advancement of universal service shall be based on the following principles:

(1) AFFORDABILITY- Quality basic electronic communications services shall be affordable to--

(A) all low-income households; and

(B) households in high cost areas of the Nation.

(2) EFFICIENCY- Universal service support and contribution mechanisms for the provision of affordable basic electronic communications services shall burden the economy no more than is necessary.

(3) NEUTRALITY- Neither the distribution of universal service support for basic electronic communications services nor the collection of universal service contributions shall discriminate in favor of or against any company or technology.

(4) TRANSPARENCY-

(A) RULES- Rules governing universal service mechanisms shall be clear and enforceable.

(B) GOALS- The goals of universal service support shall be clearly defined and identified.

SEC. 303. DEFINITION OF BASIC ELECTRONIC COMMUNICATIONS SERVICES.

(a) In General- For purposes of this title, the term 'basic electronic communications services' shall have the same meaning as the term 'supported services' in section 54.101(a) of title 47, Code of Federal Regulations.

(b) Modification of Definition-

(1) JOINT BOARD ACTION- The Joint Board may, from time to time, recommend to the Commission modifications as to which basic electronic communications services are to be supported by Federal universal service support mechanisms.

(2) COMMISSION ACTION- Not later than 1 year after receiving recommendations from the Joint Board under paragraph (1), the Commission shall complete any proceeding to consider whether to implement, in whole or in part, such recommendations.

(3) CONSIDERATIONS- The Joint Board in recommending, and the Commission in implementing, any modifications of the basic electronic communications services that are supported by Federal universal service support mechanisms shall--

(A) consider the extent to which--

- (i) basic electronic communications services have, through the operation of market choices by customers, been already subscribed to by a substantial majority of residential consumers that do not receive any universal service support;
- (ii) unaffordable, prevailing basic electronic communications services relies on underlying infrastructure located in high cost areas; and
- (iii) universal service support under section 305 is necessary to ensure that the underlying infrastructure remains available to provide such basic electronic communications services; and

- (B) publish a report in the Federal Register that details the considerations made under subparagraph (A).
- (4) LIMITATION- The Commission shall not increase the amount of total universal service support following any modification under this subsection without express Congressional authorization.

SEC. 304. CONTRIBUTION MECHANISM.

- (a) In General- Not later than 6 months after the date of enactment of this Act, the Commission shall--
 - (1) complete a proceeding to promulgate rules to reform the universal services contribution mechanism; and
 - (2) adopt a new mechanism based upon the assignment of numbers in the North American Numbering Plan or any successor methodology.
- (b) Content of Rules- The rules required under subsection (a) shall--
 - (1) include an exemption from universal service contributions for low-income households; and
 - (2) require that all assigned telephone numbers be assessed an equivalent amount for such contributions on a technologically neutral basis, except that there shall be a discounted contribution rate for paging services.
- (c) Authority to Modify- The Commission shall, by rule, adopt an alternative contribution mechanism to supplement the universal service fund if there is evidence of material, inefficient bypass of the numbers-based contribution mechanism.

SEC. 305. UNIVERSAL SERVICE BLOCK GRANT PROGRAM.

- (a) Single Universal Service Fund--
 - (1) IN GENERAL- Not later than 3 years after the date of enactment of this Act, the Commission shall revise its current universal service fund system to establish a single universal service fund (in this title referred to as the `Fund').
 - (2) FEDERAL SYSTEM- The Fund established under paragraph (1) shall be the exclusive Federal universal service support mechanism.
 - (3) CAP ON DISTRIBUTIONS- The Commission may not award grants out of the Fund in any 1 fiscal year in excess of \$3,650,000,000.
 - (4) INFLATION ADJUSTMENTS- The limitation under paragraph (3) shall be adjusted annually by an inflation index and by a fixed factor for productivity improvements, as determined by the Commission.

(5) OTHER ADJUSTMENTS- The limitation under paragraph (3) may also be adjusted by the Commission to account for--

- (A) changes in population size in each eligible State; and
- (B) exogenous cost changes in the provision of basic electronic communications services directly related to intercarrier compensation reform.

(b) Grants Authorized-

(1) IN GENERAL- Not later than 3 years after the date of enactment of this Act, and annually thereafter, the Commission shall grant from the Fund to each eligible State performance-based block grants to support the provision of those basic electronic communications services which have been defined under section 303 to be eligible for universal service support.

(2) AWARD BASIS-

(A) IN GENERAL- Not later than 18 months after the date of enactment of this Act, the Commission shall initiate a rulemaking proceeding to establish initial guidelines regarding the distribution of performance-based block grants from the Fund.

(B) CONTENT OF GUIDELINES- The guidelines required under subparagraph (A) shall include--

(i) model distribution mechanisms and regulations for the support of low-income households and households in high cost areas;

(ii) the national performance level, measured by household subscription to basic electronic communications services, that is necessary for each eligible State to retain unused block grant funds under subsection (g);

(iii) the initial amount of block grant funds that are available for each eligible State, such amounts to be based upon a formula--

(I) developed by the Commission using any appropriate data from the Census Bureau; and

(II) that reflects a comparative analysis of affordability of basic electronic communications services across States;

(iv) rules and regulations, including quality of service requirements, regarding the--

(I) designation of a carrier of last resort; and

(II) relinquishment of basic electronic communications services by a carrier eligible to

receive such funds under subsection (e)(4) in high cost areas; and

(v) any other rules or regulations necessary for the administration, monitoring, record keeping, reporting, and enforcement of the performance-based block grant program established under paragraph (1), including provisions--

(I) designed to protect against fraud; and

(II) any additional guidelines to assist eligible States in implementing and adopting the guidelines required by subparagraph (A).

(C) EFFECTIVE DATE, LIMITATION, AND MODIFICATION- The guidelines required under subparagraph (A)--

(i) shall take effect on the date that is 3 years after the date of enactment of this Act;

(ii) shall be sufficiently flexible so as to allow eligible States to experiment with alternative market-based distribution mechanisms, including voucher programs and auctions; and

(iii) may be modified by the Commission any time thereafter subject to the provisions of this title.

(3) DEFINITION OF ELIGIBLE STATE-

(A) IN GENERAL- For purposes of this section, the term 'eligible State' means any State that has certified in writing to the Commission that it has met or will meet the requirements of this section.

(B) FAILURE TO SUBMIT CERTIFICATION- If a State fails to submit to the Commission a written certification under subparagraph (A), such State shall not be eligible to receive grants under paragraph (1).

(c) Transition Period-

(1) IN GENERAL- For the period beginning on the date of enactment of this Act and ending on the date that is 3 years after the date of enactment of this Act, universal service support for any eligible telecommunications carrier, as such term is defined in section 214(e) of the Communications Act of 1934 (47 U.S.C. 214(e)), shall be capped at the per-line support levels in effect on the date of enactment of this Act.

(2) NO NEW ELIGIBLE CARRIERS- During the 3-year period described in paragraph (1), an eligible State may not exercise its authority under section 214(e) of the Communications Act of 1934 (47 U.S.C. 214(e)) to designate additional eligible

telecommunications carrier, except if such State makes such a designation in accordance with section 54.203(a) of title 47, Code of Federal Regulations.

(3) OTHER RULES- During the 3-year period described in paragraph (1), all rules, regulations, and orders of the Commission with respect to the provision of universal service under section 254 of the Communications Act of 1934 (47 U.S.C. 254), including the provision of Lifeline and Link-up assistance, shall remain in effect.

(d) Application- An eligible State seeking a grant under this section shall submit an application to the Commission at such time, in such manner, and containing such information as the Commission may require.

(e) Conditions- Not later than 18 months after the publication of the guidelines required under subsection (a)(2), each eligible State seeking a grant under this section shall--

(1) conduct proceedings to identify high cost areas within that State;

(2) promulgate rules and regulations regarding the distribution of performance-based block grant amounts to low-income households;

(3) establish distribution mechanisms for performance-based block grant amounts received under this section; and

(4) by rule, determine which carriers are eligible to receive universal support from that eligible State.

(f) Use of Funds-

(1) IN GENERAL- A performance-based block grant awarded to an eligible State shall be used to--

(A) provide a single connection to basic electronic communications services to all low-income households and households in high cost areas;

(B) provide support for households or for the underlying infrastructure used to provide basic electronic communications services in high cost areas; and

(C) fund or reimburse carriers eligible to receive such funds under subsection (e)(4) for the provision, maintenance, and upgrading of services of basic electronic communications services to low-income households and households in high cost areas.

(2) COMMISSION NEEDS- Consistent with the principles established under section 302 and with the results of audits performed under subsection (i), the Commission may redirect a

portion of the amounts in the Fund to meet additional staffing and administrative needs of the Commission.

(g) Unused Funds-

(1) IN GENERAL- If an eligible State does not use all of its allotted performance-based block grant funds in a given year, such State shall, in writing, inform the Commission of that unused amount.

(2) PERFORMANCE LEVEL ACHIEVEMENT- If an eligible State meets the performance level standards established under subsection (b)(2)(B)(ii), such State--

(A) may retain any unused block grant funds; and

(B) shall direct such unused funds towards--

(i) service not designated as basic electronic communications services; or

(ii) public safety infrastructure improvements, including the upgrading, maintenance, and support of E911 systems.

(3) OFFSET- If an eligible State does not meet the performance level standards established under subsection (b)(2)(B)(ii), the Commission shall offset any unused funds by that State in a given year against that State's block grant allotment in the following calendar year.

(h) Commission Authority- The Commission may withhold performance-based block grant funds from any eligible State that fails to comply with any rule or guideline established by the Commission under this section.

(i) Audits-

(1) IN GENERAL- The Commission shall, from time to time, conduct audits of the use and distribution performance-based block grant amounts by each eligible State and eligible communications carriers.

(2) NUMBER OF AUDITS TO BE CONDUCTED- The number of audits conducted by the Commission under paragraph (1) shall be of such number, as determined by the Commission, to allow the Commission, for purposes of the report required under section 308, to provide a detailed analysis on the efficiency of universal service distribution mechanisms employed by eligible States.

(j) Consultation With Joint Board-

(1) IN GENERAL- The Joint Board based upon the experience of eligible States and consistent with the principles established under section 302 may, from time to time, recommend to the Commission modifications to guidelines required under subsection (b)(2).

(2) COMMISSION ACTION- Not later than 1 year after receiving recommendations from the Joint Board under paragraph (1), the Commission shall complete any proceeding to consider whether to implement, in whole or in part, such recommendations.

SEC. 306. WAIVER AUTHORITY.

(a) In General- An eligible State may submit a petition to the Commission, in such manner and containing such information as the Commission may require, to adopt a distribution mechanism that is not based on the model distribution mechanisms outlined in the guidelines required by section 305(b)(2)(B)(i).

(b) Timing- Not later than 90 days after the date that a petition is submitted under subsection (a), the Commission shall issue a decision on whether to grant or deny such petition.

(c) Grant of Petition- The Commission may grant any petition submitted under subsection (a), if such petition is consistent with the universal service principles established under section 302.

SEC. 307. STATE UNIVERSAL SERVICE PROGRAMS NOT PREEMPTED.

(a) In General- Nothing in this title shall preempt or be construed to preempt an eligible State from adopting laws, rules, or regulations to ensure that quality basic electronic communications services are universally available to all low-income households and households in high cost areas at affordable rates, so long as such laws, rules, or regulations are consistent with, and not in violation of, the principles established under section 302 and any other applicable provision of this title.

(b) Federal Review- The Commission may--

(1) review any law, rule, or regulation adopted by an eligible State to determine if such law, rule, or regulation is in compliance with the requirements of subsection (a); and

(2) withhold from any eligible State performance-based block grant funds awarded under section 305, if the Commission determines that such laws, rules, or regulations fail to comply with the requirements of subsection (a).

SEC. 308. REPORT TO CONGRESS.

Not later than 3 years after the date of enactment of this Act, and every 3 years thereafter, the Commission shall report to Congress--

(1) an analysis of the costs and benefits of the universal service program established under section 305, including an evaluation of

- whether, and to what extent, such universal service program has caused improvements in affordability;
- (2) a summary of findings from the audits the Commission undertook as required under section 305(i);
 - (3) a summary of best practices employed by eligible States which have adopted laws, rules, or regulations regarding universal service in compliance with section 307;
 - (4) an evaluation of, and recommendations regarding, the contribution mechanism established under section 304; and
 - (5) an analysis of the continuing need for universal service support based upon--
 - (A) the experience of the eligible States; and
 - (B) technological and marketplace developments, including recommendations regarding the limitation on the size of the funding cap under section 305(a).

TITLE IV--GENERAL PROVISIONS

SEC. 401. FINDINGS AND POLICY REGARDING ALLOCATION OF FEDERAL, STATE, AND LOCAL RESPONSIBILITY.

- (a) Findings- Congress finds that--
- (1) technological and market forces are changing the nature and delivery of electronic communications services;
 - (2) these technological and market changes have altered the necessary roles for Federal, State, and local authorities in regulating electronic communications services;
 - (3) in many cases, responsibility to regulate activities relating to communications has been allocated to a State or local jurisdiction based on whether such activities were deemed to occur within that State or jurisdiction;
 - (4) as electronic communications services and technologies become increasingly digital and packet-based, it has become difficult, and often impossible, to rely on jurisdictional boundaries as the basis for allocating regulatory responsibility among jurisdictions;
 - (5) a regulatory regime enforced by multiple jurisdictions, based on disparate laws, may result in inconsistent, unpredictable, and onerous rules that inhibit investment, innovation, and competition;
 - (6) the Telecommunications Act of 1996, which made substantial changes in the allocation of responsibilities among regulators in different jurisdictions, nonetheless did not adopt a framework that

addresses fully the challenges posed by the rapid technological and marketplace evolution of electronic communications networks and services; and

(7) given these shortcomings, new statutory guidance for allocating Federal, State, and local responsibility is necessary to achieve the purposes of regulating electronic communications networks and services.

- (b) Policy- It shall be the policy of the United States Government--
- (1) to integrate Federal, State, and local regulation of electronic communications networks;
 - (2) that electronic communications networks and services be governed by a single, unified, minimally pervasive regulatory regime determined and generally implemented at the Federal level;
 - (3) to eliminate rate regulation and rate-setting where market conditions adequately protect the interests of consumers in obtaining reasonable rates;
 - (4) to eliminate regulation based on technological or functional distinctions among communications services and networks;
 - (5) to avoid extending legacy regulation to additional services, networks, or providers; and
 - (6) to create incentives to invest in new technologies and to encourage the deployment of advanced electronic communications services.

SEC. 402. RULEMAKING AND DELEGATION OF AUTHORITY.

(a) Rulemaking- Except as otherwise specifically provided in this Act, the Commission shall have exclusive jurisdiction and authority to adopt or enforce rules, regulations, or obligations, or conduct rulemakings or adjudications to implement the provisions of this Act.

(b) Delegation-

(1) IN GENERAL- The Commission may delegate to a State, or any general purpose political subdivision of a State, for matters occurring wholly within the jurisdiction of that State or political subdivision, the authority--

(A) to enforce any rules, regulations, or obligations adopted under subsection (a); or

(B) to adjudicate disputes between providers of electronic communications services that relate to such rules, regulations, or obligations.

(2) INVALID DELEGATION-

(A) IN GENERAL- A delegation of authority under paragraph (1) shall be invalid if a State, or any general purpose political subdivision of a State, does not certify, and the Commission does not concur, that such State or political subdivision is legally and practically competent to execute such authority.

(B) NO REVIEW- Any determination made by the Commission under subparagraph (A) as to the competence of a State, or any general purpose political subdivision of a State, shall not be subject--

- (i) to review by any court of competent jurisdiction;
- (ii) to collateral attack; or
- (iii) to interlocutory appeal.

(3) REVERSION OF AUTHORITY- If a State, or any general purpose political subdivision of a State, declines to accept, lacks authority, or otherwise fails to execute a delegation of authority under paragraph (1), the Commission, upon public notice, shall assume back such authority.

(4) CLARIFICATION OF AUTHORITY-

(A) IN GENERAL- A State, or any general purpose political subdivision of a State, may petition the Commission--

- (i) to clarify the scope of a delegation of authority under paragraph (1); or
- (ii) to obtain a waiver from any express or implied limitations on such delegation.

(B) TIMING-

- (i) IN GENERAL- Not later than 120 days after the date that a petition is submitted under subparagraph (A), and after affording any interested party the opportunity for comment, the Commission shall issue a decision on whether to grant or deny such petition.
- (ii) EXPIRATION OF 120-DAY PERIOD- If the Commission does not issue a decision within the time-period described in subparagraph (A), the petition shall be deemed granted.

(5) REQUEST FOR DELEGATION-

(A) IN GENERAL- In the absence of a delegation of authority under paragraph (1), a State, or any general purpose political subdivision of a State, may, for matters occurring wholly within the jurisdiction of that State or political subdivision, petition the Commission to enforce any rules, regulations, or obligations enacted under subsection (a).

(B) TIMING-

(i) IN GENERAL- Not later than 90 days after the date that a petition is submitted under subparagraph (A), and after affording any interested party the opportunity for comment, the Commission shall issue a decision on whether to grant or deny such petition.

(ii) EXPIRATION OF 90-DAY PERIOD- If the Commission does not issue a decision within the time-period described in subparagraph (A), the petition shall be deemed denied.

SEC. 403. JUDICIAL REVIEW OF DECISIONS.

Except as otherwise specifically provided in this Act, any interested party may appeal any decision of the Commission or any State, or any general purpose political subdivision of a State, made under section 402 to the United States Court of Appeals for the District of Columbia.

SEC. 404. RIGHT-OF-WAY AUTHORITY.

A provider of electronic communications services shall be authorized to construct or operate an electronic communications network--

(1) over public rights-of-way; and

(2) through easements within a State, except that in using such easements, such provider shall ensure that--

(A) the installation or construction of facilities necessary for the electronic communications network shall not adversely affect--

(i) the safety, function, and appearance of the property described in the easement; and

(ii) the convenience and safety of any person who has a right to use such easement;

(B) the cost of installation, construction, operation, or removal of such facilities be borne by--

(i) such provider;

(ii) the subscriber; or

(iii) a combination of both; and

(C) the owner of the property described in the easement be justly compensated by such provider for any damages caused by the installation, construction, operation, or removal of such facilities.

SEC. 405. STATE REGULATION OF BASIC LOCAL RATES.

(a) Grandfather Clause- Except as provided in subsections (b) through (d), a State may continue to regulate the rates for basic stand-alone local service, if prior to the date of enactment of this Act, such service was--

- (1) offered separately from any other services to customers who are not providers of electronic communications services;
- (2) of the type defined in section 254(c)(1) of the Communications Act of 1934 (47 U.S.C. 254 (c)(1)), as interpreted under section 54.101(a) of title 47, Code of Federal Regulations, as those provisions existed on the date of enactment of this Act;
- (3) provided via a circuit-switched telephone network; and
- (4) lawfully regulated by that State.

(b) Limitation on State Regulation of Ancillary or Vertical Services- The authority of a State to regulate rates under subsection (a) shall not--

- (1) extend to any ancillary or vertical services offered in connection with the provision of basic stand-alone local service; or
- (2) apply to any service bundles that contain basic stand-alone local service as a component of such bundle.

(c) Retail or End-User Services Are to Be Unregulated- Except as provided otherwise in this Act, neither the Commission nor any State shall have authority to regulate the rates of any other retail or end-user electronic communications service.

(d) Petition to Eliminate Existing State Regulations-

(1) IN GENERAL- Any interested party may submit a petition to the appropriate State agency, as determined by that State, to modify or eliminate any rate regulations on services grandfathered under subsection (a).

(2) TIMING-

(A) IN GENERAL- Not later than 270 days after the date that a petition is submitted under paragraph (1), the appropriate State agency shall issue a decision on whether to grant or deny such petition.

(B) EXPIRATION OF 270-DAY PERIOD- If the appropriate State agency does not issue a decision within the time-period described in subparagraph (A), the petition shall be deemed granted.

(3) CONTENT OF DECISION- Any decision that denies a petition under paragraph (2) shall include a written explanation of--

(A) how the regulation described in the petition satisfies the requirements of subsection (a); and

(B) why the economic benefits of such regulation outweigh the economic harms of such regulation.

(e) Federal Agency Review of State Decisions-

(1) IN GENERAL- An interested party may submit a petition to the Commission to overturn the denial of a petition by an appropriate State agency under subsection (d).

(2) SPECIAL EMPHASIS FOR REVIEW- In deciding whether or not to overturn the denial of a petition under paragraph (1), the Commission shall place special emphasis on whether the regulation described in the petition remedies or serves to alleviate methods, acts, or practices deemed unlawful under section 102.

(3) TIMING-

(A) IN GENERAL- Not later than 180 days after the date that a petition is submitted under paragraph (1), the Commission shall issue a decision on whether to grant or deny such petition.

(B) EXPIRATION OF 180-DAY PERIOD- If the Commission does not issue a decision within the time-period described in subparagraph (A), the petition shall be deemed denied.

(f) Federal Court Review- An interested party may appeal the grant or denial of a petition under subsection (e) directly to the United States Court of Appeals for the District of Columbia.

SEC. 406. RETENTION OF ADDITIONAL STATE AUTHORITY.

(a) In General- Notwithstanding section 402, a State, or any general purpose political subdivision of a State, shall retain jurisdiction to enact and implement rules or regulations that such State or political subdivision determines, after notice and an opportunity for public comment, are minimally and directly necessary--

(1) to prohibit unfair or deceptive acts or practices that would negatively affect consumers from using electronic communications services, including the concealment of the terms and conditions affecting the price and quality of such services;

(2) to protect the public safety and homeland security; and

(3) to manage public rights-of-way and execute traditional police powers with respect to public spaces, provided that any fees imposed by such State or political subdivision for access to rights-of-way shall not exceed the actual direct costs incurred by such State or political subdivision in managing the use of such rights-of-way by electronic communications service providers.

(b) Rule of Construction- Nothing in subsection (a) shall be construed to grant a State, or any general purpose political subdivision of a State, the authority--

(1) absent a delegation under section 403, to enact or enforce rules, regulations, or obligations, or conduct rulemakings or adjudications to implement the provisions of this Act;

(2) except as otherwise specifically provided, to enact--

(A) regulations relating to--

(i) rates; or

(ii) quality-of-service; or

(B) any other economic regulation; or

(3) to impose any other requirements on a provider of electronic communications services to the extent that such provider relies on networks that connect to customers primarily through use of electromagnetic spectrum or other non-physical means.

SEC. 407. PREEMPTION OF STATE AUTHORITY.

Except as provided in sections 405 and 406, or under a delegation of authority under section 402, this Act supersedes any provision of a statute, regulation, or rule, and any other requirement, prohibition or remedy under State law or the law of any general purpose political subdivision of a State, if the Commission concludes that--

(1) such statute, regulation, or rule, requirement, prohibition, or remedy is or would be inconsistent with the provisions of this Act;

(2) there are substantial and clear efficiencies to be gained by preempting the regulatory approach of such State or political subdivision;

(3) a single Federal regulatory approach is clearly optimal over all other regulatory approaches;

(4) there is a clear showing that the costs of abiding by a diverse set of regulatory approaches outweighs the benefits of allowing States or political subdivisions thereof to experiment with innovative regulatory approaches;

(5) abiding by a diverse set of regulatory approaches materially inhibits any provider of electronic communications services from effectively offering such service; or

(6) such State or political subdivision has imposed any tax solely on some or all providers of electronic communications services.

SEC. 408. TRANSITION AND SUNSET OF EXISTING AGREEMENTS.

(a) Existing Franchise Agreements- Any franchise agreement entered into by a franchising authority and a provider of electronic

communications services under section 621 of the Communications Act of 1934 (47 U.S.C. 541), as of the date of enactment of this Act, shall be exempt from the provisions of this Act until the earlier of--

(1) the date of expiration of the terms of such agreement; or

(2) the date that is 4 years after the date of enactment of this Act.

(b) Limitation- A State, or any general purpose political subdivision of a State, may not renew, extend, or otherwise enforce the terms of an any franchise agreement described in subsection (a) beyond the time-periods established in that subsection.

(c) Contributions by Competing Video Services- Until an existing franchise agreement is terminated under subsection (a), a State, or any general purpose political subdivision of a State, may require any provider of competing video services to contribute an equitable portion of costs associated with--

(1) any fees directly attributable to such agreement; and

(2) the provision of any public access channels required by such agreement.

SEC. 409. EFFECTIVE DATE.

Except as otherwise specifically provided, this Act shall take effect 2 years after the date of enactment of this Act.

END

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