

[STAFF WORKING DRAFT]

NOVEMBER 12, 2013

113TH CONGRESS
1ST SESSION

S. _____

An Act to amend the Communications Act of 1934 to increase consumer choice and competition in the online video programming distribution marketplace, and for other purposes.

IN THE SENATE OF THE UNITED STATES

_____ introduced the following bill; which was read twice
and referred to the Committee on _____

A BILL

An Act to amend the Communications Act of 1934 to increase consumer choice and competition in the online video programming distribution marketplace, 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; TABLE OF CONTENTS.**

4 (a) **SHORT TITLE.**—This Act may be cited as the
5 “Consumer Choice in Online Video Act”.

1 (b) TABLE OF CONTENTS.—The table of contents of
2 this Act is as follows:

- Sec. 1. Short title; table of contents.
- Sec. 2. Findings; statement of policy.
- Sec. 3. Definitions.

TITLE I—BILLING FOR INTERNET SERVICE

- Sec. 101. Consumer protections.

TITLE II—ONLINE VIDEO DISTRIBUTION ALTERNATIVES

- Sec. 201. Protections for online video distributors.
- Sec. 202. Federal Communications Commission report on peering.

TITLE III—NON-FACILITIES BASED MULTICHANNEL VIDEO
PROGRAMMING DISTRIBUTORS

- Sec. 301. Non-facilities based multichannel video programming distributors.

TITLE IV—MISCELLANEOUS

- Sec. 401. Technical and conforming amendments.
- Sec. 402. Provisions as complementary.
- Sec. 403. Applicability of antitrust laws.
- Sec. 404. Severability.

3 **SEC. 2. FINDINGS; STATEMENT OF POLICY.**

4 (a) FINDINGS.—Congress makes the following find-
5 ings:

6 (1) Online video distribution has the potential
7 to increase consumer choice in video programming,
8 lower prices for video services, bring innovative serv-
9 ices to the video distribution marketplace, and dis-
10 rupt the traditional multichannel video distribution
11 marketplace.

12 (2) Evolving consumer demand, improving tech-
13 nology, and increased choice of viewing devices can
14 make online video distributors stronger competitors

1 to multichannel video programming distributors for
2 an increasing number of viewers.

3 (3) Unlike traditional multichannel video pro-
4 gramming distributors, online video distributors do
5 not own distribution facilities and are dependent
6 upon Internet service providers (many of which are
7 affiliated with multichannel video programming dis-
8 tributors) for the delivery of their content to viewers.

9 (4) Internet service providers' management and
10 pricing of broadband services affects online video
11 distributors. Because online video distribution con-
12 sumes significant amounts of Internet bandwidth,
13 Internet service providers' use of usage-based billing
14 practices can negatively impact the competitive posi-
15 tion of online video distributors and the appeal of
16 their services to consumers.

17 (5) Internet service providers that are affiliated
18 with a multichannel video programming distributor
19 or an online video distributor have an increased in-
20 centive to degrade the delivery of, or block entirely,
21 traffic from the websites of other online video dis-
22 tributors, or speed up or favor access to the content
23 and aggregation websites of their affiliates, because
24 online video distributors pose a threat to those affili-
25 ates' video programming distribution businesses.

1 (6) Similarly, multichannel video programming
2 distributors who are affiliated with Internet service
3 providers, online video distributors who are affiliated
4 with Internet service providers, or video program-
5 ming vendors with significant market power have the
6 incentive and ability to use their competitive position
7 to engage in unfair methods of competition meant to
8 hinder competition from online video distributors.

9 (7) Growth of online video distribution alter-
10 natives also will depend, in part, on the distributor's
11 ability to acquire programming from content pro-
12 ducers. Without access to content on competitive
13 terms, an online video distributor suffers a distinct
14 competitive harm.

15 (8) Some traditional multichannel video pro-
16 gramming distributors have admitted to taking steps
17 to limit the ability of online video distributors to ac-
18 cess content or otherwise effectively compete in the
19 video distribution marketplace.

20 (9) Traditional multichannel video program-
21 ming distributors and even other online video dis-
22 tributors have the incentive and ability to convince
23 their video programming vendor partners not to sell
24 content to online video distributors or to sell content
25 to them at competitively-disadvantageous prices,

1 terms, and conditions. They also have the incentive
2 and ability to retaliate against a video programming
3 vendor that sells content to an online video dis-
4 tributor.

5 (10) Traditional multichannel video program-
6 ming distributors have the incentive and ability to
7 use their relationships with manufacturers of tele-
8 vision sets, set-top boxes, and other customer prem-
9 ises equipment to favor their own services over offer-
10 ings from online video distributors.

11 (11) There is a substantial governmental and
12 First Amendment interest in—

13 (A) requiring Internet service providers to
14 provide consumers with accurate information
15 about their Internet service, and to ensure that
16 data usage monitoring systems are accurate, ef-
17 fective, and not used for an anticompetitive
18 purpose;

19 (B) promoting a diversity of views provided
20 through multiple technology media;

21 (C) promoting the development of online
22 video distribution platforms and fair competi-
23 tion amongst all distributors and vendors of
24 video programming;

1 (D) preventing Internet service providers
2 that are affiliated with a multichannel video
3 programming distributor or an online video dis-
4 tributor from discriminating against unaffili-
5 ated content and distributors in its exercise of
6 control over consumers' broadband connections;

7 (E) encouraging and protecting consumer
8 choice and innovation in online video distribu-
9 tion, including with respect to distribution of
10 broadcast television content; and

11 (F) providing consumers with the ability to
12 choose to receive local broadcast television con-
13 tent from various markets.

14 (b) STATEMENT OF POLICY.—It is the policy of the
15 Congress that—

16 (1) consumers should be fully informed about
17 the terms and conditions related to the purchase of
18 Internet service from an Internet service provider;

19 (2) usage-based billing systems used by an
20 Internet service provider should not be used in a
21 way that harms development and use of high-band-
22 width consuming Internet applications and services
23 that might compete with that Internet service pro-
24 vider's own services;

1 (3) the availability of a diversity of views and
2 information should be promoted to the public
3 through various video programming distribution
4 platforms, including those providing service by uti-
5 lizing the Internet or other IP-based transmission
6 paths;

7 (4) existing multichannel video programming
8 distributors and video programming vendors should
9 not have or exercise undue market power with re-
10 spect to online video distributors; and

11 (5) Internet service providers should not hinder
12 through anticompetitive behavior the ability of online
13 video distributors to provide services to their sub-
14 scribers.

15 **SEC. 3. DEFINITIONS.**

16 In this Act:

17 (1) **BROADCAST TELEVISION LICENSEE.**—The
18 term “broadcast television licensee” means the li-
19 censee of a full-power television station or a low-
20 power television station.

21 (2) **COMMISSION.**—The term “Commission”
22 means the Federal Communications Commission.

23 (3) **INTERNET SERVICE PROVIDER.**—The term
24 “Internet service provider” means any provider of

1 Internet service to an end user, regardless of the
2 technology used to provide that service.

3 (4) NON-FACILITIES BASED MULTICHANNEL
4 VIDEO PROGRAMMING DISTRIBUTOR.—The term
5 “non-facilities based multichannel video program-
6 ming distributor” means an online video distributor
7 that has made the election permitted under section
8 672.

9 (5) ONLINE VIDEO DISTRIBUTOR.—The term
10 “online video distributor” means any entity, includ-
11 ing a non-facilities based multichannel video pro-
12 gramming distributor, that—

13 (A) has its principal place of business in
14 the United States; and

15 (B) distributes video programming in the
16 United States by means of the Internet or an-
17 other IP-based transmission path provided by a
18 person other than that entity.

19 (6) TELEVISION NETWORK.—The term “tele-
20 vision network” means a television network in the
21 United States which offers an interconnected pro-
22 gram service on a regular basis for 15 or more hours
23 per week to at least 25 affiliated broadcast stations
24 in 10 or more States.

25 (7) USAGE-BASED BILLING.—

1 (A) IN GENERAL.—The term “usage-based
2 billing” means a system of charging a consumer
3 for Internet service or the use of an IP-based
4 transmission path provided by an Internet serv-
5 ice provider or other entity that is based upon
6 the amount of data the consumer uses over a
7 period of time.

8 (B) INCLUSIONS.—The term “usage-based
9 billing” includes—

10 (i) imposing a cap on the amount of
11 data the consumer can use based on the
12 price the consumer is willing to pay for
13 service;

14 (ii) charging a consumer varying
15 amounts each billing cycle based on a per-
16 megabyte, per-gigabyte, or similar rate;
17 and

18 (iii) establishing different tiers of
19 prices based on the amount of data the
20 consumer elects to consume in a billing
21 cycle, whether or not the amount acts as a
22 cap on the consumer’s service.

23 (8) VIDEO PROGRAMMING.—The term “video
24 programming” means programming provided by, or
25 generally considered comparable to programming

1 provided by, a television broadcast station, whether
2 or not such programming is delivered using a por-
3 tion of the electromagnetic frequency spectrum.

4 (9) VIDEO PROGRAMMING VENDOR.—The term
5 “video programming vendor” means a person en-
6 gaged in the production, creation, or wholesale dis-
7 tribution of video programming for sale.

8 **TITLE I—BILLING FOR** 9 **INTERNET SERVICE**

10 **SEC. 101. CONSUMER PROTECTIONS.**

11 Title VII of the Communications Act of 1934 (47
12 U.S.C. 601 et seq.) is amended—

13 (1) by inserting before section 701 the fol-
14 lowing:

15 **“PART I—GENERAL PROVISIONS”; and**

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

17 **“PART II—INTERNET SERVICES BILLING**

18 **“SEC. 721. CONSUMER PROTECTIONS.**

19 “(a) GENERAL DISCLOSURES.—

20 “(1) IN GENERAL.—Not later than 1 year after
21 the date of enactment of the Consumer Choice in
22 Online Video Act, the Commission shall promulgate
23 regulations requiring Internet service providers to
24 disclose certain information that will assist a con-

1 consumer in making an informed decision about the
2 purchase of Internet service.

3 “(2) REQUIREMENTS.—The regulations under
4 paragraph (1) shall require, at a minimum, that—

5 “(A) any advertising related to Internet
6 service include plain language disclosure of any
7 information the Commission considers necessary
8 for a consumer to make an informed decision
9 about the purchase of that Internet service;

10 “(B) an Internet service provider provide a
11 plain language disclosure to a consumer prior to
12 the purchase of Internet service that includes—

13 “(i) the length of the contract;

14 “(ii) the terms of renewal;

15 “(iii) a projected monthly bill, includ-
16 ing all fees and costs associated with the
17 Internet service;

18 “(iv) if the consumer is receiving pro-
19 motional pricing for service, a projected
20 monthly bill for service once that pro-
21 motional pricing period has ended;

22 “(v) the procedures to cancel the
23 Internet service, including any policies re-
24 lated to early termination fees;

1 “(vi) the average actual data trans-
2 mission speeds, including both upload and
3 download speeds;

4 “(vii) any policies or practices regard-
5 ing network management, including lim-
6 iting service speeds or prioritizing content;
7 and

8 “(viii) any other information that the
9 Commission considers necessary for the
10 consumer to make an informed decision
11 about the purchase of the Internet service.

12 “(b) SPECIAL DISCLOSURES FOR USAGE-BASED
13 BILLING.—

14 “(1) IN GENERAL.—As part of the rulemaking
15 under subsection (a), the Commission shall promul-
16 gate regulations to protect consumers in the use of
17 usage-based billing by Internet service providers.

18 “(2) PLAIN LANGUAGE DISCLOSURE OF TERMS
19 AND CONDITIONS.—

20 “(A) IN GENERAL.—The regulations under
21 paragraph (1) shall require an Internet service
22 provider to provide a plain language disclosure
23 of all terms and conditions associated with its
24 use of usage-based billing to a consumer prior
25 to the purchase of Internet service.

1 “(B) CONTENTS.—The plain language dis-
2 closure under this paragraph shall include—

3 “(i) an explanation of how usage-
4 based billing will be applied to the con-
5 sumer;

6 “(ii) a complete list of the tiers of
7 service;

8 “(iii) comparisons of how much data
9 of varying types, including video program-
10 ming in standard and high-definition, the
11 consumer would be able to consume each
12 month under each tier;

13 “(iv) the procedure for providing the
14 consumer the notifications under para-
15 graph (4);

16 “(v) an explanation of the con-
17 sequences, if any, to a consumer for ex-
18 ceeding the consumer’s data usage amount,
19 including any fees that may be charged
20 and any options a consumer may have to
21 avoid those fees;

22 “(vi) if the Internet service provider
23 provides a tool for a consumer to monitor
24 the consumer’s data usage, a description of
25 the tool and how to use it;

1 “(vii) the appeals procedure under
2 paragraph (5); and

3 “(viii) any other information that the
4 Commission considers necessary to protect
5 consumers in the use of usage-based billing
6 by Internet service providers.

7 “(3) MONTHLY DISCLOSURE OF DATA USAGE.—

8 “(A) DATA USAGE.—An Internet service
9 provider that uses usage-based billing shall pro-
10 vide a plain language disclosure to a consumer
11 of the consumer’s data usage during each bill-
12 ing cycle as part of the consumer’s bill.

13 “(B) DATA USAGE TRENDS.—An Internet
14 service provider that uses usage-based billing
15 shall include in the consumer’s bill information
16 documenting the consumer’s data usage over
17 the prior 6 monthly bills or over a period begin-
18 ning on the date that the consumer contracted
19 for the Internet service, whichever is shorter.

20 “(4) NOTIFICATIONS.—

21 “(A) IN GENERAL.—An Internet service
22 provider that uses usage-based billing shall pro-
23 vide to a consumer notification of the amount
24 of data the consumer has remaining at the mid-
25 point of a billing cycle, and at any other incre-

1 ments the Commission finds are in the public
2 interest.

3 “(B) FORM.—The Commission may deter-
4 mine the form of the notifications required
5 under this paragraph.

6 “(5) CONSUMER APPEALS.—Each Internet serv-
7 ice provider that uses usage-based billing shall estab-
8 lish an appeals procedure for a consumer to obtain
9 more detailed information about the consumer’s
10 Internet data usage and to challenge the Internet
11 service provider’s determination of that consumer’s
12 data usage.

13 “(c) TRUTH-IN-BILLING FOR INTERNET SERV-
14 ICES.—

15 “(1) IN GENERAL.—Not later than 1 year after
16 the date of enactment of the Consumer Choice in
17 Online Video Act, the Commission shall update its
18 truth-in-billing rules to extend the rules to Internet
19 service providers.

20 “(2) BUNDLED SERVICES.—As part of the rule-
21 making under paragraph (1), the Commission shall
22 consider whether it is in the public interest to estab-
23 lish truth-in-billing rules for bundled communica-
24 tions service packages.

1 “(d) EXEMPTION.—The Commission may exempt an
2 Internet service provider serving 20,000 or fewer sub-
3 scribers from the requirements of this section

4 “(e) SPECIAL CONSIDERATION.—The Commission
5 may take into account the special considerations in an
6 Internet service provider’s delivery technology, including
7 wireless, when implementing this section.

8 **“SEC. 722. CERTIFICATION OF DATA USAGE MONITORING**
9 **SYSTEMS.**

10 “(a) INDEPENDENT CERTIFICATION REQUIRED.—

11 “(1) IN GENERAL.—An Internet service pro-
12 vider may not use a data usage monitoring system
13 as part of usage-based billing unless the data usage
14 monitoring system is certified under this section.

15 “(2) DEVELOPMENT OF STANDARDS.—The
16 Commission, after consultation with the National In-
17 stitute of Standards and Technology, shall develop
18 standards to ensure that a data usage monitoring
19 system accurately measures a consumer’s usage of
20 data.

21 “(3) CERTIFICATION PROCESS.—The Commis-
22 sion may certify a data usage monitoring system for
23 use in usage-based billing if it determines that the
24 data usage monitoring system accurately measures

1 consumer data usage and is in material compliance
2 with the standards under paragraph (2).

3 “(4) PERMISSIBLE DELEGATION.—The Com-
4 mission may designate 1 or more impartial third
5 parties to conduct the certification of a data usage
6 monitoring system under this section.

7 “(b) PERIODIC REVIEW.—The Commission shall de-
8 termine how to ensure that an Internet service provider’s
9 data usage monitoring system remains in compliance with
10 this section.

11 “(c) DEFINITION OF DATA USAGE MONITORING SYS-
12 TEM.—In this section, the term ‘data usage monitoring
13 system’ means a system of monitoring and calculating the
14 amount of data a user has consumed—

15 “(1) while accessing the Internet;

16 “(2) while using hardware, software, or applica-
17 tions that consume data transmitted over the Inter-
18 net; or

19 “(3) while accessing another IP-based trans-
20 mission path provided by an Internet service pro-
21 vider or another entity.

22 “(d) PENALTIES.—The Commission is authorized to
23 assess penalties against any Internet service provider that
24 fails to comply with this section.

25 “(e) RULEMAKING.—

1 “(1) IN GENERAL.—The Commission shall pro-
2 mulgate regulations to implement this section not
3 later than 1 year after the date of enactment of the
4 Consumer Choice in Online Video Act.

5 “(2) EXEMPTION.—The regulations under para-
6 graph (1) may provide an exemption from the regu-
7 lations for an Internet service provider serving
8 20,000 or fewer subscribers.

9 “(3) SPECIAL CONSIDERATIONS.—The Commis-
10 sion may take into account the special considerations
11 in an Internet service provider’s delivery technology,
12 including wireless, when implementing this section.”.

13 **TITLE II—ONLINE VIDEO** 14 **DISTRIBUTION ALTERNATIVES**

15 **SEC. 201. PROTECTIONS FOR ONLINE VIDEO DISTRIBU-** 16 **TORS.**

17 Title VI of the Communications Act of 1934 (47
18 U.S.C. 521 et seq.) is amended by adding at the end the
19 following:

20 **“PART VI—ONLINE VIDEO DISTRIBUTORS**

21 **“SEC. 661. DEFINITIONS.**

22 “In this part:

23 “(1) AFFILIATED WITH.—For purposes of sec-
24 tions 663, 664, and 667, the term ‘affiliated with’
25 means that the Internet service provider, multi-

1 channel video programming distributor, online video
2 distributor, or video programming vendor, as appro-
3 priate, directly or indirectly, is owned or controlled
4 by, owns or controls, or is under common ownership
5 or control with another Internet service provider,
6 multichannel video programming distributor, online
7 video distributor, or video programming vendor, as
8 appropriate. For purposes of this paragraph, the
9 term ‘own’ means to own an equity interest, or the
10 equivalent thereof, of more than 10 percent.

11 “(2) VIDEO PROGRAMMING.—The term ‘video
12 programming’ means programming provided by, or
13 generally considered comparable to programming
14 provided by, a television broadcast station, whether
15 or not such programming is delivered using a por-
16 tion of the electromagnetic frequency spectrum.

17 **“SEC. 662. ENHANCEMENT OF CONSUMER CHOICE IN ON-
18 LINE VIDEO.**

19 “The purposes of this part are

20 “(1) to promote the public interest, conven-
21 ience, and necessity by increasing competition, inno-
22 vation, and diversity in the video programming mar-
23 ketplace;

1 “(2) to enhance consumer access to online video
2 distribution platforms and consumer choice in online
3 video programming; and

4 “(3) to increase the availability of video pro-
5 gramming on all platforms, including Internet-based
6 platforms.

7 **“SEC. 663. DEVELOPMENT OF COMPETITION AND DIVER-**
8 **SITY IN ONLINE VIDEO DISTRIBUTION.**

9 “(a) PROHIBITION.—It shall be unlawful for a des-
10 ignated distributor to engage in unfair methods of com-
11 petition or unfair or deceptive acts or practices, the pur-
12 pose or effect of which are to hinder significantly or pre-
13 vent an online video distributor from providing video pro-
14 gramming to consumers, including over any platform or
15 device capable of delivering that online video distributor’s
16 content to consumers.

17 “(b) REGULATIONS.—

18 “(1) IN GENERAL.—Not later than 1 year after
19 the date of enactment of the Consumer Choice in
20 Online Video Act, the Commission shall promulgate
21 regulations to implement this section.

22 “(2) MINIMUM CONTENTS.—At a minimum, the
23 regulations under this section shall—

24 “(A) specify the conduct that constitutes a
25 prima facie violation of subsection (a); and

1 “(B) establish effective safeguards to pre-
2 vent a designated distributor from—

3 “(i) unduly or improperly influencing
4 the decision of any other entity to make a
5 television set or other customer premises
6 equipment incompatible with the services
7 provided by any online video distributor;

8 “(ii) unduly or improperly using its
9 own customer premises equipment to dis-
10 criminate against, or otherwise favor its
11 own services over, the service provided by
12 any online video distributor;

13 “(iii) unduly or improperly influencing
14 the decision of any other entity to sell, or
15 the prices, terms, and conditions of the
16 sale of, video programming to any online
17 video distributor; and

18 “(iv) providing an incentive to any en-
19 tity in an attempt to deny video program-
20 ming to an online video distributor.

21 “(c) EXCEPTIONS.—

22 “(1) IN GENERAL.—Subject to paragraph (2), a
23 designated distributor shall not be prohibited from—

24 “(A) imposing reasonable requirements for
25 creditworthiness, offering of service, and finan-

1 cial stability and standards regarding character
2 and technical quality;

3 “(B) establishing different prices, terms,
4 and conditions to take into account economies
5 of scale, cost savings, or other direct and legiti-
6 mate economic benefits reasonably attributable
7 to the number of subscribers served by the on-
8 line video distributor; and

9 “(C) imposing reasonable requirements to
10 ensure the security of the video programming
11 being provided to the online video distributor,
12 including means to authenticate the right of the
13 distributor’s subscribers to access the program-
14 ming.

15 “(2) LIMITATIONS.—An exception under para-
16 graph (1)—

17 “(A) shall be related to the substantial,
18 real, and legitimate business concerns of the
19 designated distributor; and

20 “(B) may not be used in an anticompeti-
21 tive manner.

22 “(d) DEFINITION OF DESIGNATED DISTRIBUTOR.—

23 “(1) IN GENERAL.—In this section, the term
24 ‘designated distributor’ means—

1 “(A) a multichannel video programming
2 distributor affiliated with an Internet service
3 provider;

4 “(B) an online video distributor affiliated
5 with an Internet service provider; or

6 “(C) a video programming vendor with sig-
7 nificant market power.

8 “(2) SIGNIFICANT MARKET POWER.—The Com-
9 mission shall establish rules for determining whether
10 a video programming vendor has significant market
11 power under paragraph (1)(C).

12 **“SEC. 664. ACCESS TO VIDEO PROGRAMMING.**

13 “(a) PROHIBITIONS.—It shall be unlawful for a mul-
14 tichannel video programming distributor or an online video
15 distributor—

16 “(1) to include in a contract with any video
17 programming vendor a provision that serves as a
18 substantial disincentive for the video programming
19 vendor to sell its content to an online video dis-
20 tributor;

21 “(2) to use any practice, understanding, ar-
22 rangement, or other agreement with a video pro-
23 gramming vendor that has the effect of causing the
24 video programming vendor to face a substantial dis-

1 incentive to sell its content to an online video dis-
2 tributor; or

3 “(3) to enter into a contract with a video pro-
4 gramming vendor that has the effect of preventing
5 an online video distributor from making the video
6 programming vendor’s content available on any plat-
7 form or device capable of delivering that distribu-
8 tor’s content to its subscribers.

9 “(b) CONTRACT LIMITATIONS.—A multichannel video
10 programming distributor or an online video distributor
11 may not include in any contract with a video programming
12 vendor any provision that requires the multichannel video
13 programming distributor or online video distributor, as ap-
14 plicable, to be treated in material parity with other simi-
15 larly situated multichannel video programming distribu-
16 tors or online video distributors with regard to pricing or
17 other terms and conditions of carriage of video program-
18 ming.

19 “(c) RETALIATION PROHIBITED.—A multichannel
20 video programming distributor or an online video dis-
21 tributor may not retaliate against—

22 “(1) any video programming vendor for making
23 its video programming available to an online video
24 distributor;

1 “(2) any online video distributor for obtaining
2 video programming from a video programming ven-
3 dor; or

4 “(3) any entity for exercising a right under this
5 Act.

6 “(d) EXCEPTION.—Notwithstanding subsection (a)
7 or any other provision of this part, a multichannel video
8 programming distributor or an online video distributor
9 may enter into an exclusive contract with a video program-
10 ming vendor for video programming provided by that video
11 programming vendor if the contract does not exceed the
12 limits or violate the prohibitions under subsection (e).

13 “(e) PUBLIC INTEREST LIMITATIONS ON EXCLUSIVE
14 CONTRACTS.—

15 “(1) IN GENERAL.—The Commission shall
16 adopt limits on—

17 “(A) the ability of a multichannel video
18 programming distributor or an online video dis-
19 tributor to enter into any contract for video
20 programming that includes an exclusivity provi-
21 sion that substantially deters the development
22 of an online video distribution alternative; and

23 “(B) the ability of an online video dis-
24 tributor to enter into any contract for video
25 programming that includes an exclusivity provi-

1 sion that substantially deters the development
2 of an online video distribution alternative.

3 “(2) PROHIBITED CONTRACTS.—The Commis-
4 sion shall prohibit—

5 “(A) a multichannel video programming
6 distributor from entering into an exclusive con-
7 tract with a video programming vendor that is
8 affiliated with the multichannel video program-
9 ming distributor; and

10 “(B) an online video distributor from en-
11 tering into an exclusive contract with a video
12 programming vendor that is affiliated with the
13 online video distributor.

14 “(3) LIMITATIONS ON OTHER EXCLUSIVE CON-
15 TRACTS FOR VIDEO PROGRAMMING.—

16 “(A) IN GENERAL.—The Commission shall
17 establish criteria for determining whether an
18 exclusive contract for programming substan-
19 tially deters the development of an online video
20 distribution alternative.

21 “(B) CONSIDERATIONS.—In establishing
22 the criteria under subparagraph (A), the Com-
23 mission shall consider the totality of the cir-
24 cumstances surrounding the contract, includ-
25 ing—

1 “(i) the duration of the exclusivity pe-
2 riod;

3 “(ii) the effect of the exclusive con-
4 tract on capital investment in the produc-
5 tion and distribution of video program-
6 ming;

7 “(iii) the time period after initial
8 first-day distribution of video programming
9 to consumers when the multichannel video
10 programming distributor or the online
11 video distributor is granted exclusive ac-
12 cess to distribute the programming; and

13 “(iv) the likelihood that the exclusive
14 contract will enhance diversity in program-
15 ming on video distribution platforms.

16 “(f) ONLINE DISTRIBUTION OF CONTENT BY A
17 VIDEO PROGRAMMING VENDOR.—

18 “(1) IN GENERAL.—A multichannel video pro-
19 gramming distributor or an online video distributor
20 may not enter into an agreement that limits or pro-
21 hibits a video programming vendor from making its
22 video content available to consumers free over the
23 Internet.

1 “(2) EXCEPTION.—The prohibition under para-
2 graph (1) shall not apply if the duration of the
3 agreement is 30 days or less.

4 “(g) PRICES, TERMS, AND CONDITIONS FOR PRO-
5 GRAMMING.—A video programming vendor may establish
6 different prices, terms, and conditions for its video pro-
7 gramming if, taking into account economies of scale, cost
8 savings, or other direct and legitimate economic benefits
9 that are reasonably attributable to the number of sub-
10 scribers served by an online video distributor, the prices,
11 terms, and conditions—

12 “(1) are related to substantial, real, and legiti-
13 mate business concerns of the video programming
14 vendor; and

15 “(2) are not used in an anticompetitive manner.

16 “(h) REGULATIONS.—

17 “(1) IN GENERAL.—Not later than 1 year after
18 the date of enactment of the Consumer Choice in
19 Online Video Act, the Commission shall promulgate
20 regulations to specify particular conduct that is pro-
21 hibited by this section.

22 “(2) MINIMUM CONTENTS.—The regulations
23 under this section shall establish, at a minimum—

24 “(A) effective safeguards to prevent any
25 activity prohibited by this section; and

1 “(B) complaint and contract review proce-
2 dures to facilitate the Commission’s ability to
3 determine if a multichannel video programming
4 distributor, a video programming vendor, or an
5 online video distributor has violated this sec-
6 tion.

7 “(i) EXISTING CONTRACTS.—

8 “(1) IN GENERAL.—Subject to paragraph (2),
9 nothing in this section shall affect any contract, un-
10 derstanding, or arrangement that was entered into
11 on or before December 1, 2013.

12 “(2) EXCEPTIONS.—No contract, under-
13 standing, or arrangement entered into on or before
14 December 1, 2013, that violates this section shall be
15 enforceable by any person after the date that is 3
16 years after the date of enactment of the Consumer
17 Choice in Online Video Act.

18 “(3) LIMITATION ON RENEWALS.—A contract,
19 understanding, or arrangement that was entered
20 into on or before December 1, 2013, but that is re-
21 newed or extended after the date of enactment of
22 the Consumer Choice in Online Video Act shall not
23 be exempt under paragraph (1).

1 **“SEC. 665. FOSTERING ACCESS TO VIDEO PROGRAMMING.**

2 “(a) IN GENERAL.—Not later than 1 year after the
3 date of enactment of the Consumer Choice in Online Video
4 Act, the Commission shall commence a proceeding to de-
5 termine the additional steps it should take, in the public
6 interest, to foster the ability of online video distributors
7 to gain access to video programming, offer innovative serv-
8 ices, and compete with multichannel video programming
9 distributors.

10 “(b) LIMITATION.—The Commission shall not compel
11 a video programming vendor to sell its video programming
12 to an online video distributor as part of any rules adopted
13 under this section.

14 **“SEC. 666. BROADCAST TELEVISION LICENSEES AND TELE-**
15 **VISION NETWORKS.**

16 “(a) DUTY TO NEGOTIATE.—It shall be unlawful for
17 a broadcast television licensee or television network—

18 “(1) to refuse to negotiate with an online video
19 distributor for carriage of the broadcast television li-
20 censee’s or the television network’s content, as appli-
21 cable; or

22 “(2) to place any restriction on an online video
23 distributor’s ability to make the broadcast television
24 licensee’s or the television network’s content, as ap-
25 plicable, available on any platform or device that is

1 capable of delivering the online video distributor's
2 content to its subscribers.

3 “(b) REFUSAL TO NEGOTIATE; COMMISSION DETER-
4 MINATION.—The Commission shall determine what con-
5 stitutes a refusal to negotiate under subsection (a). The
6 Commission may require a broadcast television licensee or
7 television network to engage in good faith negotiations
8 with an online video distributor. The Commission shall de-
9 fine good faith for purposes of this subsection.

10 “(c) ONLINE RETRANSMISSION OF IN-MARKET
11 BROADCAST SIGNALS.—

12 “(1) SIGNAL PARITY.—

13 “(A) IN GENERAL.—It shall be unlawful
14 for a broadcast television licensee to provide an
15 over-the-air signal that differs from a retrans-
16 mission of that signal provided to a multi-
17 channel video programming distributor or an
18 online video distributor.

19 “(B) EXCEPTION.—Subparagraph (A)
20 shall not apply if—

21 “(i) the variation in the 2 signals con-
22 sists of a change to 1 or more commercial
23 advertisements of not more than 60 sec-
24 onds in duration embedded in a broadcast
25 television licensee's signal; and

1 “(ii) the broadcast television licensee
2 is not using the variation under clause (i)
3 to increase the overall amount of adver-
4 tising time in its over-the-air signal.

5 “(2) ANTENNA RENTAL SERVICES.—

6 “(A) IN GENERAL.—Notwithstanding any
7 other provision of this Act, except subparagraph
8 (C), an entity may rent to a consumer access
9 to an individual antenna to view over-the-air
10 broadcast television signals transmitted from
11 that antenna—

12 “(i) directly to the consumer over the
13 Internet or another IP-based transmission
14 path; or

15 “(ii) to an individual data storage sys-
16 tem, including an online remote data stor-
17 age system, for recording and then made
18 accessible to that consumer through the
19 Internet or another IP-based transmission
20 path.

21 “(B) RETRANSMISSION CONSENT FEES.—

22 An antenna rental service described under sub-
23 paragraph (A) shall be exempt from paying re-
24 transmission consent fees under section 325 of
25 this Act to any broadcast television station

1 whose signal is received by the individual an-
2 tenna and retransmitted to the subscriber.

3 “(C) CONDITIONS OF RENTAL SERVICES.—

4 An antenna rental service described under sub-
5 paragraph (A) shall—

6 “(i) only provide a subscriber with ac-
7 cess to over-the-air broadcast television sig-
8 nals received by an individual antenna lo-
9 cated in the same designated market area
10 (as defined in section 671 of this Act) in
11 which that subscriber resides; and

12 “(ii) make available to a subscriber all
13 over-the-air broadcast signals that are re-
14 ceived by the individual antenna rented by
15 that subscriber, unless a signal is of such
16 poor quality that it cannot be transmitted
17 to the consumer in a reasonably viewable
18 form.

19 “(d) LIMITS IN EXISTING PROGRAMMING AND AF-
20 FILIATION CONTRACTS.—

21 “(1) IN GENERAL.—It shall be unlawful for any
22 entity selling or otherwise providing video program-
23 ming to be transmitted by a broadcast television li-
24 censee or television network to include in any con-
25 tract, agreement, understanding, or arrangement

1 with that licensee or network a limitation on the
2 ability of that licensee or network to comply with the
3 requirements of this section.

4 “(2) EXISTING CONTRACTS.—

5 “(A) IN GENERAL.—Subject to subpara-
6 graph (B), nothing in this section shall affect
7 any contract, understanding, or arrangement
8 that was entered into on or before December 1,
9 2013.

10 “(B) EXCEPTIONS.—No contract, under-
11 standing, or arrangement entered into on or be-
12 fore December 1, 2013, that violates this sec-
13 tion shall be enforceable by any person after the
14 date that is 3 years after the date of enactment
15 of the Consumer Choice in Online Video Act.

16 “(C) LIMITATION ON RENEWALS.—A con-
17 tract, understanding, or arrangement that was
18 entered into on or before December 1, 2013,
19 but that is renewed or extended after the date
20 of enactment of the Consumer Choice in Online
21 Video Act shall not be exempt under subpara-
22 graph (A).

23 “(e) REGULATIONS.—Not later than 1 year after the
24 date of enactment of the Consumer Choice in Online Video
25 Act, the Commission shall promulgate regulations to im-

1 plement this section. The Commission shall not compel a
2 broadcast television licensee or television network to sell
3 its video programming to an online video distributor as
4 part of any rules adopted under this section.

5 **“SEC. 667. CONSUMER ACCESS TO CONTENT.**

6 “(a) IN GENERAL.—It shall be unlawful for a des-
7 ignated Internet service provider to engage in unfair meth-
8 ods of competition or unfair or deceptive acts or practices,
9 the purpose or effect of which are to hinder significantly
10 or to prevent an online video distributor from providing
11 video programming to a consumer.

12 “(b) REGULATIONS.—Not later than 1 year after the
13 date of enactment of the Consumer Choice in Online Video
14 Act, the Commission shall promulgate regulations to speci-
15 fy particular conduct that is prohibited by subsection (a).
16 The Commission’s regulations under this section shall en-
17 sure, at a minimum, that a designated Internet service
18 provider does not—

19 “(1) block, degrade, or otherwise impair any
20 content provided by an online video distributor;

21 “(2) unreasonably discriminate in transmitting
22 the content of an unaffiliated online video distributor
23 over the designated Internet service provider’s net-
24 work;

1 “(3) provide benefits in the transmission of the
2 video content of any company affiliated with the
3 Internet service provider through specialized services
4 or other means, or otherwise leverage its ownership
5 of the physical delivery architecture to benefit that
6 affiliated company in a way that has the effect of
7 harming competition from an unaffiliated online
8 video distributor; or

9 “(4) use billing systems, such as usage-based
10 billing, in a way that deters competition from unaf-
11 filiated online video distributors that may be in com-
12 petition with the Internet service provider’s or its af-
13 filiate’s services.

14 “(c) DEFINITION OF DESIGNATED INTERNET SERV-
15 ICE PROVIDER.—In this section, the term ‘designated
16 Internet service provider’ means an Internet service pro-
17 vider that is affiliated with a multichannel video program-
18 ming distributor, an online video distributor, or a video
19 programming vendor.

20 **“SEC. 668. BLOCKING CONSUMER ACCESS TO ONLINE**
21 **VIDEO PROGRAMMING.**

22 “(a) IN GENERAL.—No video programming vendor
23 that has made available its video programming to con-
24 sumers online may restrict access to that online video pro-
25 gramming for a subscriber of a multichannel video pro-

1 gramming distributor or its affiliate, or an online video
2 distributor or its affiliate, during the time that vendor is
3 involved in a dispute with such distributor.

4 “(b) EXCEPTION.—

5 “(1) IN GENERAL.—If a video programming
6 vendor requires a consumer to purchase access to its
7 online video programming through a contract with a
8 multichannel video programming distributor or an
9 online video distributor then that vendor may re-
10 strict access to that online video programming dur-
11 ing the time that the vendor is involved in a dispute
12 with that distributor.

13 “(2) LIMITATION.—The exception under this
14 subsection shall apply only to a subscriber to video
15 services provided by a multichannel video program-
16 ming distributor or an online video distributor in-
17 volved in the dispute and not to a subscriber to any
18 other service provided by that distributor or its affil-
19 iate.

20 “(c) REMEDIES.—

21 “(1) IN GENERAL.—Any entity that is ag-
22 grieved by a violation of this section may bring a
23 civil action in a United States district court or in
24 any other court of competent jurisdiction.

25 “(2) AUTHORITY.—The court may—

1 “(A) grant a temporary or final injunction
2 on such terms as it may deem reasonable to
3 prevent or restrain violations of this section;

4 “(B) award any damages it deems appro-
5 priate; and

6 “(C) direct the recovery of full costs, in-
7 cluding awarding reasonable attorneys’ fees to
8 an aggrieved party who prevails.

9 “(d) DEFINITIONS.—In this section:

10 “(1) AVAILABLE ONLINE.—The term ‘available
11 online’ means both available over the Internet and
12 through applications, software, or other similar serv-
13 ices on a mobile device.

14 “(2) DISPUTE.—The term ‘dispute’ includes—

15 “(A) a dispute over carriage of the pro-
16 gramming provided by a video programming
17 vendor to a multichannel video programming
18 distributor or online video distributor; and

19 “(B) a dispute over carriage of the pro-
20 gramming provided by a television licensee or
21 television network under section 325(b) of this
22 Act.

23 “(3) ENTITY THAT IS AGGRIEVED.—The term
24 ‘entity that is aggrieved’ includes—

1 “(A) a consumer whose access to online
2 video programming has been restricted in viola-
3 tion of this section; and

4 “(B) a multichannel video programming
5 distributor or its affiliate, or an online video
6 distributor or its affiliate, that has had a sub-
7 scriber’s access to online video programming re-
8 stricted in violation of this section.

9 **“SEC. 669. REMEDIES AND ADJUDICATIONS.**

10 “(a) ADJUDICATORY PROCEEDINGS.—Any online
11 video distributor aggrieved by conduct that it alleges con-
12 stitutes a violation of this part, or the regulations of the
13 Commission under this part, may commence an adjudica-
14 tory proceeding at the Commission.

15 “(b) REMEDIES.—

16 “(1) REMEDIES AUTHORIZED.—

17 “(A) INTERIM REMEDIES.—The Commis-
18 sion may authorize interim remedies during the
19 pendency of a complaint.

20 “(B) APPROPRIATE REMEDIES.—Upon
21 completion of an adjudicatory proceeding under
22 this section, the Commission shall have the
23 power to order appropriate remedies, including,
24 if necessary, the power to establish prices,

1 terms, and conditions of sale of programming to
2 the aggrieved online video distributor.

3 “(2) **ADDITIONAL REMEDIES.**—The remedies
4 provided in paragraph (1) are in addition to and not
5 in lieu of the remedies available under title V or any
6 other provision of this Act.

7 “(c) **PROCEDURES.**—In promulgating regulations to
8 implement this part, the Commission shall—

9 “(1) provide for an expedited review of any
10 complaint made under this part, including a proce-
11 dural timeline to conclude the review of each com-
12 plaint not later than 180 days after the date the
13 complaint is filed;

14 “(2) establish procedures for the Commission to
15 collect any data, including the right to obtain copies
16 of all contracts and documents reflecting any prac-
17 tice, understanding, arrangement, or agreement al-
18 leged to violate this part, as the Commission re-
19 quires to carry out this part; and

20 “(3) provide for penalties to be assessed against
21 any person filing a frivolous complaint under this
22 part.”.

23 **SEC. 202. FEDERAL COMMUNICATIONS COMMISSION RE-**
24 **PORT ON PEERING.**

25 (a) **IN GENERAL.**—The Commission shall study—

1 (1) the status of peering, transit, and inter-
2 connection agreements related to the transport and
3 delivery of content over the Internet and other IP-
4 based transmission paths; and

5 (2) what impact the agreements under para-
6 graph (1) or disputes about the agreements under
7 paragraph (1) have on consumers and competition
8 with respect to online video.

9 (b) REPORT.—Not later than 3 years after the date
10 of enactment of this Act, the Commission shall report the
11 findings of the study under subsection (a) to the Com-
12 mittee on Commerce, Science, and Transportation of the
13 Senate and the Committee on Energy and Commerce of
14 the House of Representatives.

15 **TITLE III—NON-FACILITIES**
16 **BASED MULTICHANNEL**
17 **VIDEO PROGRAMMING DIS-**
18 **TRIBUTORS**

19 **SEC. 301. NON-FACILITIES BASED MULTICHANNEL VIDEO**
20 **PROGRAMMING DISTRIBUTORS.**

21 Title VI of the Communications Act of 1934 (47
22 U.S.C. 521 et seq.), as amended by title II of this Act,
23 is further amended by adding at the end the following:

1 **“PART VII—NON-FACILITIES BASED MULTI-**
2 **CHANNEL VIDEO PROGRAMMING DISTRIBUTORS**

3 **TORS**
4 **“SEC. 671. DEFINITIONS.**

5 “In this part:

6 “(1) DESIGNATED MARKET AREA.—The term
7 ‘designated market area’ means a designated market
8 area as determined by Nielsen Media Research or by
9 any successor system of dividing broadcast television
10 licensees into local markets that the Commission de-
11 termines is equivalent to the designated market area
12 system created by Nielsen Media Research.

13 “(2) LOCAL COMMERCIAL TELEVISION STA-
14 TION.—The term ‘local commercial television station’
15 means, with respect to a subscriber to a non-facili-
16 ties based multichannel video programming dis-
17 tributor, any full power commercial television station
18 licensed and operating on a channel regularly as-
19 signed to a community in the same designated mar-
20 ket area as the subscriber.

21 “(3) LOCAL NONCOMMERCIAL EDUCATIONAL
22 TELEVISION STATION.—The term ‘local noncommer-
23 cial educational television station’ means, with re-
24 spect to a subscriber to a non-facilities based multi-
25 channel video programming distributor, a television
26 broadcast station that is a noncommercial edu-

1 cational broadcast station (as defined in section 397
2 of this Act), licensed and operating on a channel
3 regularly assigned to a community in the same des-
4 ignated market area as the subscriber.

5 “(4) NON-LOCAL COMMERCIAL TELEVISION
6 STATION.—The term ‘non-local commercial television
7 station’ means, with respect to a subscriber to a
8 non-facilities based multichannel video programming
9 distributor, any full power commercial television sta-
10 tion licensed and operating on a channel regularly
11 assigned to a community not located in the same
12 designated market area as the subscriber.

13 “(5) VIDEO PROGRAMMING.—The term ‘video
14 programming’ means programming provided by, or
15 generally considered comparable to programming
16 provided by, a television broadcast station, whether
17 or not such programming is delivered using a por-
18 tion of the electromagnetic frequency spectrum.

19 **“SEC. 672. RIGHT TO ELECT STATUS.**

20 “(a) IN GENERAL.—Any online video distributor that
21 provides programming in a manner reasonably equivalent
22 to a multichannel video programming distributor may
23 elect to be treated as a non-facilities based multichannel
24 video programming distributor under this part.

1 “(b) PROCEDURE FOR ELECTION.—Not later than 1
2 year after the date of enactment of the Consumer Choice
3 in Online Video Act, the Commission shall establish the
4 form and procedures for an online video distributor to
5 make the election permitted under subsection (a).

6 “(c) DEFINITION OF REASONABLY EQUIVALENT.—
7 For purposes of this section, the term ‘reasonably equiva-
8 lent’—

9 “(1) means providing multiple channels of video
10 programming that allow a subscriber to watch that
11 programming in a fashion comparable to the services
12 provided by multichannel video programming dis-
13 tributors, regardless of the means used to transmit
14 the multiple channels of video programming;

15 “(2) shall be based upon the subscriber experi-
16 ence in using the service provided by the online video
17 distributor, and not the underlying technology used
18 by the online video distributor; and

19 “(3) may include services that include the abil-
20 ity for a subscriber to record video programming
21 and watch recorded programming at another time if
22 the underlying video programming service being re-
23 corded conforms to this subsection.

1 **“SEC. 673. EFFECT OF ELECTION.**

2 “Any online video distributor that elects to be treated
3 as a non-facilities based multichannel video programming
4 distributor under section 672 shall have all of the rights
5 and responsibilities under this part.

6 **“SEC. 674. FEDERAL COMMUNICATIONS COMMISSION PRO-**
7 **CEEDING.**

8 “(a) IN GENERAL.—Not later than 1 year after the
9 date of enactment of the Consumer Choice in Online Video
10 Act, the Commission shall—

11 “(1) determine whether any of its rules and
12 regulations applicable to a multichannel video pro-
13 gramming distributor shall also be applied, in the
14 public interest, to a non-facilities based multichannel
15 video programming distributor;

16 “(2) require a non-facilities based multichannel
17 video programming distributor to comply with the
18 access to broadcast time requirement under section
19 312(a)(7) of this Act and the use of facilities re-
20 quirements under section 315 of this Act;

21 “(3) consider whether it is in the public interest
22 for the Commission to adopt minimum technical
23 quality standards for a non-facilities based multi-
24 channel video programming distributor; and

25 “(4) adopt any other rules the Commission con-
26 siders necessary to implement this part.

1 “(b) LIMITATION.—The Commission shall not re-
2 quire, as part of its rulemaking under subsection (a), a
3 non-facilities based multichannel video programming dis-
4 tributor to comply with the basic tier and tier buy-through
5 requirement under section 623(b)(7).

6 **“SEC. 675. PROGRAM ACCESS FOR NON-FACILITIES BASED**
7 **MULTICHANNEL VIDEO PROGRAMMING DIS-**
8 **TRIBUTORS.**

9 “(a) IN GENERAL.—The Commission shall prohibit
10 practices, understandings, arrangements, and activities,
11 including any exclusive contract for video programming
12 between a multichannel video programming distributor
13 and a video programming vendor or an online video dis-
14 tributor and a video programming vendor that prevents
15 a non-facilities based multichannel video programming
16 distributor from obtaining programming from any video
17 programming vendor.

18 “(b) SPECIFIC ACTIONS PROHIBITED.—

19 “(1) MATERIAL PARITY RESTRICTIONS.—A
20 multichannel video programming distributor or an
21 online video distributor may not include in any con-
22 tract with a video programming vendor any provi-
23 sion that requires the multichannel video program-
24 ming distributor or online video distributor, as appli-
25 cable, to be treated in material parity with other

1 similarly situated multichannel video programming
2 distributors or online video distributors with regard
3 to pricing or other terms and conditions of carriage
4 of video programming.

5 “(2) RETALIATION PROHIBITED.—A multi-
6 channel video programming distributor or an online
7 video distributor may not retaliate against—

8 “(A) any video programming vendor for
9 making its video programming available to a
10 non-facilities based multichannel video program-
11 ming distributor;

12 “(B) any non-facilities based multichannel
13 video programming distributor for obtaining
14 video programming from a video programming
15 vendor; or

16 “(C) any entity for exercising a right
17 under this Act.

18 **“SEC. 676. CONSUMER CHOICE IN VIDEO PROGRAMMING.**

19 “(a) IN GENERAL.—As part of the rulemaking re-
20 quired by section 674, the Commission shall determine
21 what, if any, additional steps it should take, in the public
22 interest, to allow a non-facilities based multichannel video
23 programming vendor to offer a subscriber greater choice
24 over the video programming that is part of the sub-
25 scribe’s service.

1 “(b) CONSIDERATIONS.—As part of the proceeding
2 under subsection (a), the Commission shall consider
3 whether to limit a video programming vendor’s use of cer-
4 tain contractual terms and conditions that disincentivize
5 or impede the ability of a subscriber to have greater choice
6 over the video programming packages or options the sub-
7 scriber can purchase from a non-facilities based multi-
8 channel video programming vendor.

9 “(c) LIMITATION.—The Commission shall not compel
10 a video programming vendor to sell its video programming
11 to a non-facilities based multichannel video programming
12 vendor as part of any rules adopted under this section.

13 **“SEC. 677. CARRIAGE OF COMMERCIAL BROADCAST TELE-**
14 **VISION SIGNALS.**

15 “(a) IN-MARKET BROADCAST TELEVISION SIG-
16 NALS.—

17 “(1) IN GENERAL.—At the request of a non-fa-
18 cilities based multichannel video programming dis-
19 tributor serving a designated market area, a local
20 commercial television broadcast station located in
21 that designated market area shall enter into negotia-
22 tions for carriage of its content over that distribu-
23 tor’s system.

24 “(2) GOOD FAITH REQUIREMENTS.—A local
25 commercial television station subject to the duty to

1 negotiate under paragraph (1) shall engage in good
2 faith negotiations for carriage of its signal in the
3 designated marketed area where the station is lo-
4 cated. The Commission shall define good faith for
5 purposes of this paragraph.

6 “(3) GOOD SIGNAL REQUIREMENTS.—A local
7 commercial television broadcast station being carried
8 by a non-facilities based multichannel video pro-
9 gramming distributor under this subsection shall be
10 responsible for delivering a good quality signal suit-
11 able for distribution by that distributor.

12 “(b) OUT-OF-MARKET BROADCAST TELEVISION SIG-
13 NALS.—

14 “(1) IN GENERAL.—In addition to any signal
15 carried under subsection (a), a non-facilities based
16 multichannel video programming distributor also
17 may deliver to a subscriber the signal of a non-local
18 commercial broadcast television station under this
19 subsection and subsection (c).

20 “(2) DEEMED SIGNIFICANTLY VIEWED.—

21 “(A) IN GENERAL.—A signal of a non-local
22 commercial broadcast television station deliv-
23 ered by a non-facilities based multichannel
24 video programming distributor under this sec-
25 tion shall be deemed to be significantly viewed

1 within the meaning of section 76.54 of title 47,
2 Code of Federal Regulations.

3 “(B) EXEMPTIONS.—The following regula-
4 tions shall not apply to a signal that is eligible
5 to be carried under this subsection:

6 “(i) Section 76.92 of title 47, Code of
7 Federal Regulations (relating to cable net-
8 work non-duplication).

9 “(ii) Section 76.122 of title 47, Code
10 of Federal Regulations (relating to satellite
11 network non-duplication).

12 “(iii) Section 76.101 of title 47, Code
13 of Federal Regulations (relating to cable
14 syndicated program exclusivity).

15 “(iv) Section 76.123 of title 47, Code
16 of Federal Regulations (relating to satellite
17 syndicated program exclusivity).

18 “(v) Section 76.111 of title 47, Code
19 of Federal Regulations (relating to cable
20 sports blackout).

21 “(vi) Section 76.127 of title 47, Code
22 of Federal Regulations (relating to satellite
23 sports blackout).

24 “(3) SUBSCRIBER PREFERENCE.—In delivering
25 a non-local commercial broadcast television station

1 signal to a subscriber under this subsection, and
2 consistent with subsection (c)—

3 “(A) the non-facilities based multichannel
4 video programming distributor shall provide the
5 subscriber with information regarding all sig-
6 nals that the distributor is capable of making
7 available to the subscriber under this sub-
8 section;

9 “(B) the non-facilities based multichannel
10 video programming distributor shall offer a sub-
11 scriber the option to choose each non-local com-
12 mercial television station signal the subscriber
13 wants to receive as part of the subscriber’s
14 service; and

15 “(C) if a subscriber does not make a choice
16 under subparagraph (B), the non-facilities
17 based multichannel video programming dis-
18 tributor shall take reasonable steps to deliver to
19 the subscriber the signal of each non-local com-
20 mercial television station that is closest in prox-
21 imity.

22 “(4) DEFINITION OF CLOSEST IN PROXIMITY.—

23 “(A) IN GENERAL.—For purposes of para-
24 graph (3), the term ‘closest in proximity’ means
25 the non-local commercial television station

1 whose community of license is the closest in dis-
2 tance to the subscriber's place of residence.

3 “(B) INCLUSIONS.—For purposes of para-
4 graph (3), the term ‘closest in proximity’ in-
5 cludes a non-local commercial television station
6 located in a State other than the State of the
7 subscriber's place of residence.

8 “(c) SUBSCRIBER RIGHTS.—

9 “(1) IN GENERAL.—Notwithstanding any other
10 provision of law, a subscriber to a non-facilities
11 based multichannel video programming distributor
12 shall be entitled to receive programming from not
13 more than 2 commercial television stations that are
14 affiliates of the same television network and not
15 more than 1 of the affiliates may be located in a
16 designated market area where the subscriber does
17 not reside.

18 “(2) LOCAL SIGNAL NOT REQUIRED.—A non-fa-
19 cilities based multichannel video programming dis-
20 tributor shall not be required to carry the signal of
21 a local commercial television station under sub-
22 section (a) as a condition to carrying and delivering
23 to a consumer a non-local commercial broadcast tele-
24 vision signal under subsection (b).

1 “(3) MOBILE PLATFORMS.—A subscriber shall
2 have the right to view any commercial television sta-
3 tion signal provided to that subscriber under this
4 section at any time and on any device, including a
5 mobile device and any other device not permanently
6 located in the subscriber’s place of residence, that a
7 non-facilities based multichannel video programming
8 distributor has made capable of delivering the dis-
9 tributor’s service to that subscriber.

10 “(d) LIMITS IN EXISTING PROGRAMMING AND AF-
11 FILIATION CONTRACTS.—

12 “(1) IN GENERAL.—It shall be unlawful for any
13 entity selling or otherwise providing video program-
14 ming to be transmitted by a local or non-local com-
15 mercial television station to include in any contract,
16 agreement, understanding, or arrangement with that
17 station a limitation on the ability of the station to
18 comply with the requirements of this section.

19 “(2) EXISTING CONTRACTS.—

20 “(A) IN GENERAL.—Subject to subpara-
21 graph (B), nothing in this section shall affect
22 any contract, understanding, or arrangement
23 that was entered into on or before December 1,
24 2013.

1 “(B) EXCEPTIONS.—No contract, under-
2 standing, or arrangement entered into on or be-
3 fore December 1, 2013, that violates this sec-
4 tion shall be enforceable by any person after the
5 date that is 3 years after the date of enactment
6 of the Consumer Choice in Online Video Act.

7 “(C) LIMITATION ON RENEWALS.—A con-
8 tract, understanding, or arrangement that was
9 entered into on or before December 1, 2013,
10 but that is renewed or extended after the date
11 of enactment of the Consumer Choice in Online
12 Video Act shall not be exempt under subpara-
13 graph (A).

14 **“SEC. 678. CARRIAGE OF NONCOMMERCIAL, EDUCATIONAL,**
15 **AND INFORMATIONAL PROGRAMMING.**

16 “(a) LOCAL NONCOMMERCIAL EDUCATIONAL TELE-
17 VISION STATIONS.—

18 “(1) IN GENERAL.—If a non-facilities based
19 multichannel video programming distributor elects to
20 carry a local commercial broadcast television signal
21 under section 677(a), that non-facilities based multi-
22 channel video programming distributor shall carry,
23 upon request, the signal of a local noncommercial
24 educational television station located in the same
25 designated market area of the local commercial tele-

1 vision broadcast station being carried under that
2 section.

3 “(2) CARRIAGE ONLY IN LOCAL MARKET.—

4 “(A) IN GENERAL.—A local noncommercial
5 educational television station shall be entitled to
6 carriage only in the designated market area to
7 which that station is assigned.

8 “(B) SYSTEMS OF NONCOMMERCIAL EDU-
9 CATIONAL BROADCAST STATIONS.—In the case
10 of a system of 3 or more noncommercial edu-
11 cational broadcast stations licensed to a single
12 State, public agency, or political, educational, or
13 special purpose subdivision of a State, the car-
14 riage right under this subsection shall apply to
15 any designated market area in the State where
16 that system is located.

17 “(3) GOOD SIGNAL REQUIREMENTS.—A local
18 noncommercial educational television station that re-
19 quests to be carried by a non-facilities based multi-
20 channel video programming distributor under para-
21 graph (1) shall be responsible for delivering a good
22 quality signal suitable for distribution by that dis-
23 tributor.

24 “(b) CHANNEL RESERVATION REQUIREMENTS.—

1 “(1) IN GENERAL.—The Commission shall re-
2 quire a non-facilities based multichannel video pro-
3 gramming distributor to reserve a portion of its
4 channel capacity, equal to not less than 3.5 percent
5 or not more than 7 percent, exclusively for non-
6 commercial programming of an educational or infor-
7 mational nature.

8 “(2) USE OF UNUSED CHANNEL CAPACITY.—A
9 non-facilities based multichannel video programming
10 distributor may use for any purpose any unused
11 channel capacity required to be reserved under this
12 subsection pending the actual use of that channel
13 capacity for noncommercial programming of an edu-
14 cational or informational nature.

15 “(3) PRICES, TERMS, AND CONDITIONS.—A
16 non-facilities based multichannel video programming
17 distributor shall meet the requirements of this sub-
18 section by making channel capacity available to each
19 national educational programming supplier, upon
20 reasonable prices, terms, and conditions, as deter-
21 mined by the Commission under paragraph (5).

22 “(4) EDITORIAL CONTROL.—A non-facilities
23 based multichannel video programming distributor
24 may not exercise any editorial control over any video
25 programming provided under this subsection.

1 “(5) LIMITATIONS.—In determining reasonable
2 prices under paragraph (3)—

3 “(A) the Commission, among other consid-
4 erations, shall consider the nonprofit character
5 of the programming provider and any Federal
6 funds used to support that programming;

7 “(B) the Commission shall not permit the
8 prices to exceed, for any channel capacity made
9 available under this subsection, 50 percent of
10 the total direct costs of making the channel ca-
11 pacity available; and

12 “(C) in the calculation of total direct costs,
13 the Commission shall exclude—

14 “(i) the marketing costs, general ad-
15 ministrative costs, and similar overhead
16 costs of the non-facilities based multi-
17 channel video programming distributor;
18 and

19 “(ii) the revenue that the non-facili-
20 ties based multichannel video programming
21 distributor might have obtained by making
22 that channel capacity available to a video
23 programming vendor.

24 “(6) DEFINITION OF CHANNEL CAPACITY.—In
25 this section, the term ‘channel capacity’ means the

1 total number of channels of video programming pro-
2 vided to a subscriber by the non-facilities based mul-
3 tichannel video programming distributor, without re-
4 gard to whether that non-facilities based multi-
5 channel video programming distributor uses a por-
6 tion of the electromagnetic frequency spectrum to
7 deliver that channel of video programming.

8 **“SEC. 679. LICENSING.**

9 “(a) IN GENERAL.—A non-facilities based multi-
10 channel video programming distributor that is carrying
11 any broadcast television station signal under section 677
12 or section 678 shall—

13 “(1) be considered to be a cable system under
14 section 111 of title 17, United States Code; and

15 “(2) be subject to—

16 “(A) the statutory licensing requirements
17 set forth in sections 111(c) and 111(e) of that
18 title;

19 “(B) payment of the fees required by sec-
20 tion 111(d) of that title; and

21 “(C) the penalties under section 111 of
22 that title for failure to pay the fees required by
23 that section.

24 “(b) LOCAL SERVICE AREA OF A PRIMARY TRANS-
25 MITTER.—For purposes of the application of section 111

1 of title 17, United States Code, to a non-facilities based
2 multichannel video programming distributor under this
3 section—

4 “(1) a local commercial television station’s local
5 service area of a primary transmitter shall consist of
6 the entirety of that station’s designated market area;
7 and

8 “(2) a local noncommercial educational tele-
9 vision station’s local service area of a primary trans-
10 mitter shall consist of the entirety of that station’s
11 designated market area.

12 **“SEC. 680. EXCLUSION FROM FRANCHISE REQUIREMENTS.**

13 “A non-facilities based multichannel video program-
14 ming distributor shall not be subject to local franchising
15 requirements under section 621 of this Act or otherwise
16 be regulated by any franchising authority.

17 **“SEC. 681. PRIVACY PROTECTIONS.**

18 “(a) IN GENERAL.—A non-facilities based multi-
19 channel video programming distributor shall comply with
20 the privacy protections applicable to satellite services as
21 set forth in section 338(i) of this Act and the Commis-
22 sion’s regulations under that section.

23 “(b) PENALTIES.—Any non-facilities based multi-
24 channel video programming distributor that fails to com-
25 ply with the provisions under section 338(i) of this Act,

1 and the Commission's regulations under that section, shall
2 be subject to the penalties set forth in section 338(i)(7)
3 of this Act.

4 **“SEC. 682. CONSUMER EQUIPMENT.**

5 “Not later than 1 year after the date of enactment
6 of the Consumer Choice in Online Video Act, the Commis-
7 sion shall commence a proceeding to consider whether to
8 adopt rules—

9 “(1) to establish standards to ensure that serv-
10 ices and platforms provided by a non-facilities based
11 multichannel video programming distributor can
12 interconnect and interface with—

13 “(A) any Internet-capable television and
14 television receiver; and

15 “(B) any other Internet-capable consumer
16 electronics equipment that facilitates the view-
17 ing of video programming on a television re-
18 ceiver; and

19 “(2) to promote the commercial availability of
20 other devices that will permit a consumer to access
21 non-facilities based multichannel video programming
22 distribution services and platforms over equipment
23 of the consumer's choice.

1 **“SEC. 683. EFFECTIVE COMPETITION STANDARD.**

2 “The number of households subscribing to a non-fa-
3 cilities based multichannel video programming distributor
4 in a franchise area under this part shall not be considered
5 for purposes of a determination by the Commission of
6 whether a cable system is subject to effective competition
7 in that franchise area under section 623 of this Act.

8 **“SEC. 684. REMEDIES AND ADJUDICATIONS.**

9 “(a) **ADJUDICATORY PROCEEDINGS.**—Any entity ag-
10 grieved by conduct that it alleges constitutes a violation
11 of this part, or the regulations of the Commission under
12 this part, may commence an adjudicatory proceeding at
13 the Commission.

14 “(b) **REMEDIES.**—

15 “(1) **REMEDIES AUTHORIZED.**—

16 “(A) **INTERIM REMEDIES.**—The Commis-
17 sion may authorize interim remedies during the
18 pendency of a complaint.

19 “(B) **APPROPRIATE REMEDIES.**—Upon
20 completion of an adjudicatory proceeding under
21 this section, the Commission shall have the
22 power to order appropriate remedies, including,
23 if necessary, the power to establish prices,
24 terms, and conditions of sale of programming
25 to, or prices, terms, and conditions of the trans-
26 port of the content of, the aggrieved entity.

1 “(2) ADDITIONAL REMEDIES.—The remedies
2 provided in paragraph (1) are in addition to and not
3 in lieu of the remedies available under title V or any
4 other provision of this Act.

5 “(c) PROCEDURES.—In promulgating regulations to
6 implement this part, the Commission shall—

7 “(1) provide for an expedited review of any
8 complaint made under this part, including a proce-
9 dural timeline to conclude the review of each com-
10 plaint not later than 180 days after the date the
11 complaint is filed;

12 “(2) establish procedures for the Commission to
13 collect any data, including the right to obtain copies
14 of all contracts and documents reflecting any prac-
15 tice, understanding, arrangement, or agreement al-
16 leged to violate this part, as the Commission re-
17 quires to carry out this part; and

18 “(3) provide for penalties to be assessed against
19 any person filing a frivolous complaint under this
20 part.”.

21 **TITLE IV—MISCELLANEOUS**

22 **SEC. 401. TECHNICAL AND CONFORMING AMENDMENTS.**

23 Section 602(20) of title VI of the Communications
24 Act of 1934 (47 U.S.C. 522(20)) is amended by inserting

1 “unless expressly provided otherwise,” before “the term
2 ‘video programming’ means”.

3 **SEC. 402. PROVISIONS AS COMPLEMENTARY.**

4 The provisions of this Act are in addition to, and
5 shall not affect the operation of, other Federal, State, or
6 local laws or regulations regulating billing for Internet
7 service, online video distribution, or non-facilities based
8 multichannel video programming distributors, except if the
9 provisions of any other law are inconsistent with the provi-
10 sions of this Act, the provisions of this Act shall be con-
11 trolling.

12 **SEC. 403. APPLICABILITY OF ANTITRUST LAWS.**

13 Nothing in this Act or the amendments made by this
14 Act shall be construed to alter or restrict in any manner
15 the applicability of any Federal or State antitrust law.

16 **SEC. 404. SEVERABILITY.**

17 If any provision of this Act, an amendment made by
18 this Act, or the application of such provision or amend-
19 ment to any person or circumstance is held invalid, the
20 remainder of this Act, the amendments made by this Act,
21 and the application of such provision or amendment to any
22 person or circumstance shall not be affected thereby.