

113TH CONGRESS
1ST SESSION

S. 1680

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

NOVEMBER 12, 2013

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

A BILL

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”.

6 (b) **TABLE OF CONTENTS.**—The table of contents of
7 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.

1 SEC. 2. FINDINGS; STATEMENT OF POLICY.

2 (a) FINDINGS.—Congress makes the following find-
3 ings:

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

10 (2) Evolving consumer demand, improving tech-
11 nology, and increased choice of viewing devices can
12 make online video distributors stronger competitors
13 to multichannel video programming distributors for
14 an increasing number of viewers.

15 (3) Unlike traditional multichannel video pro-
16 gramming distributors, online video distributors do
17 not own distribution facilities and are dependent

1 upon Internet service providers (many of which are
2 affiliated with multichannel video programming dis-
3 tributors) for the delivery of their content to viewers.

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

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

21 (6) Similarly, multichannel video programming
22 distributors who are affiliated with Internet service
23 providers, online video distributors who are affiliated
24 with Internet service providers, or video program-
25 ming vendors with significant market power have the

1 incentive and ability to use their competitive position
2 to engage in unfair methods of competition meant to
3 hinder competition from online video distributors.

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

10 (8) Some traditional multichannel video pro-
11 gramming distributors have admitted to taking steps
12 to limit the ability of online video distributors to ac-
13 cess content or otherwise effectively compete in the
14 video distribution marketplace.

15 (9) Traditional multichannel video program-
16 ming distributors and even other online video dis-
17 tributors have the incentive and ability to convince
18 their video programming vendor partners not to sell
19 content to online video distributors or to sell content
20 to them at competitively disadvantageous prices,
21 terms, and conditions. They also have the incentive
22 and ability to retaliate against a video programming
23 vendor that sells content to an online video dis-
24 tributor.

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

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

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

15 (B) promoting a diversity of views provided
16 through multiple technology media;

17 (C) promoting the development of online
18 video distribution platforms and fair competi-
19 tion amongst all distributors and vendors of
20 video programming;

21 (D) preventing Internet service providers
22 that are affiliated with a multichannel video
23 programming distributor or an online video dis-
24 tributor from discriminating against unaffili-

1 ated content and distributors in its exercise of
2 control over consumers' broadband connections;

3 (E) encouraging and protecting consumer
4 choice and innovation in online video distribu-
5 tion, including with respect to distribution of
6 broadcast television content; and

7 (F) providing consumers with the ability to
8 choose to receive local broadcast television con-
9 tent from various markets.

10 (b) STATEMENT OF POLICY.—It is the policy of the
11 Congress that—

12 (1) consumers should be fully informed about
13 the terms and conditions related to the purchase of
14 Internet service from an Internet service provider;

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

21 (3) the availability of a diversity of views and
22 information should be promoted to the public
23 through various video programming distribution
24 platforms, including those providing service by uti-

1 lizing the Internet or other IP-based transmission
2 paths;

3 (4) existing multichannel video programming
4 distributors and video programming vendors should
5 not have or exercise undue market power with re-
6 spect to online video distributors; and

7 (5) Internet service providers should not hinder
8 through anticompetitive behavior the ability of online
9 video distributors to provide services to their sub-
10 sscribers.

11 **SEC. 3. DEFINITIONS.**

12 In this Act:

13 (1) BROADCAST TELEVISION LICENSEE.—The
14 term “broadcast television licensee” means the li-
15 censee of a full-power television station or a low-
16 power television station.

17 (2) COMMISSION.—The term “Commission”
18 means the Federal Communications Commission.

19 (3) INTERNET SERVICE PROVIDER.—The term
20 “Internet service provider” means any provider of
21 Internet service to an end user, regardless of the
22 technology used to provide that service.

23 (4) NON-FACILITIES BASED MULTICHANNEL
24 VIDEO PROGRAMMING DISTRIBUTOR.—The term
25 “non-facilities based multichannel video program-

1 ming distributor” means an online video distributor
2 that has made the election permitted under section
3 672.

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

8 (A) has its principal place of business in
9 the United States; and

10 (B) distributes video programming in the
11 United States by means of the Internet or an-
12 other IP-based transmission path provided by a
13 person other than that entity.

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

20 (7) USAGE-BASED BILLING.—

21 (A) IN GENERAL.—The term “usage-based
22 billing” means a system of charging a consumer
23 for Internet service or the use of an IP-based
24 transmission path provided by an Internet serv-
25 ice provider or other entity that is based upon

1 the amount of data the consumer uses over a
2 period of time.

3 (B) INCLUSIONS.—The term “usage-based
4 billing” includes—

5 (i) imposing a cap on the amount of
6 data the consumer can use based on the
7 price the consumer is willing to pay for
8 service;

9 (ii) charging a consumer varying
10 amounts each billing cycle based on a per-
11 megabyte, per-gigabyte, or similar rate;
12 and

13 (iii) establishing different tiers of
14 prices based on the amount of data the
15 consumer elects to consume in a billing
16 cycle, whether or not the amount acts as a
17 cap on the consumer’s service.

18 (8) VIDEO PROGRAMMING.—The term “video
19 programming” means programming provided by, or
20 generally considered comparable to programming
21 provided by, a television broadcast station, whether
22 or not such programming is delivered using a por-
23 tion of the electromagnetic frequency spectrum.

24 (9) VIDEO PROGRAMMING VENDOR.—The term
25 “video programming vendor” means a person en-

1 gaged in the production, creation, or wholesale dis-
 2 tribution of video programming for sale.

3 **TITLE I—BILLING FOR**
 4 **INTERNET SERVICE**

5 **SEC. 101. CONSUMER PROTECTIONS.**

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

8 (1) by inserting before section 701 the fol-
 9 lowing:

10 **“PART I—GENERAL PROVISIONS”;**

11 and

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

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

14 **“SEC. 721. CONSUMER PROTECTIONS.**

15 **“(a) GENERAL DISCLOSURES.—**

16 **“(1) IN GENERAL.—**Not later than 1 year after
 17 the date of enactment of the Consumer Choice in
 18 Online Video Act, the Commission shall promulgate
 19 regulations requiring Internet service providers to
 20 disclose certain information that will assist a con-
 21 sumer in making an informed decision about the
 22 purchase of Internet service.

23 **“(2) REQUIREMENTS.—**The regulations under
 24 paragraph (1) shall require, at a minimum, that—

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

6 “(B) an Internet service provider provide a
7 plain language disclosure to a consumer prior to
8 the purchase of Internet service that includes—

9 “(i) the length of the contract;

10 “(ii) the terms of renewal;

11 “(iii) a projected monthly bill, includ-
12 ing all fees and costs associated with the
13 Internet service;

14 “(iv) if the consumer is receiving pro-
15 motional pricing for service, a projected
16 monthly bill for service once that pro-
17 motional pricing period has ended;

18 “(v) the procedures to cancel the
19 Internet service, including any policies re-
20 lated to early termination fees;

21 “(vi) the average actual data trans-
22 mission speeds, including both upload and
23 download speeds;

24 “(vii) any policies or practices regard-
25 ing network management, including lim-

1 iting service speeds or prioritizing content;
2 and

3 “(viii) any other information that the
4 Commission considers necessary for the
5 consumer to make an informed decision
6 about the purchase of the Internet service.

7 “(b) SPECIAL DISCLOSURES FOR USAGE-BASED
8 BILLING.—

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

13 “(2) PLAIN LANGUAGE DISCLOSURE OF TERMS
14 AND CONDITIONS.—

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

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

23 “(i) an explanation of how usage-
24 based billing will be applied to the con-
25 sumer;

1 “(ii) a complete list of the tiers of
2 service;

3 “(iii) comparisons of how much data
4 of varying types, including video program-
5 ming in standard and high-definition, the
6 consumer would be able to consume each
7 month under each tier;

8 “(iv) the procedure for providing the
9 consumer the notifications under para-
10 graph (4);

11 “(v) an explanation of the con-
12 sequences, if any, to a consumer for ex-
13 ceeding the consumer’s data usage amount,
14 including any fees that may be charged
15 and any options a consumer may have to
16 avoid those fees;

17 “(vi) if the Internet service provider
18 provides a tool for a consumer to monitor
19 the consumer’s data usage, a description of
20 the tool and how to use it;

21 “(vii) the appeals procedure under
22 paragraph (5); and

23 “(viii) any other information that the
24 Commission considers necessary to protect

1 consumers in the use of usage-based billing
2 by Internet service providers.

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

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

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

16 “(4) NOTIFICATIONS.—

17 “(A) IN GENERAL.—An Internet service
18 provider that uses usage-based billing shall pro-
19 vide to a consumer notification of the amount
20 of data the consumer has remaining at the mid-
21 point of a billing cycle, and at any other incre-
22 ments the Commission finds are in the public
23 interest.

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

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

11 “(c) TRUTH-IN-BILLING FOR INTERNET SERV-
12 ICES.—

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

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

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

1 parties to conduct the certification of a data usage
2 monitoring system under this section.

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

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

11 “(1) while accessing the Internet;

12 “(2) while using hardware, software, or applica-
13 tions that consume data transmitted over the Inter-
14 net; or

15 “(3) while accessing another IP-based trans-
16 mission path provided by an Internet service pro-
17 vider or another entity.

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

21 “(e) RULEMAKING.—

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

1 “(2) EXEMPTION.—The regulations under para-
 2 graph (1) may provide an exemption from the regu-
 3 lations for an Internet service provider serving
 4 20,000 or fewer subscribers.

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

9 **TITLE II—ONLINE VIDEO**
 10 **DISTRIBUTION ALTERNATIVES**

11 **SEC. 201. PROTECTIONS FOR ONLINE VIDEO DISTRIBU-**
 12 **TORS.**

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

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

17 **“SEC. 661. DEFINITIONS.**

18 “In this part:

19 “(1) AFFILIATED WITH.—For purposes of sec-
 20 tions 663, 664, and 667, the term ‘affiliated with’
 21 means that the Internet service provider, multi-
 22 channel video programming distributor, online video
 23 distributor, or video programming vendor, as appro-
 24 priate, directly or indirectly, is owned or controlled
 25 by, owns or controls, or is under common ownership

1 or control with another Internet service provider,
 2 multichannel video programming distributor, online
 3 video distributor, or video programming vendor, as
 4 appropriate. For purposes of this paragraph, the
 5 term ‘own’ means to own an equity interest, or the
 6 equivalent thereof, of more than 10 percent.

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

13 **“SEC. 662. ENHANCEMENT OF CONSUMER CHOICE IN ON-**
 14 **LINE VIDEO.**

15 “The purposes of this part are—

16 “(1) to promote the public interest, conven-
 17 ience, and necessity by increasing competition, inno-
 18 vation, and diversity in the video programming mar-
 19 ketplace;

20 “(2) to enhance consumer access to online video
 21 distribution platforms and consumer choice in online
 22 video programming; and

23 “(3) to increase the availability of video pro-
 24 gramming on all platforms, including Internet-based
 25 platforms.

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

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

11 “(b) REGULATIONS.—

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

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

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

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

22 “(i) unduly or improperly influencing
23 the decision of any other entity to make a
24 television set or other customer premises
25 equipment incompatible with the services
26 provided by any online video distributor;

1 “(ii) unduly or improperly using its
2 own customer premises equipment to dis-
3 criminate against, or otherwise favor its
4 own services over, the service provided by
5 any online video distributor;

6 “(iii) unduly or improperly influencing
7 the decision of any other entity to sell, or
8 the prices, terms, and conditions of the
9 sale of, video programming to any online
10 video distributor; and

11 “(iv) providing an incentive to any en-
12 tity in an attempt to deny video program-
13 ming to an online video distributor.

14 “(c) EXCEPTIONS.—

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

17 “(A) imposing reasonable requirements for
18 creditworthiness, offering of service, and finan-
19 cial stability and standards regarding character
20 and technical quality;

21 “(B) establishing different prices, terms,
22 and conditions to take into account economies
23 of scale, cost savings, or other direct and legiti-
24 mate economic benefits reasonably attributable

1 to the number of subscribers served by the on-
2 line video distributor; and

3 “(C) imposing reasonable requirements to
4 ensure the security of the video programming
5 being provided to the online video distributor,
6 including means to authenticate the right of the
7 distributor’s subscribers to access the program-
8 ming.

9 “(2) LIMITATIONS.—An exception under para-
10 graph (1)—

11 “(A) shall be related to the substantial,
12 real, and legitimate business concerns of the
13 designated distributor; and

14 “(B) may not be used in an anticompeti-
15 tive manner.

16 “(d) DEFINITION OF DESIGNATED DISTRIBUTOR.—

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

19 “(A) a multichannel video programming
20 distributor affiliated with an Internet service
21 provider;

22 “(B) an online video distributor affiliated
23 with an Internet service provider; or

24 “(C) a video programming vendor with sig-
25 nificant market power.

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

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

6 “(a) PROHIBITIONS.—It shall be unlawful for a mul-
7 tichannel video programming distributor or an online video
8 distributor—

9 “(1) to include in a contract with any video
10 programming vendor a provision that serves as a
11 substantial disincentive for the video programming
12 vendor to sell its content to an online video dis-
13 tributor;

14 “(2) to use any practice, understanding, ar-
15 rangement, or other agreement with a video pro-
16 gramming vendor that has the effect of causing the
17 video programming vendor to face a substantial dis-
18 incentive to sell its content to an online video dis-
19 tributor; or

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

1 “(b) CONTRACT LIMITATIONS.—A multichannel video
2 programming distributor or an online video distributor
3 may not include in any contract with a video programming
4 vendor any provision that requires the multichannel video
5 programming distributor or online video distributor, as ap-
6 plicable, to be treated in material parity with other simi-
7 larly situated multichannel video programming distribu-
8 tors or online video distributors with regard to pricing or
9 other terms and conditions of carriage of video program-
10 ming.

11 “(c) RETALIATION PROHIBITED.—A multichannel
12 video programming distributor or an online video dis-
13 tributor may not retaliate against—

14 “(1) any video programming vendor for making
15 its video programming available to an online video
16 distributor;

17 “(2) any online video distributor for obtaining
18 video programming from a video programming ven-
19 dor; or

20 “(3) any entity for exercising a right under this
21 Act.

22 “(d) EXCEPTION.—Notwithstanding subsection (a)
23 or any other provision of this part, a multichannel video
24 programming distributor or an online video distributor
25 may enter into an exclusive contract with a video program-

1 ming vendor for video programming provided by that video
2 programming vendor if the contract does not exceed the
3 limits or violate the prohibitions under subsection (e).

4 “(e) PUBLIC INTEREST LIMITATIONS ON EXCLUSIVE
5 CONTRACTS.—

6 “(1) IN GENERAL.—The Commission shall
7 adopt limits on—

8 “(A) the ability of a multichannel video
9 programming distributor or an online video dis-
10 tributor to enter into any contract for video
11 programming that includes an exclusivity provi-
12 sion that substantially deters the development
13 of an online video distribution alternative; and

14 “(B) the ability of an online video dis-
15 tributor to enter into any contract for video
16 programming that includes an exclusivity provi-
17 sion that substantially deters the development
18 of an online video distribution alternative.

19 “(2) PROHIBITED CONTRACTS.—The Commis-
20 sion shall prohibit—

21 “(A) a multichannel video programming
22 distributor from entering into an exclusive con-
23 tract with a video programming vendor that is
24 affiliated with the multichannel video program-
25 ming distributor; and

1 “(B) an online video distributor from en-
2 tering into an exclusive contract with a video
3 programming vendor that is affiliated with the
4 online video distributor.

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

7 “(A) IN GENERAL.—The Commission shall
8 establish criteria for determining whether an
9 exclusive contract for programming substan-
10 tially deters the development of an online video
11 distribution alternative.

12 “(B) CONSIDERATIONS.—In establishing
13 the criteria under subparagraph (A), the Com-
14 mission shall consider the totality of the cir-
15 cumstances surrounding the contract, includ-
16 ing—

17 “(i) the duration of the exclusivity pe-
18 riod;

19 “(ii) the effect of the exclusive con-
20 tract on capital investment in the produc-
21 tion and distribution of video program-
22 ming;

23 “(iii) the time period after initial
24 first-day distribution of video programming
25 to consumers when the multichannel video

1 programming distributor or the online
2 video distributor is granted exclusive ac-
3 cess to distribute the programming; and

4 “(iv) the likelihood that the exclusive
5 contract will enhance diversity in program-
6 ming on video distribution platforms.

7 “(f) ONLINE DISTRIBUTION OF CONTENT BY A
8 VIDEO PROGRAMMING VENDOR.—

9 “(1) IN GENERAL.—A multichannel video pro-
10 gramming distributor or an online video distributor
11 may not enter into an agreement that limits or pro-
12 hibits a video programming vendor from making its
13 video content available to consumers free over the
14 Internet.

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

18 “(g) PRICES, TERMS, AND CONDITIONS FOR PRO-
19 GRAMMING.—A video programming vendor may establish
20 different prices, terms, and conditions for its video pro-
21 gramming if, taking into account economies of scale, cost
22 savings, or other direct and legitimate economic benefits
23 that are reasonably attributable to the number of sub-
24 scribers served by an online video distributor, the prices,
25 terms, and conditions—

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

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

5 “(h) REGULATIONS.—

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

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

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

15 “(B) complaint and contract review proce-
16 dures to facilitate the Commission’s ability to
17 determine if a multichannel video programming
18 distributor, a video programming vendor, or an
19 online video distributor has violated this sec-
20 tion.

21 “(i) EXISTING CONTRACTS.—

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

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

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

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

14 “(a) IN GENERAL.—Not later than 1 year after the
15 date of enactment of the Consumer Choice in Online Video
16 Act, the Commission shall commence a proceeding to de-
17 termine the additional steps it should take, in the public
18 interest, to foster the ability of online video distributors
19 to gain access to video programming, offer innovative serv-
20 ices, and compete with multichannel video programming
21 distributors.

22 “(b) LIMITATION.—The Commission shall not compel
23 a video programming vendor to sell its video programming
24 to an online video distributor as part of any rules adopted
25 under this section.

1 **“SEC. 666. BROADCAST TELEVISION LICENSEES AND TELE-**
2 **VISION NETWORKS.**

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

5 “(1) to refuse to negotiate with an online video
6 distributor for carriage of the broadcast television li-
7 censee’s or the television network’s content, as appli-
8 cable; or

9 “(2) to place any restriction on an online video
10 distributor’s ability to make the broadcast television
11 licensee’s or the television network’s content, as ap-
12 plicable, available on any platform or device that is
13 capable of delivering the online video distributor’s
14 content to its subscribers.

15 “(b) REFUSAL TO NEGOTIATE; COMMISSION DETER-
16 MINATION.—The Commission shall determine what con-
17 stitutes a refusal to negotiate under subsection (a). The
18 Commission may require a broadcast television licensee or
19 television network to engage in good faith negotiations
20 with an online video distributor. The Commission shall de-
21 fine good faith for purposes of this subsection.

22 “(c) ONLINE RETRANSMISSION OF IN-MARKET
23 BROADCAST SIGNALS.—

24 “(1) SIGNAL PARITY.—

25 “(A) IN GENERAL.—It shall be unlawful
26 for a broadcast television licensee to provide an

1 over-the-air signal that differs from a retrans-
2 mission of that signal provided to a multi-
3 channel video programming distributor or an
4 online video distributor.

5 “(B) EXCEPTION.—Subparagraph (A)
6 shall not apply if—

7 “(i) the variation in the 2 signals con-
8 sists of a change to 1 or more commercial
9 advertisements of not more than 60 sec-
10 onds in duration embedded in a broadcast
11 television licensee’s signal; and

12 “(ii) the broadcast television licensee
13 is not using the variation under clause (i)
14 to increase the overall amount of adver-
15 tising time in its over-the-air signal.

16 “(2) ANTENNA RENTAL SERVICES.—

17 “(A) IN GENERAL.—Notwithstanding any
18 other provision of this Act, except subparagraph
19 (C), an entity may rent to a consumer access
20 to an individual antenna to view over-the-air
21 broadcast television signals transmitted from
22 that antenna—

23 “(i) directly to the consumer over the
24 Internet or another IP-based transmission
25 path; or

1 “(ii) to an individual data storage sys-
2 tem, including an online remote data stor-
3 age system, for recording and then made
4 accessible to that consumer through the
5 Internet or another IP-based transmission
6 path.

7 “(B) RETRANSMISSION CONSENT FEES.—
8 An antenna rental service described under sub-
9 paragraph (A) shall be exempt from paying re-
10 transmission consent fees under section 325 of
11 this Act to any broadcast television station
12 whose signal is received by the individual an-
13 tenna and retransmitted to the subscriber.

14 “(C) CONDITIONS OF RENTAL SERVICES.—
15 An antenna rental service described under sub-
16 paragraph (A) shall—

17 “(i) only provide a subscriber with ac-
18 cess to over-the-air broadcast television sig-
19 nals received by an individual antenna lo-
20 cated in the same designated market area
21 (as defined in section 671 of this Act) in
22 which that subscriber resides; and

23 “(ii) make available to a subscriber all
24 over-the-air broadcast signals that are re-
25 ceived by the individual antenna rented by

1 that subscriber, unless a signal is of such
2 poor quality that it cannot be transmitted
3 to the consumer in a reasonably viewable
4 form.

5 “(d) LIMITS IN EXISTING PROGRAMMING AND AF-
6 FILIATION CONTRACTS.—

7 “(1) IN GENERAL.—It shall be unlawful for any
8 entity selling or otherwise providing video program-
9 ming to be transmitted by a broadcast television li-
10 censee or television network to include in any con-
11 tract, agreement, understanding, or arrangement
12 with that licensee or network a limitation on the
13 ability of that licensee or network to comply with the
14 requirements of this section.

15 “(2) EXISTING CONTRACTS.—

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

21 “(B) EXCEPTIONS.—No contract, under-
22 standing, or arrangement entered into on or be-
23 fore December 1, 2013, that violates this sec-
24 tion shall be enforceable by any person after the

1 date that is 3 years after the date of enactment
2 of the Consumer Choice in Online Video Act.

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

10 “(e) REGULATIONS.—Not later than 1 year after the
11 date of enactment of the Consumer Choice in Online Video
12 Act, the Commission shall promulgate regulations to im-
13 plement this section. The Commission shall not compel a
14 broadcast television licensee or television network to sell
15 its video programming to an online video distributor as
16 part of any rules adopted under this section.

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

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

24 “(b) REGULATIONS.—Not later than 1 year after the
25 date of enactment of the Consumer Choice in Online Video

1 Act, the Commission shall promulgate regulations to speci-
2 fy particular conduct that is prohibited by subsection (a).
3 The Commission’s regulations under this section shall en-
4 sure, at a minimum, that a designated Internet service
5 provider does not—

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

8 “(2) unreasonably discriminate in transmitting
9 the content of an unaffiliated online video distributor
10 over the designated Internet service provider’s net-
11 work;

12 “(3) provide benefits in the transmission of the
13 video content of any company affiliated with the
14 Internet service provider through specialized services
15 or other means, or otherwise leverage its ownership
16 of the physical delivery architecture to benefit that
17 affiliated company in a way that has the effect of
18 harming competition from an unaffiliated online
19 video distributor; or

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

1 “(2) LIMITATION.—The exception under this
2 subsection shall apply only to a subscriber to video
3 services provided by a multichannel video program-
4 ming distributor or an online video distributor in-
5 volved in the dispute and not to a subscriber to any
6 other service provided by that distributor or its affil-
7 iate.

8 “(c) REMEDIES.—

9 “(1) IN GENERAL.—Any entity that is ag-
10 grievied by a violation of this section may bring a
11 civil action in a United States district court or in
12 any other court of competent jurisdiction.

13 “(2) AUTHORITY.—The court may—

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

17 “(B) award any damages it deems appro-
18 priate; and

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

22 “(d) DEFINITIONS.—In this section:

23 “(1) AVAILABLE ONLINE.—The term ‘available
24 online’ means both available over the Internet and

1 through applications, software, or other similar serv-
2 ices on a mobile device.

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

4 “(A) a dispute over carriage of the pro-
5 gramming provided by a video programming
6 vendor to a multichannel video programming
7 distributor or online video distributor; and

8 “(B) a dispute over carriage of the pro-
9 gramming provided by a television licensee or
10 television network under section 325(b) of this
11 Act.

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

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

17 “(B) a multichannel video programming
18 distributor or its affiliate, or an online video
19 distributor or its affiliate, that has had a sub-
20 scriber’s access to online video programming re-
21 stricted in violation of this section.

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

23 “(a) ADJUDICATORY PROCEEDINGS.—Any online
24 video distributor aggrieved by conduct that it alleges con-
25 stitutes a violation of this part, or the regulations of the

1 Commission under this part, may commence an adjudica-
2 tory proceeding at the Commission.

3 “(b) REMEDIES.—

4 “(1) REMEDIES AUTHORIZED.—

5 “(A) INTERIM REMEDIES.—The Commis-
6 sion may authorize interim remedies during the
7 pendency of a complaint.

8 “(B) APPROPRIATE REMEDIES.—Upon
9 completion of an adjudicatory proceeding under
10 this section, the Commission shall have the
11 power to order appropriate remedies, including,
12 if necessary, the power to establish prices,
13 terms, and conditions of sale of programming to
14 the aggrieved online video distributor.

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

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

21 “(1) provide for an expedited review of any
22 complaint made under this part, including a proce-
23 dural timeline to conclude the review of each com-
24 plaint not later than 180 days after the date the
25 complaint is filed;

1 “(2) establish procedures for the Commission to
2 collect any data, including the right to obtain copies
3 of all contracts and documents reflecting any prac-
4 tice, understanding, arrangement, or agreement al-
5 leged to violate this part, as the Commission re-
6 quires to carry out this part; and

7 “(3) provide for penalties to be assessed against
8 any person filing a frivolous complaint under this
9 part.”.

10 **SEC. 202. FEDERAL COMMUNICATIONS COMMISSION RE-**
11 **PORT ON PEERING.**

12 (a) IN GENERAL.—The Commission shall study—

13 (1) the status of peering, transit, and inter-
14 connection agreements related to the transport and
15 delivery of content over the Internet and other IP-
16 based transmission paths; and

17 (2) what impact the agreements under para-
18 graph (1) or disputes about the agreements under
19 paragraph (1) have on consumers and competition
20 with respect to online video.

21 (b) REPORT.—Not later than 3 years after the date
22 of enactment of this Act, the Commission shall report the
23 findings of the study under subsection (a) to the Com-
24 mittee on Commerce, Science, and Transportation of the

1 Senate and the Committee on Energy and Commerce of
2 the House of Representatives.

3 **TITLE III—NON-FACILITIES**
4 **BASED MULTICHANNEL**
5 **VIDEO PROGRAMMING DIS-**
6 **TRIBUTORS**

7 **SEC. 301. NON-FACILITIES BASED MULTICHANNEL VIDEO**
8 **PROGRAMMING DISTRIBUTORS.**

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

12 **“PART VII—NON-FACILITIES BASED MULTI-**
13 **CHANNEL VIDEO PROGRAMMING DISTRIBUTU-**
14 **TORS**

15 **“SEC. 671. DEFINITIONS.**

16 “In this part:

17 “(1) DESIGNATED MARKET AREA.—The term
18 ‘designated market area’ means a designated market
19 area as determined by Nielsen Media Research or by
20 any successor system of dividing broadcast television
21 licensees into local markets that the Commission de-
22 termines is equivalent to the designated market area
23 system created by Nielsen Media Research.

24 “(2) LOCAL COMMERCIAL TELEVISION STA-
25 TION.—The term ‘local commercial television station’

1 means, with respect to a subscriber to a non-facili-
2 ties based multichannel video programming dis-
3 tributor, any full power commercial television station
4 licensed and operating on a channel regularly as-
5 signed to a community in the same designated mar-
6 ket area as the subscriber.

7 “(3) LOCAL NONCOMMERCIAL EDUCATIONAL
8 TELEVISION STATION.—The term ‘local noncommer-
9 cial educational television station’ means, with re-
10 spect to a subscriber to a non-facilities based multi-
11 channel video programming distributor, a television
12 broadcast station that is a noncommercial edu-
13 cational broadcast station (as defined in section 397
14 of this Act), licensed and operating on a channel
15 regularly assigned to a community in the same des-
16 ignated market area as the subscriber.

17 “(4) NON-LOCAL COMMERCIAL TELEVISION
18 STATION.—The term ‘non-local commercial television
19 station’ means, with respect to a subscriber to a
20 non-facilities based multichannel video programming
21 distributor, any full power commercial television sta-
22 tion licensed and operating on a channel regularly
23 assigned to a community not located in the same
24 designated market area as the subscriber.

1 “(5) VIDEO PROGRAMMING.—The term ‘video
2 programming’ means programming provided by, or
3 generally considered comparable to programming
4 provided by, a television broadcast station, whether
5 or not such programming is delivered using a por-
6 tion of the electromagnetic frequency spectrum.

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

8 “(a) IN GENERAL.—Any online video distributor that
9 provides programming in a manner reasonably equivalent
10 to a multichannel video programming distributor may
11 elect to be treated as a non-facilities based multichannel
12 video programming distributor under this part.

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

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

21 “(1) means providing multiple channels of video
22 programming that allow a subscriber to watch that
23 programming in a fashion comparable to the services
24 provided by multichannel video programming dis-

1 tributors, regardless of the means used to transmit
2 the multiple channels of video programming;

3 “(2) shall be based upon the subscriber experi-
4 ence in using the service provided by the online video
5 distributor, and not the underlying technology used
6 by the online video distributor; and

7 “(3) may include services that include the abil-
8 ity for a subscriber to record video programming
9 and watch recorded programming at another time if
10 the underlying video programming service being re-
11 corded conforms to this subsection.

12 **“SEC. 673. EFFECT OF ELECTION.**

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

17 **“SEC. 674. FEDERAL COMMUNICATIONS COMMISSION PRO-**
18 **CEEDING.**

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

22 “(1) determine whether any of its rules and
23 regulations applicable to a multichannel video pro-
24 gramming distributor shall also be applied, in the

1 public interest, to a non-facilities based multichannel
2 video programming distributor;

3 “(2) require a non-facilities based multichannel
4 video programming distributor to comply with the
5 access to broadcast time requirement under section
6 312(a)(7) of this Act and the use of facilities re-
7 quirements under section 315 of this Act;

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

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

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

19 **“SEC. 675. PROGRAM ACCESS FOR NON-FACILITIES BASED**
20 **MULTICHANNEL VIDEO PROGRAMMING DIS-**
21 **TRIBUTORS.**

22 “(a) IN GENERAL.—The Commission shall prohibit
23 practices, understandings, arrangements, and activities,
24 including any exclusive contract for video programming
25 between a multichannel video programming distributor

1 and a video programming vendor or an online video dis-
2 tributor and a video programming vendor that prevents
3 a non-facilities based multichannel video programming
4 distributor from obtaining programming from any video
5 programming vendor.

6 “(b) SPECIFIC ACTIONS PROHIBITED.—

7 “(1) MATERIAL PARITY RESTRICTIONS.—A
8 multichannel video programming distributor or an
9 online video distributor may not include in any con-
10 tract with a video programming vendor any provi-
11 sion that requires the multichannel video program-
12 ming distributor or online video distributor, as appli-
13 cable, to be treated in material parity with other
14 similarly situated multichannel video programming
15 distributors or online video distributors with regard
16 to pricing or other terms and conditions of carriage
17 of video programming.

18 “(2) RETALIATION PROHIBITED.—A multi-
19 channel video programming distributor or an online
20 video distributor may not retaliate against—

21 “(A) any video programming vendor for
22 making its video programming available to a
23 non-facilities based multichannel video program-
24 ming distributor;

1 “(B) any non-facilities based multichannel
2 video programming distributor for obtaining
3 video programming from a video programming
4 vendor; or

5 “(C) any entity for exercising a right
6 under this Act.

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

8 “(a) IN GENERAL.—As part of the rulemaking re-
9 quired by section 674, the Commission shall determine
10 what, if any, additional steps it should take, in the public
11 interest, to allow a non-facilities based multichannel video
12 programming vendor to offer a subscriber greater choice
13 over the video programming that is part of the sub-
14 scriber’s service.

15 “(b) CONSIDERATIONS.—As part of the proceeding
16 under subsection (a), the Commission shall consider
17 whether to limit a video programming vendor’s use of cer-
18 tain contractual terms and conditions that disincentivize
19 or impede the ability of a subscriber to have greater choice
20 over the video programming packages or options the sub-
21 scriber can purchase from a non-facilities based multi-
22 channel video programming vendor.

23 “(c) LIMITATION.—The Commission shall not compel
24 a video programming vendor to sell its video programming

1 to a non-facilities based multichannel video programming
2 vendor as part of any rules adopted under this section.

3 **“SEC. 677. CARRIAGE OF COMMERCIAL BROADCAST TELE-**
4 **VISION SIGNALS.**

5 “(a) IN-MARKET BROADCAST TELEVISION SIG-
6 NALS.—

7 “(1) IN GENERAL.—At the request of a non-fa-
8 cilities based multichannel video programming dis-
9 tributor serving a designated market area, a local
10 commercial television broadcast station located in
11 that designated market area shall enter into negotia-
12 tions for carriage of its content over that distribu-
13 tor’s system.

14 “(2) GOOD FAITH REQUIREMENTS.—A local
15 commercial television station subject to the duty to
16 negotiate under paragraph (1) shall engage in good
17 faith negotiations for carriage of its signal in the
18 designated marketed area where the station is lo-
19 cated. The Commission shall define good faith for
20 purposes of this paragraph.

21 “(3) GOOD SIGNAL REQUIREMENTS.—A local
22 commercial television broadcast station being carried
23 by a non-facilities based multichannel video pro-
24 gramming distributor under this subsection shall be

1 responsible for delivering a good quality signal suit-
2 able for distribution by that distributor.

3 “(b) OUT-OF-MARKET BROADCAST TELEVISION SIG-
4 NALS.—

5 “(1) IN GENERAL.—In addition to any signal
6 carried under subsection (a), a non-facilities based
7 multichannel video programming distributor also
8 may deliver to a subscriber the signal of a non-local
9 commercial broadcast television station under this
10 subsection and subsection (c).

11 “(2) DEEMED SIGNIFICANTLY VIEWED.—

12 “(A) IN GENERAL.—A signal of a non-local
13 commercial broadcast television station deliv-
14 ered by a non-facilities based multichannel
15 video programming distributor under this sec-
16 tion shall be deemed to be significantly viewed
17 within the meaning of section 76.54 of title 47,
18 Code of Federal Regulations.

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

22 “(i) Section 76.92 of title 47, Code of
23 Federal Regulations (relating to cable net-
24 work non-duplication).

1 “(ii) Section 76.122 of title 47, Code
2 of Federal Regulations (relating to satellite
3 network non-duplication).

4 “(iii) Section 76.101 of title 47, Code
5 of Federal Regulations (relating to cable
6 syndicated program exclusivity).

7 “(iv) Section 76.123 of title 47, Code
8 of Federal Regulations (relating to satellite
9 syndicated program exclusivity).

10 “(v) Section 76.111 of title 47, Code
11 of Federal Regulations (relating to cable
12 sports blackout).

13 “(vi) Section 76.127 of title 47, Code
14 of Federal Regulations (relating to satellite
15 sports blackout).

16 “(3) SUBSCRIBER PREFERENCE.—In delivering
17 a non-local commercial broadcast television station
18 signal to a subscriber under this subsection, and
19 consistent with subsection (c)—

20 “(A) the non-facilities based multichannel
21 video programming distributor shall provide the
22 subscriber with information regarding all sig-
23 nals that the distributor is capable of making
24 available to the subscriber under this sub-
25 section;

1 “(B) the non-facilities based multichannel
2 video programming distributor shall offer a sub-
3 scription the option to choose each non-local com-
4 mercial television station signal the subscriber
5 wants to receive as part of the subscriber’s
6 service; and

7 “(C) if a subscriber does not make a choice
8 under subparagraph (B), the non-facilities
9 based multichannel video programming dis-
10 tributor shall take reasonable steps to deliver to
11 the subscriber the signal of each non-local com-
12 mercial television station that is closest in prox-
13 imity.

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

15 “(A) IN GENERAL.—For purposes of para-
16 graph (3), the term ‘closest in proximity’ means
17 the non-local commercial television station
18 whose community of license is the closest in dis-
19 tance to the subscriber’s place of residence.

20 “(B) INCLUSIONS.—For purposes of para-
21 graph (3), the term ‘closest in proximity’ in-
22 cludes a non-local commercial television station
23 located in a State other than the State of the
24 subscriber’s place of residence.

25 “(c) SUBSCRIBER RIGHTS.—

1 “(1) IN GENERAL.—Notwithstanding any other
2 provision of law, a subscriber to a non-facilities
3 based multichannel video programming distributor
4 shall be entitled to receive programming from not
5 more than 2 commercial television stations that are
6 affiliates of the same television network and not
7 more than 1 of the affiliates may be located in a
8 designated market area where the subscriber does
9 not reside.

10 “(2) LOCAL SIGNAL NOT REQUIRED.—A non-fa-
11 cilities based multichannel video programming dis-
12 tributor shall not be required to carry the signal of
13 a local commercial television station under sub-
14 section (a) as a condition to carrying and delivering
15 to a consumer a non-local commercial broadcast tele-
16 vision signal under subsection (b).

17 “(3) MOBILE PLATFORMS.—A subscriber shall
18 have the right to view any commercial television sta-
19 tion signal provided to that subscriber under this
20 section at any time and on any device, including a
21 mobile device and any other device not permanently
22 located in the subscriber’s place of residence, that a
23 non-facilities based multichannel video programming
24 distributor has made capable of delivering the dis-
25 tributor’s service to that subscriber.

1 “(d) LIMITS IN EXISTING PROGRAMMING AND AF-
2 FILIATION CONTRACTS.—

3 “(1) IN GENERAL.—It shall be unlawful for any
4 entity selling or otherwise providing video program-
5 ming to be transmitted by a local or non-local com-
6 mercial television station to include in any contract,
7 agreement, understanding, or arrangement with that
8 station a limitation on the ability of the station to
9 comply with the requirements of this section.

10 “(2) EXISTING CONTRACTS.—

11 “(A) IN GENERAL.—Subject to subpara-
12 graph (B), nothing in this section shall affect
13 any contract, understanding, or arrangement
14 that was entered into on or before December 1,
15 2013.

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

22 “(C) LIMITATION ON RENEWALS.—A con-
23 tract, understanding, or arrangement that was
24 entered into on or before December 1, 2013,
25 but that is renewed or extended after the date

1 of enactment of the Consumer Choice in Online
2 Video Act shall not be exempt under subpara-
3 graph (A).

4 **“SEC. 678. CARRIAGE OF NONCOMMERCIAL, EDUCATIONAL,**
5 **AND INFORMATIONAL PROGRAMMING.**

6 “(a) LOCAL NONCOMMERCIAL EDUCATIONAL TELE-
7 VISION STATIONS.—

8 “(1) IN GENERAL.—If a non-facilities based
9 multichannel video programming distributor elects to
10 carry a local commercial broadcast television signal
11 under section 677(a), that non-facilities based multi-
12 channel video programming distributor shall carry,
13 upon request, the signal of a local noncommercial
14 educational television station located in the same
15 designated market area of the local commercial tele-
16 vision broadcast station being carried under that
17 section.

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

19 “(A) IN GENERAL.—A local noncommercial
20 educational television station shall be entitled to
21 carriage only in the designated market area to
22 which that station is assigned.

23 “(B) SYSTEMS OF NONCOMMERCIAL EDU-
24 CATIONAL BROADCAST STATIONS.—In the case
25 of a system of 3 or more noncommercial edu-

1 cational broadcast stations licensed to a single
2 State, public agency, or political, educational, or
3 special purpose subdivision of a State, the car-
4 riage right under this subsection shall apply to
5 any designated market area in the State where
6 that system is located.

7 “(3) GOOD SIGNAL REQUIREMENTS.—A local
8 noncommercial educational television station that re-
9 quests to be carried by a non-facilities based multi-
10 channel video programming distributor under para-
11 graph (1) shall be responsible for delivering a good
12 quality signal suitable for distribution by that dis-
13 tributor.

14 “(b) CHANNEL RESERVATION REQUIREMENTS.—

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

22 “(2) USE OF UNUSED CHANNEL CAPACITY.—A
23 non-facilities based multichannel video programming
24 distributor may use for any purpose any unused
25 channel capacity required to be reserved under this

1 subsection pending the actual use of that channel
2 capacity for noncommercial programming of an edu-
3 cational or informational nature.

4 “(3) PRICES, TERMS, AND CONDITIONS.—A
5 non-facilities based multichannel video programming
6 distributor shall meet the requirements of this sub-
7 section by making channel capacity available to each
8 national educational programming supplier, upon
9 reasonable prices, terms, and conditions, as deter-
10 mined by the Commission under paragraph (5).

11 “(4) EDITORIAL CONTROL.—A non-facilities
12 based multichannel video programming distributor
13 may not exercise any editorial control over any video
14 programming provided under this subsection.

15 “(5) LIMITATIONS.—In determining reasonable
16 prices under paragraph (3)—

17 “(A) the Commission, among other consid-
18 erations, shall consider the nonprofit character
19 of the programming provider and any Federal
20 funds used to support that programming;

21 “(B) the Commission shall not permit the
22 prices to exceed, for any channel capacity made
23 available under this subsection, 50 percent of
24 the total direct costs of making the channel ca-
25 pacity available; and

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

3 “(i) the marketing costs, general ad-
4 ministrative costs, and similar overhead
5 costs of the non-facilities based multi-
6 channel video programming distributor;
7 and

8 “(ii) the revenue that the non-facili-
9 ties based multichannel video programming
10 distributor might have obtained by making
11 that channel capacity available to a video
12 programming vendor.

13 “(6) DEFINITION OF CHANNEL CAPACITY.—In
14 this section, the term ‘channel capacity’ means the
15 total number of channels of video programming pro-
16 vided to a subscriber by the non-facilities based mul-
17 tichannel video programming distributor, without re-
18 gard to whether that non-facilities based multi-
19 channel video programming distributor uses a por-
20 tion of the electromagnetic frequency spectrum to
21 deliver that channel of video programming.

22 **“SEC. 679. LICENSING.**

23 “(a) IN GENERAL.—A non-facilities based multi-
24 channel video programming distributor that is carrying

1 any broadcast television station signal under section 677
2 or section 678 shall—

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

5 “(2) be subject to—

6 “(A) the statutory licensing requirements
7 set forth in sections 111(c) and 111(e) of that
8 title;

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

11 “(C) the penalties under section 111 of
12 that title for failure to pay the fees required by
13 that section.

14 “(b) LOCAL SERVICE AREA OF A PRIMARY TRANS-
15 MITTER.—For purposes of the application of section 111
16 of title 17, United States Code, to a non-facilities based
17 multichannel video programming distributor under this
18 section—

19 “(1) a local commercial television station’s local
20 service area of a primary transmitter shall consist of
21 the entirety of that station’s designated market area;
22 and

23 “(2) a local noncommercial educational tele-
24 vision station’s local service area of a primary trans-

1 mitter shall consist of the entirety of that station’s
2 designated market area.

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

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

8 **“SEC. 681. PRIVACY PROTECTIONS.**

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

14 “(b) PENALTIES.—Any non-facilities based multi-
15 channel video programming distributor that fails to com-
16 ply with the provisions under section 338(i) of this Act,
17 and the Commission’s regulations under that section, shall
18 be subject to the penalties set forth in section 338(i)(7)
19 of this Act.

20 **“SEC. 682. CONSUMER EQUIPMENT.**

21 “Not later than 1 year after the date of enactment
22 of the Consumer Choice in Online Video Act, the Commis-
23 sion shall commence a proceeding to consider whether to
24 adopt rules—

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

5 “(A) any Internet-capable television and
6 television receiver; and

7 “(B) any other Internet-capable consumer
8 electronics equipment that facilitates the view-
9 ing of video programming on a television re-
10 ceiver; and

11 “(2) to promote the commercial availability of
12 other devices that will permit a consumer to access
13 non-facilities based multichannel video programming
14 distribution services and platforms over equipment
15 of the consumer’s choice.

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

17 “The number of households subscribing to a non-fa-
18 cilities based multichannel video programming distributor
19 in a franchise area under this part shall not be considered
20 for purposes of a determination by the Commission of
21 whether a cable system is subject to effective competition
22 in that franchise area under section 623 of this Act.

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

24 “(a) ADJUDICATORY PROCEEDINGS.—Any entity ag-
25 grieved by conduct that it alleges constitutes a violation

1 of this part, or the regulations of the Commission under
2 this part, may commence an adjudicatory proceeding at
3 the Commission.

4 “(b) REMEDIES.—

5 “(1) REMEDIES AUTHORIZED.—

6 “(A) INTERIM REMEDIES.—The Commis-
7 sion may authorize interim remedies during the
8 pendency of a complaint.

9 “(B) APPROPRIATE REMEDIES.—Upon
10 completion of an adjudicatory proceeding under
11 this section, the Commission shall have the
12 power to order appropriate remedies, including,
13 if necessary, the power to establish prices,
14 terms, and conditions of sale of programming
15 to, or prices, terms, and conditions of the trans-
16 port of the content of, the aggrieved entity.

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

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

23 “(1) provide for an expedited review of any
24 complaint made under this part, including a proce-
25 dural timeline to conclude the review of each com-

1 plaint not later than 180 days after the date the
2 complaint is filed;

3 “(2) establish procedures for the Commission to
4 collect any data, including the right to obtain copies
5 of all contracts and documents reflecting any prac-
6 tice, understanding, arrangement, or agreement al-
7 leged to violate this part, as the Commission re-
8 quires to carry out this part; and

9 “(3) provide for penalties to be assessed against
10 any person filing a frivolous complaint under this
11 part.”.

12 **TITLE IV—MISCELLANEOUS**

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

14 Section 602(20) of title VI of the Communications
15 Act of 1934 (47 U.S.C. 522(20)) is amended by inserting
16 “unless expressly provided otherwise,” before “the term
17 ‘video programming’ means”.

18 **SEC. 402. PROVISIONS AS COMPLEMENTARY.**

19 The provisions of this Act are in addition to, and
20 shall not affect the operation of, other Federal, State, or
21 local laws or regulations regulating billing for Internet
22 service, online video distribution, or non-facilities based
23 multichannel video programming distributors, except if the
24 provisions of any other law are inconsistent with the provi-

1 sions of this Act, the provisions of this Act shall be con-
2 trolling.

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

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

7 **SEC. 404. SEVERABILITY.**

8 If any provision of this Act, an amendment made by
9 this Act, or the application of such provision or amend-
10 ment to any person or circumstance is held invalid, the
11 remainder of this Act, the amendments made by this Act,
12 and the application of such provision or amendment to any
13 person or circumstance shall not be affected thereby.

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