

111TH CONGRESS
2ND SESSION

S. _____

To encourage continued investment and innovation in communications networks by establishing a new, competition analysis-based regulatory framework for the Federal Communications Commission.

IN THE SENATE OF THE UNITED STATES

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

A BILL

To encourage continued investment and innovation in communications networks by establishing a new, competition analysis-based regulatory framework for the Federal Communications Commission.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Freedom For Con-
5 sumer Choice Act”.

6 **SEC. 2. DEFINITIONS.**

7 (a) IN GENERAL.—In this Act, the following defini-
8 tions shall apply:

1 (1) ANTITRUST LAWS.—The term “antitrust
2 laws” includes—

3 (A) the Act entitled “An Act to protect
4 trade and commerce against unlawful restraints
5 and monopolies”, approved July 2, 1890;

6 (B) sections 73 through 76 of an Act enti-
7 tled “An Act to reduce taxation, to provide rev-
8 enue for the Government, and for other pur-
9 poses”, approved August 27, 1894;

10 (C) the Act entitled “An Act to amend sec-
11 tions 73 and 76 of the Act of August 27, 1894,
12 entitled An Act to reduce taxation, to provide
13 revenue for the Government, and for other pur-
14 poses”, approved February 12, 1913; and

15 (D) the Act entitled “An Act to supple-
16 ment existing laws against unlawful restraints
17 and monopolies, and for other purposes”, ap-
18 proved October 15, 1914.

19 (2) COMMISSION.—The term “Commission”
20 means the Federal Communications Commission.

21 (3) ELECTRONIC COMMUNICATIONS NET-
22 WORK.—The term “electronic communications net-
23 work” means—

24 (A) a transmission system; and

1 (B) where applicable, switching or routing
2 equipment and other facilities which permit the
3 conveyance of signals by wire, radio, optical, or
4 other electromagnetic means, over satellite,
5 cable, or other facilities, whether fixed or mo-
6 bile, to the extent that such facilities are used
7 for the purpose of transmitting signals, irre-
8 spective of the type of information conveyed.

9 (4) ELECTRONIC COMMUNICATIONS SERVICE.—
10 The term “electronic communications service”
11 means a service normally provided for remuneration
12 which consists wholly or mainly in the conveyance of
13 signals on electronic communications networks.

14 (5) UNFAIR METHODS OF COMPETITION.—

15 (A) IN GENERAL.—The term “unfair
16 methods of competition” means—

17 (i) practices that present a threat of
18 abuse of significant and nontransitory
19 market power as determined by the Com-
20 mission consistent with the application of
21 jurisprudential principles grounded in mar-
22 ket-oriented competition analysis such as
23 those commonly employed by the Federal
24 Trade Commission and the United States
25 Department of Justice in enforcing the

1 Federal Trade Commission Act (15 U.S.C.
2 41 et seq.) and the antitrust laws of the
3 United States; and

4 (ii) with respect to interconnection,
5 practices that pose a substantial and non-
6 transitory risk to consumer welfare by ma-
7 terially and substantially impeding the
8 interconnection of public communications
9 facilities and services in circumstances in
10 which the Commission determines that
11 marketplace competition is not sufficient to
12 adequately protect consumer welfare.

13 (B) INTERCONNECTION DETERMINA-
14 TION.—In making any determination under
15 subparagraph (A)(ii), the Commission shall con-
16 sider whether requiring interconnection will ad-
17 versely affect investment in facilities and inno-
18 vation in services.

19 (b) COMMON TERMINOLOGY.—Except as otherwise
20 provided in subsection (a), terms used in this Act shall
21 have the same meaning given to such terms under sections
22 3, 254, and 602 of the Communications Act of 1934 (47
23 U.S.C. 153, 254, and 522).

24 **SEC. 3. FINDINGS AND POLICY.**

25 (a) FINDINGS.—Congress finds that—

1 (1) in 1996, Congress enacted and the Presi-
2 dent signed into law the Telecommunications Act of
3 1996, which was intended to provide a procom-
4 petitive, deregulatory framework designed to facili-
5 tate the continuing transition to a more competitive
6 communications market;

7 (2) since the enactment and implementation of
8 the Telecommunications Act of 1996, rapid advances
9 in technology and marketplace developments have
10 further increased the existence of competition in all
11 communications markets and the likelihood of the
12 continuing existence and increasing intensity of com-
13 petition;

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

20 (4) unnecessary regulation regarding protection
21 of consumers and enhancement of consumer welfare
22 deters—

23 (A) investment in new and advanced com-
24 munications facilities; and

1 (B) the development of new services and
2 applications.

3 (b) POLICY.—It shall be the policy of the United
4 States Government—

5 (1) to promote the widespread availability of
6 communications services for all Americans in order
7 to assure that the American people have access to a
8 diversity of information sources necessary for demo-
9 cratic government;

10 (2) to promote the integrity, reliability, and ef-
11 ficiency of communications facilities in a manner
12 consistent with—

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

15 (B) innovation in communications services
16 and applications;

17 (3) that economic regulation of communications
18 markets should be presumed unnecessary absent cir-
19 cumstances that demonstrate the existence of a sig-
20 nificant threat of abuse of market power that poses
21 a substantial and nontransitory risk to consumer
22 welfare; and

23 (4) that in order to ensure that the actions of
24 the Federal Communications Commission are con-
25 sistent with the findings in subsection (a), and to ef-

1 or unfair or deceptive acts or practices as described
2 in subsection (a).

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

8 (3) LIMITATION.—

9 (A) IN GENERAL.—Notwithstanding para-
10 graph (1) and except as provided in subpara-
11 graph (B), the Commission shall have no au-
12 thority to issue rules that declare unlawful an
13 act or practice on the grounds that such act or
14 practice is an unfair method of competition or
15 unfair or deceptive act or practice.

16 (B) EXCEPTION.—The Commission may
17 declare an act or practice unlawful if the Com-
18 mission determines, based on a showing of clear
19 and convincing evidence presented in a rule-
20 making proceeding, that—

21 (i) marketplace competition is not suf-
22 ficient to adequately protect consumer wel-
23 fare; and

24 (ii) such act or practice—

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

3 (II) is not—

4 (aa) avoidable by consumers
5 themselves; and

6 (bb) outweighed by counter-
7 vailing benefits to consumers or
8 to competition.

9 (4) SUNSET OF RULES.—Any rule promulgated
10 under paragraph (1) shall terminate on the day that
11 is 5 years after the date on which such rule became
12 effective unless the Commission, in a proceeding in
13 which the public is afforded notice and an oppor-
14 tunity to comment, makes an affirmative determina-
15 tion, based on a showing of clear and convincing evi-
16 dence presented in such proceeding, that the rule
17 continues to be necessary because marketplace com-
18 petition is not sufficient to adequately protect con-
19 sumers from substantial injury which is not—

20 (A) avoidable by consumers themselves;
21 and

22 (B) outweighed by countervailing benefits
23 to consumers or to competition.

24 **SEC. 5. ACTIONS FOR COMPLAINTS.**

25 The Commission shall have authority—

1 (1) to hear complaints from any party injured
2 by a violation of the prohibitions established under
3 section 4; and

4 (2) to award damages to such injured party if
5 the Commission determines that a violation of that
6 section has occurred.

7 **SEC. 6. TIME LIMITS ON COMMISSION ACTION.**

8 (a) 120-DAY LIMIT FOR APPLICATIONS WITH SUP-
9 PORTING TESTIMONY.—If an application is filed with the
10 Commission under this or any other Act, and such applica-
11 tion is accompanied by supporting testimony from the ap-
12 plicant or a detailed summary of that testimony, together
13 with exhibits, if any, the Commission shall issue a decision
14 on such application not later than 120 days after the ap-
15 plication is deemed complete (as the Commission shall, by
16 rule, determine).

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

1 (c) WAIVER.—The time limits specified in subsections
2 (a) and (b)—

3 (1) may be waived by an applicant; and

4 (2) if so waived, shall not be binding on the
5 Commission.

6 (d) EXTENSION OF TIME.—The Commission, in par-
7 ticular cases, under extraordinary conditions, and after
8 notice and a hearing at which the existence of such condi-
9 tions are established, may extend the time limits specified
10 in subsections (a) and (b) for a period not to exceed an
11 additional 90 days.

12 **SEC. 7. ADDITIONAL POWERS OF THE COMMISSION.**

13 The Commission shall have authority—

14 (1) to research and investigate, from time to
15 time, the organization, business, conduct, or prac-
16 tices of—

17 (A) any person or entity engaged in, or
18 whose business affects, the operation of elec-
19 tronic communications networks; and

20 (B) any provider of electronic communica-
21 tions service;

22 (2) to require any person or entity that owns or
23 operates an electronic communications networks, or
24 any class of such persons or entities, to file, in such
25 form, in such manner, and at such time as the Com-

1 mission may determine, reports or answers to spe-
2 cific questions regarding the organization, business,
3 conduct, or practices of such person or entity, such
4 reports or answers shall be in writing and made
5 under penalty of perjury;

6 (3) to make public, from time to time, in such
7 form, and in such manner as the Commission deter-
8 mines—

9 (A) such portions of the information ob-
10 tained under paragraph (1) as are in the public
11 interest; and

12 (B) the reports and answers described
13 under paragraph (2), except that the Commis-
14 sion—

15 (i) may not make public any trade se-
16 cret or any privileged or confidential com-
17 mercial or financial information obtained
18 from such reports or answers; and

19 (ii) may disclose such trade secrets or
20 information to officers and employees of an
21 appropriate Federal or State law enforce-
22 ment agency upon prior certification by an
23 officer of that Federal or State law en-
24 forcement agency that such trade secrets
25 or information shall—

1 (I) be maintained in confidence;
2 and
3 (II) be used only for official law
4 enforcement purposes; and
5 (4) to make annual and special reports to Con-
6 gress and to submit with such reports recommenda-
7 tions for additional legislation.