

AMENDMENT TO SUBTITLE L

OFFERED BY _____

Add at the end the following:

1 **SEC. 3___. REMOVAL OF BARRIERS TO ENTRY.**

2 Section 253 of the Communications Act of 1934 (47
3 U.S.C. 253) is amended to read as follows:

4 **“SEC. 253. REMOVAL OF BARRIERS TO ENTRY.**

5 “(a) IN GENERAL.—No State or local statute or reg-
6 ulation, or other State or local legal requirement, may pro-
7 hibit or have the effect of prohibiting the ability of any
8 entity to provide or enhance any interstate or intrastate
9 telecommunications service.

10 “(b) PLACEMENT, CONSTRUCTION, OR MODIFICA-
11 TION OF TELECOMMUNICATIONS SERVICE FACILITIES.—

12 “(1) PROHIBITION ON UNREASONABLE DIS-
13 CRIMINATION AMONG PROVIDERS OF FUNCTIONALLY
14 EQUIVALENT SERVICES.—The regulation of the
15 placement, construction, or modification of a tele-
16 communications service facility by any State or local
17 government or instrumentality thereof shall not un-
18 reasonably discriminate among providers of function-
19 ally equivalent services.

1 “(2) TIMEFRAME TO GRANT OR DENY RE-
2 QUESTS.—

3 “(A) IN GENERAL.—A State or local gov-
4 ernment or instrumentality thereof shall grant
5 or deny a complete request for authorization to
6 place, construct, or modify a telecommuni-
7 cations service facility not later than—

8 “(i) if the request is for authorization
9 to place, construct, or modify such facility
10 in or on eligible support infrastructure, 90
11 days after the date on which the complete
12 request is received by the government or
13 instrumentality; or

14 “(ii) for any other action relating to
15 such facility, 150 days after the date on
16 which the complete request is received by
17 the government or instrumentality.

18 “(B) APPLICABILITY.—The applicable
19 timeframe under subparagraph (A) shall apply
20 collectively to all proceedings required by a
21 State or local government or instrumentality
22 thereof for the approval of the request.

23 “(C) NO TOLLING.—A timeframe under
24 subparagraph (A) may not be tolled by any
25 moratorium, whether express or de facto, im-

1 posed by a State or local government or instru-
2 mentality thereof on the consideration of any
3 request for authorization to place, construct, or
4 modify a telecommunications service facility.

5 “(D) TEMPORARY WAIVER.—The Commis-
6 sion may temporarily waive the applicability of
7 subparagraph (A) for not longer than a single
8 30-day period for any complete request upon a
9 demonstration by a State or local government
10 or instrumentality thereof that the waiver would
11 be consistent with the public interest, conven-
12 ience, and necessity.

13 “(3) DEEMED GRANTED.—

14 “(A) IN GENERAL.—If a State or local
15 government or instrumentality thereof has nei-
16 ther granted nor denied a complete request
17 within the applicable timeframe under para-
18 graph (2), the request shall be deemed granted
19 on the date on which the government or instru-
20 mentality receives a written notice of the failure
21 from the requesting party.

22 “(B) RULE OF CONSTRUCTION.—In the
23 case of a request that is deemed granted under
24 subparagraph (A), the placement, construction,
25 or modification requested in such request shall

1 be considered to be authorized, without any fur-
2 ther action by the government or instrumen-
3 tality, beginning on the date on which such re-
4 quest is deemed granted under such subpara-
5 graph.

6 “(4) WRITTEN DECISION AND RECORD.—Any
7 decision by a State or local government or instru-
8 mentality thereof to deny a request to place, con-
9 struct, or modify a telecommunications service facil-
10 ity shall be—

11 “(A) in writing; and

12 “(B) supported by substantial evidence
13 contained in a written record.

14 “(5) FEES.—

15 “(A) IN GENERAL.—Notwithstanding any
16 other provision of law, a State or local govern-
17 ment or instrumentality thereof may charge a
18 fee that meets the requirements under subpara-
19 graph (B)—

20 “(i) to consider a request for author-
21 ization to place, construct, or modify a
22 telecommunications service facility; or

23 “(ii) for use of a right-of-way or a fa-
24 cility in a right-of-way owned or managed
25 by the government or instrumentality for

1 the placement, construction, or modifica-
2 tion of a telecommunications service facil-
3 ity.

4 “(B) REQUIREMENTS.—A fee charged
5 under subparagraph (A) shall be—

6 “(i) competitively neutral, technology
7 neutral, and nondiscriminatory;

8 “(ii) publicly disclosed;

9 “(iii) calculated—

10 “(I) based on actual and direct
11 costs, such as costs for—

12 “(aa) review and processing
13 of requests; and

14 “(bb) repairs and replace-
15 ment of—

16 “(AA) components and
17 materials resulting from and
18 affected by the installation
19 or improvement of tele-
20 communications service fa-
21 cilities; or

22 “(BB) equipment that
23 facilitates the installation or
24 improvement of such facili-
25 ties; and

1 “(II) using, for purposes of sub-
2 clause (I), only costs that are objec-
3 tively reasonable; and

4 “(iv) described to a requesting party
5 in a manner that distinguishes between—

6 “(I) nonrecurring fees and recur-
7 ring fees; and

8 “(II) the use of facilities on
9 which telecommunications service fa-
10 cilities are already located and those
11 on which there are no telecommuni-
12 cations service facilities as of the date
13 on which the complete request is re-
14 ceived by the government or instru-
15 mentality.

16 “(c) JUDICIAL REVIEW.—

17 “(1) IN GENERAL.—Any person adversely af-
18 fected by a final action or failure to act by a State
19 or local government or instrumentality thereof that
20 is inconsistent with this section may, not later than
21 30 days after the action or failure to act, commence
22 an action in any court of competent jurisdiction.

23 “(2) TIMING.—A court shall hear and decide an
24 action described in paragraph (1) on an expedited
25 basis.

1 “(d) PRESERVATION OF STATE REGULATORY AU-
2 THORITY.—Nothing in this section shall affect the ability
3 of a State to impose, on a competitively neutral and non-
4 discriminatory basis and consistent with section 254, re-
5 quirements necessary to preserve and advance universal
6 service, protect the public safety and welfare, ensure the
7 continued quality of telecommunications services, and
8 safeguard the rights of consumers.

9 “(e) PRESERVATION OF STATE AND LOCAL GOVERN-
10 MENT AUTHORITY.—Nothing in this section affects the
11 authority of a State or local government or instrumen-
12 tality thereof to manage the public rights-of-way or to re-
13 quire fair and reasonable compensation from telecommuni-
14 cations providers, on a competitively neutral and non-
15 discriminatory basis, for use of public rights-of-way on a
16 competitively neutral and nondiscriminatory basis, if the
17 compensation required meets the requirements of sub-
18 section (b)(5).

19 “(f) PREEMPTION.—

20 “(1) IN GENERAL.—If, after notice and an op-
21 portunity for public comment, the Commission deter-
22 mines that a State or local government or instru-
23 mentality thereof has permitted or imposed any stat-
24 ute, regulation, or legal requirement that violates or
25 is inconsistent with this section, the Commission

1 shall preempt the enforcement of such statute, regu-
2 lation, or legal requirement to the extent necessary
3 to correct such violation or inconsistency.

4 “(2) TIMING.—Not later than 60 days after re-
5 ceiving a petition for preemption of the enforcement
6 of a statute, regulation, or legal requirement as de-
7 scribed in paragraph (1), the Commission shall
8 grant or deny the petition.

9 “(g) COMMERCIAL MOBILE SERVICE PROVIDERS.—
10 Nothing in this section shall affect the application of sec-
11 tion 332(c)(3) to commercial mobile service providers.

12 “(h) RURAL MARKETS.—It shall not be a violation
13 of this section for a State to require a telecommunications
14 carrier that seeks to provide telephone exchange service
15 or exchange access in a service area served by a rural tele-
16 phone company to meet the requirements in section
17 214(e)(1) for designation as an eligible telecommuni-
18 cations carrier for that area before being permitted to pro-
19 vide such service. This subsection shall not apply—

20 “(1) to a service area served by a rural tele-
21 phone company that has obtained an exemption, sus-
22 pension, or modification of section 251(c)(4) that ef-
23 fectively prevents a competitor from meeting the re-
24 quirements of section 214(e)(1); and

1 “(2) to a provider of commercial mobile serv-
2 ices.

3 “(i) WHEN REQUEST CONSIDERED COMPLETE; RE-
4 CEIVED.—

5 “(1) WHEN REQUEST CONSIDERED COM-
6 plete.—

7 “(A) IN GENERAL.—For the purposes of
8 this section, a request to a State or local gov-
9 ernment or instrumentality thereof shall be con-
10 sidered complete if the requesting party has not
11 received a written notice from the government
12 or instrumentality within 10 business days after
13 the date on which the request is received by the
14 government or instrumentality—

15 “(i) stating that all the information
16 (including any form or other document) re-
17 quired by the government or instrumen-
18 tality to be submitted for the request to be
19 considered complete has not been sub-
20 mitted; and

21 “(ii) identifying the information re-
22 quired to be submitted that was not sub-
23 mitted.

1 “(B) DEFINITION.—In this paragraph, the
2 term ‘received by the government or instrumen-
3 tality’ means—

4 “(i) in the case of a request submitted
5 electronically, on the date on which the re-
6 quest is transmitted;

7 “(ii) in the case of a request sub-
8 mitted in person, on the date on which the
9 request is delivered to the individual or at
10 the location specified by the government or
11 instrumentality for in-person submission;
12 and

13 “(iii) in the case of a request sub-
14 mitted in any other manner, on the date
15 determined under regulations promulgated
16 by the Commission for the manner in
17 which the request is submitted.

18 “(2) WHEN COMPLETE REQUEST CONSIDERED
19 RECEIVED.—For the purposes of this section, a com-
20 plete request shall be considered received on the date
21 on which the requesting party submits to the govern-
22 ment or instrumentality all information (including
23 any form or other document) required by the govern-
24 ment or instrumentality to be submitted for the re-
25 quest to be considered complete.

1 “(j) DEFINITIONS.—In this section:

2 “(1) ELIGIBLE SUPPORT INFRASTRUCTURE.—

3 The term ‘eligible support infrastructure’ means in-
4 frastructure that supports or houses a facility for
5 communication by wire (or is designed to and capa-
6 ble of supporting or housing such a facility) at the
7 time when a complete request to a State or local
8 government or instrumentality thereof for authoriza-
9 tion to place, construct, or modify a telecommuni-
10 cations service facility in or on the infrastructure is
11 received by the government or instrumentality.

12 “(2) TELECOMMUNICATIONS SERVICE FACIL-
13 ITY.—The term ‘telecommunications service facility’
14 means a facility for the provision of any interstate
15 or intrastate telecommunications service.”.

