

**AMENDMENT TO THE AMENDMENT IN THE
NATURE OF A SUBSTITUTE
OFFERED BY _____**

At the end of subtitle D, add the following:

1 **CHAPTER 4—OTHER MATTER**

2 **SEC. 3331. REMOVAL OF BARRIERS TO ENTRY.**

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

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

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

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

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

1 reasonably discriminate among providers of function-
2 ally equivalent services.

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

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

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

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

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

1 “(C) NO TOLLING.—A timeframe under
2 subparagraph (A) may not be tolled by any
3 moratorium, whether express or de facto, im-
4 posed by a State or local government or instru-
5 mentality thereof on the consideration of any
6 request for authorization to place, construct, or
7 modify a telecommunications service facility.

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

16 “(3) DEEMED GRANTED.—

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

1 “(B) RULE OF CONSTRUCTION.—In the
2 case of a request that is deemed granted under
3 subparagraph (A), the placement, construction,
4 or modification requested in such request shall
5 be considered to be authorized, without any fur-
6 ther action by the government or instrumen-
7 tality, beginning on the date on which such re-
8 quest is deemed granted under such subpara-
9 graph.

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

15 “(A) in writing; and

16 “(B) supported by substantial evidence
17 contained in a written record.

18 “(5) FEES.—

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

1 “(i) to consider a request for author-
2 ization to place, construct, or modify a
3 telecommunications service facility; or

4 “(ii) for use of a right-of-way or a fa-
5 cility in a right-of-way owned or managed
6 by the government or instrumentality for
7 the placement, construction, or modifica-
8 tion of a telecommunications service facil-
9 ity.

10 “(B) REQUIREMENTS.—A fee charged
11 under subparagraph (A) shall be—

12 “(i) competitively neutral, technology
13 neutral, and nondiscriminatory;

14 “(ii) publicly disclosed;

15 “(iii) calculated—

16 “(I) based on actual and direct
17 costs, such as costs for—

18 “(aa) review and processing
19 of requests; and

20 “(bb) repairs and replace-
21 ment of—

22 “(AA) components and
23 materials resulting from and
24 affected by the installation
25 or improvement of tele-

1 communications service fa-
2 cilities; or

3 “(BB) equipment that
4 facilitates the installation or
5 improvement of such facili-
6 ties; and

7 “(II) using, for purposes of sub-
8 clause (I), only costs that are objec-
9 tively reasonable; and

10 “(iv) described to a requesting party
11 in a manner that distinguishes between—

12 “(I) nonrecurring fees and recur-
13 ring fees; and

14 “(II) the use of facilities on
15 which telecommunications service fa-
16 cilities are already located and those
17 on which there are no telecommuni-
18 cations service facilities as of the date
19 on which the complete request is re-
20 ceived by the government or instru-
21 mentality.

22 “(c) JUDICIAL REVIEW.—

23 “(1) IN GENERAL.—Any person adversely af-
24 fected by a final action or failure to act by a State
25 or local government or instrumentality thereof that

1 is inconsistent with this section may, not later than
2 30 days after the action or failure to act, commence
3 an action in any court of competent jurisdiction.

4 “(2) TIMING.—A court shall hear and decide an
5 action described in paragraph (1) on an expedited
6 basis.

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

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

25 “(f) PREEMPTION.—

1 “(1) IN GENERAL.—If, after notice and an op-
2 portunity for public comment, the Commission deter-
3 mines that a State or local government or instru-
4 mentality thereof has permitted or imposed any stat-
5 ute, regulation, or legal requirement that violates or
6 is inconsistent with this section, the Commission
7 shall preempt the enforcement of such statute, regu-
8 lation, or legal requirement to the extent necessary
9 to correct such violation or inconsistency.

10 “(2) TIMING.—Not later than 60 days after re-
11 ceiving a petition for preemption of the enforcement
12 of a statute, regulation, or legal requirement as de-
13 scribed in paragraph (1), the Commission shall
14 grant or deny the petition.

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

18 “(h) RURAL MARKETS.—It shall not be a violation
19 of this section for a State to require a telecommunications
20 carrier that seeks to provide telephone exchange service
21 or exchange access in a service area served by a rural tele-
22 phone company to meet the requirements in section
23 214(e)(1) for designation as an eligible telecommuni-
24 cations carrier for that area before being permitted to pro-
25 vide such service. This subsection shall not apply—

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

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

8 “(i) WHEN REQUEST CONSIDERED COMPLETE; RE-
9 CEIVED.—

10 “(1) WHEN REQUEST CONSIDERED COM-
11 PLETE.—

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

20 “(i) stating that all the information
21 (including any form or other document) re-
22 quired by the government or instrumen-
23 tality to be submitted for the request to be
24 considered complete has not been sub-
25 mitted; and

1 “(ii) identifying the information re-
2 quired to be submitted that was not sub-
3 mitted.

4 “(B) DEFINITION.—In this paragraph, the
5 term ‘received by the government or instrumen-
6 tality’ means—

7 “(i) in the case of a request submitted
8 electronically, on the date on which the re-
9 quest is transmitted;

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

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

21 “(2) WHEN COMPLETE REQUEST CONSIDERED
22 RECEIVED.—For the purposes of this section, a com-
23 plete request shall be considered received on the date
24 on which the requesting party submits to the govern-
25 ment or instrumentality all information (including

1 any form or other document) required by the govern-
2 ment or instrumentality to be submitted for the re-
3 quest to be considered complete.

4 “(j) DEFINITIONS.—In this section:

5 “(1) ELIGIBLE SUPPORT INFRASTRUCTURE.—

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

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

