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110TH CONGRESS, 2d Session | SENATE | REPORT 110–330

COMMUNITY BROADBAND ACT OF 2007

R E P O R T

OF THE

COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION

ON

S. 1853

APRIL 22, 2008.—Ordered to be printed

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SENATE COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION

ONE HUNDRED TENTH CONGRESS

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Mr. INOUYE, from the Committee on Commerce, Science, and Transportation, submitted the following

R E P O R T

[To accompany S. 1853]

The Committee on Commerce, Science, and Transportation, to which was referred the bill (S. 1853) to promote competition, to preserve the ability of local governments to provide broadband capability and services, and for other purposes, having considered the same, reports favorably thereon with amendments, and recommends that the bill (as amended) do pass.

PURPOSE OF THE BILL

The purpose of S. 1853 is to promote universal and affordable access to broadband by preserving the ability of municipal governments to provide advanced telecommunications capability and services.

BACKGROUND AND NEEDS

Widespread broadband deployment can promote economic development, enhance public safety, and increase educational opportunities for millions of Americans. As a result, communities across the country are eager to bring the economic and social benefits of broadband infrastructure to their citizens. Within the past several years, hundreds of cities have launched community broadband initiatives, either with private partners or on their own. These efforts have an historical analogue from the last century: When the private sector fell short of providing electric services in some areas of the country, community leaders stepped forward to form their own municipal electric utilities.

In some areas of the country, however, community broadband efforts have been blocked or stymied by State or local laws restrict-

ing the ability of municipalities to provide telecommunications or telecommunications services. In practice, these laws can leave some rural and remote communities without broadband service. Other municipalities may find their broadband service limited to already available commercial options, which may fall short of community need. Many of these laws followed in the wake of the Supreme Court decision in Nixon v. Missouri Municipal League, holding that the Telecommunications Act of 1996 did not preempt a specific State statute prohibiting political subdivisions from providing telecommunications. 451 U.S. 125 (2004).

The Community Broadband Act of 2007 will support efforts of cities and towns across the country to ensure faster, more affordable broadband service for their citizens. The bill would prohibit State or local regulations or requirements that prevent a municipality from offering advanced telecommunications capability or services to any person, or public or private entity. The bill, however, would prevent a municipality from using its regulatory authority to discriminate against competing private providers. In addition, the bill would require a municipality offering high-speed Internet services to comply with Federal and State telecommunications laws and regulations that apply to all such providers.

SUMMARY OF PROVISIONS

S. 1853, the Community Broadband Act of 2007, would promote broadband service by preserving the ability of municipalities to provide advanced telecommunications capability and services.

The bill would bar State and local governments from adopting new legal measures or enforcing existing legal measures that would prohibit or have the effect of prohibiting municipal governments from providing broadband services. At the same time, the bill would encourage the development and use of public-private partnerships to further the deployment of these services. The bill also would set forth notice requirements to ensure that the public has adequate information to evaluate prospective public broadband deployments and that the private sector has an opportunity to put forward alternative approaches. Finally, the bill would ensure that public providers of broadband services are treated on an equal footing with respect to ordinances, rules, and policies that apply to private providers of broadband services.

LEGISLATIVE HISTORY

In the 109th Congress, H.R. 5252, the Communications Opportunity, Promotion, and Enhancement Act of 2006, included Title V, a section to establish the framework under which local governments may offer broadband capability or services to the public. The bill (as amended) was reported favorably by the Commerce Committee by a vote of 15–7.

On July 23, 2007, Senator Lautenberg, for himself and Senators Inouye, Kerry, McCain, McCaskill, Smith, Snowe, and Stevens, introduced S. 1853, a bill to preserve the ability of local governments to provide broadband capability and services.

On October 30, 2007, the Committee held an executive session at which S. 1853 was considered. The Committee adopted two amendments proposed by Senator Ensign. The first would preclude the use of Federal funds to assist a public provider in the event of

bankruptcy or termination of a project. The second would provide private sector entities with the opportunity to bid to provide advanced telecommunications services. The bill, as amended, was approved by voice vote.

ESTIMATED COSTS

In accordance with paragraph 11(a) of rule XXVI of the Standing Rules of the Senate and section 403 of the Congressional Budget Act of 1974, the Committee provides the following cost estimate, prepared by the Congressional Budget Office:

S. 1853—Community Broadband Act of 2007

S. 1853 would likely preempt state and local laws in 15 states that would ban, or have the effect of banning, the provision of broadband services by public entities, including municipalities. Before public entities may provide broadband service, the bill would require them to publish notice of their intent to offer such services, including detail of the types of services to be provided. The bill also would require public entities to allow private bids for those services. CBO estimates that enacting S. 1853 would have no significant impact on the federal budget, but it would impose mandates on state and local governments.

The preemption, as well as the notification and bidding requirements, would be intergovernmental mandates as defined in the Unfunded Mandates Reform Act (UMRA), but CBO estimates that the costs of those mandates would be small and would not exceed the threshold established in UMRA ($66 million in 2007, adjusted annually for inflation). The bill would benefit public entities in some states by allowing them to offer broadband services. The bill contains no new private-sector mandates as defined in UMRA.

The CBO staff contacts for this estimate are Susan Willie (for federal costs) and Elizabeth Cove (for the impact on state and local governments). The estimate was approved by Theresa Gullo, Deputy Assistant Director for Budget Analysis.

REGULATORY IMPACT STATEMENT

In accordance with paragraph 11(b) of rule XXVI of the Standing Rules of the Senate, the Committee provides the following evaluation of the regulatory impact of the legislation, as reported:

NUMBER OF PERSONS COVERED

S. 1853 would expand the availability of broadband access. The number of persons covered by this legislation should be consistent with current levels of individuals affected.

ECONOMIC IMPACT

S. 1853 would increase the affordability of broadband service for consumers and commercial use.

PRIVACY

S. 1853 is not expected to have an adverse effect on the personal privacy of any individuals that will be impacted by this legislation.

PAPERWORK

S. 1853 has minimal or no impact on current paperwork levels.

SECTION-BY-SECTION ANALYSIS

Section 1. Short title

Section 1 would establish the short title of the Act as "Community Broadband Act of 2007".

Section 2. Local government provision of advanced telecommunications capability and services

Section 2 would bar State or local governments from prohibiting any public provider from providing advanced telecommunications capability or services using advanced telecommunications capability to any person or any public or private entity.

Section 3. Safeguards

Subsection (a) would prohibit any public providers from biasing themselves over competing providers with respect to ordinances, rules, and policies, including those relating to access to public rights-of-way, permitting, performance bonding, and reporting.

Subsection (b) would provide that the bill does not exempt any public providers from any Federal communications law or regulation that applies to all providers of advanced telecommunications capability or services.

Section 4. Public-private partnerships encouraged

Section 4 would encourage each public provider that intends to provide advanced telecommunications capability or services to consider the potential benefits of a public-private partnership prior to doing so.

Section 5. Public input and private sector opportunity to bid

Subsection (a) would require that before a public provider may provide advanced telecommunications capability or services, either directly or through a public-private partnership, a public provider must publish notice of its intention to do so; generally describe the capability or services to be provided and proposed coverage area; identify any special capabilities or services to be provided in low-income areas or other demographically or geographically defined areas; provide local citizens and private-sector entities with an opportunity to be heard on the costs and benefits of the project and potential alternatives to the project; and provide private-sector entities with an opportunity to bid to provide such capability or services.

Subsection (b) would make clear that subsection (a) does not apply to contracts or arrangements under which a public provider is providing advanced telecommunications capability or services as of the date of enactment. Subsection (b) also would make clear that subsection (a) does not apply to proposals that as of the date of enactment are in the request-for-proposals process, are in the process of being built, or have been approved by referendum.

Section 6. Exemptions

Section 6 would make clear that the requirements of sections 3 and 5 do not apply when a public provider provides advanced telecommunications capabilities or services other than to the public. Section 6 also would make clear that the requirements of sections 3 and 5 do not apply during an emergency declared by the President, Governor of the State, or any other elected local official authorized by law to declare a state of emergency where the public provider is located.

Section 7. Use of Federal funds

Section 7 would prohibit the use of Federal funds by public providers if any project providing advanced telecommunications capability or services fails due to bankruptcy or is terminated by a public provider.

Section 8. Definitions

Section 8 would define "advanced telecommunications capability" consistent with its meaning in the Telecommunications Act of 1996 and "public provider" as a State or political subdivision thereof, or an Indian tribe, or any agency or entity affiliated with a State, political subdivision, or Indian tribe.

CHANGES IN EXISTING LAW

In compliance with paragraph 12 of rule XXVI of the Standing Rules of the Senate, the Committee states that the bill as reported would make no change to existing law.

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