

115TH CONGRESS
1ST SESSION

S. 742

To promote competition, to preserve the ability of local governments to provide broadband capability and services, and for other purposes.

IN THE SENATE OF THE UNITED STATES

MARCH 28, 2017

Mr. BOOKER (for himself, Mr. MARKEY, Mr. WYDEN, Mr. KING, Mr. BLUMENTHAL, and Mrs. MCCASKILL) introduced the following bill; which was read twice and referred to the Committee on Commerce, Science, and Transportation

A BILL

To promote competition, to preserve the ability of local governments to provide broadband capability and services, 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.**

4 This Act may be cited as the “Community Broadband
5 Act of 2017”.

6 **SEC. 2. DEFINITIONS.**

7 In this Act—

8 (1) the term “advanced telecommunications ca-
9 pability” has the meaning given the term in section

1 706(d) of the Telecommunications Act of 1996 (47
2 U.S.C. 1302(d));

3 (2) the term “advanced telecommunications ca-
4 pability or services” means—

5 (A) advanced telecommunications capa-
6 bility; or

7 (B) services using advanced telecommuni-
8 cations capability;

9 (3) the term “Indian tribe” has the meaning
10 given the term in section 4 of the Indian Self-Deter-
11 mination and Education Assistance Act (25 U.S.C.
12 5304);

13 (4) the term “public provider” means—

14 (A) a State or political subdivision thereof;

15 (B) any agency, authority, or instrumen-
16 tality of a State or political subdivision thereof;

17 (C) an Indian tribe; or

18 (D) any entity that is owned by, controlled
19 by, or otherwise affiliated with—

20 (i) a State or political subdivision
21 thereof;

22 (ii) an agency, authority, or instru-
23 mentality of a State or political subdivision
24 thereof; or

25 (iii) an Indian tribe;

1 (5) the term “State” means each of the several
 2 States, the District of Columbia, the Commonwealth
 3 of Puerto Rico, and any other territory or possession
 4 of the United States; and

5 (6) the term “telecommunications service” has
 6 the meaning given the term in section 3 of the Com-
 7 munications Act of 1934 (47 U.S.C. 153).

8 **SEC. 3. LOCAL GOVERNMENT PROVISION OF TELE-**
 9 **COMMUNICATIONS SERVICES AND AD-**
 10 **VANCED TELECOMMUNICATIONS CAPABILITY**
 11 **AND SERVICES.**

12 No statute, regulation, or other legal requirement of
 13 a State, a political subdivision thereof, or an Indian tribe
 14 may prohibit, or have the effect of prohibiting or substan-
 15 tially inhibiting, any public provider from providing tele-
 16 communications services or advanced telecommunications
 17 capability or services to any person or any public or pri-
 18 vate entity.

19 **SEC. 4. SAFEGUARDS.**

20 (a) ADMINISTRATION.—To the extent any public pro-
 21 vider regulates competing providers of telecommunications
 22 services or advanced telecommunications capability or
 23 services, the public provider shall apply its ordinances,
 24 rules, and policies, including those relating to the use of

1 public rights-of-way, permitting, performance bonding,
2 and reporting, without discrimination in favor of—

3 (1) the public provider; or

4 (2) any other provider of telecommunications
5 services or advanced telecommunications capability
6 or services that the public provider owns or with
7 which the public provider is affiliated.

8 (b) APPLICATION OF GENERAL LAWS.—Nothing in
9 this Act shall be construed to exempt a public provider
10 that offers telecommunications services or advanced tele-
11 communications capability or services to the public from
12 any Federal communications law or regulation that applies
13 to all providers of telecommunications services or ad-
14 vanced telecommunications capability or services to the
15 public.

16 **SEC. 5. PUBLIC-PRIVATE PARTNERSHIPS ENCOURAGED.**

17 It is the sense of Congress that a public provider that
18 intends to provide telecommunications services or ad-
19 vanced telecommunications capability or services to the
20 public should consider the potential benefits of a public-
21 private partnership before providing the capability or serv-
22 ices.

1 **SEC. 6. PUBLIC INPUT AND PRIVATE SECTOR OPPOR-**
2 **TUNITY TO BID.**

3 (a) NOTICE AND OPPORTUNITY TO BE HEARD.—Be-
4 fore a public provider may provide telecommunications
5 services or advanced telecommunications capability or
6 services to the public, either directly or through a public-
7 private partnership, the public provider shall—

8 (1) publish notice of its intention to do so;

9 (2) generally describe the capability or services
10 to be provided and the proposed coverage area for
11 the capability or services;

12 (3) identify any special capabilities or services
13 to be provided in low-income areas or other demo-
14 graphically or geographically defined areas;

15 (4) provide local residents and private-sector
16 entities with an opportunity to be heard on the costs
17 and benefits of the project and potential alternatives
18 to the project, including any bids under paragraph
19 (5); and

20 (5) provide private-sector entities with an op-
21 portunity to bid to provide the capability or services
22 during the 30-day period beginning on the date on
23 which the notice is published under paragraph (1).

24 (b) APPLICATION TO EXISTING PROJECTS AND
25 PENDING PROPOSALS.—Subsection (a) shall not apply
26 to—

1 (1) any contract or other arrangement under
 2 which a public provider is providing telecommuni-
 3 cations services or advanced telecommunications ca-
 4 pability or services to the public as of the date of en-
 5 actment of this Act; or

6 (2) any proposal by a public provider to provide
 7 telecommunications services or advanced tele-
 8 communications capability or services to the pub-
 9 lic—

10 (A) that is in the request-for-proposals
 11 process as of the date of enactment of this Act;

12 (B) the infrastructure for which is in the
 13 process of being built as of the date of enact-
 14 ment of this Act; or

15 (C) that has been approved by referendum
 16 as of the date of enactment of this Act.

17 **SEC. 7. EXEMPTIONS.**

18 The requirements under sections 4 and 6 shall not
 19 apply—

20 (1) when a public provider provides tele-
 21 communications services or advanced telecommuni-
 22 cations capability or services other than—

23 (A) to the public; or

1 (B) to such classes of users as to make the
2 capability or services effectively available to the
3 public; or

4 (2) during an emergency declared by the Presi-
5 dent, the Governor of the State in which the public
6 provider is located, or any other elected local official
7 authorized by law to declare a state of emergency in
8 the jurisdiction in which the public provider is lo-
9 cated.

10 **SEC. 8. USE OF FEDERAL FUNDS.**

11 If any project providing telecommunications services
12 or advanced telecommunications capability or services
13 under this Act fails due to bankruptcy or is terminated
14 by a public provider, no Federal funds may be provided
15 to the public provider specifically to assist the public pro-
16 vider in reviving or renewing that project, unless the fail-
17 ure due to bankruptcy occurred in a jurisdiction that is
18 subject to a declaration by the President of a major dis-
19 aster, as defined in section 102 of the Robert T. Stafford
20 Disaster Relief and Emergency Assistance Act (42 U.S.C.
21 5122).

