

**CAP Act (Introduced in House)**

HR 3745 IH

111th CONGRESS  
1st Session  
**H. R. 3745**

To amend the Communications Act of 1934 to provide for carriage and display of public, educational, and government channels in a manner consistent with commercial channels, and for other purposes.

**IN THE HOUSE OF REPRESENTATIVES**

**October 7, 2009**

Ms. BALDWIN introduced the following bill; which was referred to the Committee on Energy and Commerce

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**A BILL**

To amend the Communications Act of 1934 to provide for carriage and display of public, educational, and government channels in a manner consistent with commercial channels, and for other purposes.

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,*

**SECTION 1. SHORT TITLE.**

This Act may be cited as the 'Community Access Preservation Act' or the 'CAP Act'.

**SEC. 2. AMENDMENTS.**

(a) In General- Section 611 of the Communications Act of 1934 (47 U.S.C. 531) is amended--

(1) by redesignating subsection (f) as subsection (h); and

(2) by inserting after subsection (e) the following new subsections:

(f) Equivalence-

(1) IN GENERAL- In the case of any franchise under which channel capacity is designated under subsection (b), such channel capacity shall be--

(A) at least equivalent in quality, accessibility, functionality, and placement to--

`(i) channel capacity used for required carriage of local commercial television stations, as defined in section 614(h)(1); or

`(ii) if no such stations are required to be carried, the channel capacity used to carry the primary signal of the network-affiliated commercial television stations carried on the cable system; and

`(B) provided to and viewable by every subscriber of a cable system without additional service or equipment charges.

`(2) SIGNAL QUALITY AND CONTENT- A cable operator shall--

`(A) carry signals for public, educational, or governmental use from the point of origin of such signals to subscribers without material degradation and without altering or removing content provided as part of the public, educational, or governmental use; and

`(B) provide facilities adequate to fulfill such requirements.

`(3) WAIVER- The requirements of paragraph (1) may be waived by a franchising authority if the franchise contains an explicit provision that such requirements shall not apply and such provision was adopted after a proceeding the conduct of which afforded the public adequate notice and an opportunity to participate.

`(4) ENFORCEMENT- The requirements of this subsection may be enforced by a franchising authority or by the Commission.

`(5) ADDITIONAL REQUIREMENTS- Nothing in this subsection prevents a franchising authority from establishing additional requirements with respect to the quality, accessibility, functionality, placement, and provision of channel capacity designated for public, educational, or governmental use.

`(g) Preservation of Public, Educational, and Governmental Use-

`(1) STUDY- Within 180 days after the date of enactment of the Community Access Preservation Act, the Commission shall submit to Congress a report containing--

`(A) an analysis of the impact of the enactment of State video service franchising laws since 2005 on public, educational, and governmental use of cable systems;

`(B) an analysis of the impact of the conversion from analog to digital transmission technologies on public, educational, and governmental use of cable systems; and

`(C) recommendations for changes required to this Act to preserve and advance localism and public, educational, and governmental use of advanced communications systems.

`(2) SUPPORT- In States that adopted legislation affecting cable system franchising requirements relating to support for public, educational, or governmental use of a cable system that became effective after May 31, 2005, a cable operator shall, notwithstanding such legislation--

`(A) pay to any political subdivision in which the operator provides service the greater of--

`(i) the historical support that the operator, or its predecessor, provided for public, educational, or governmental use of the cable system in such subdivision in accordance with this subsection; or

`(ii) the amount of any cash payment that the operator is required to pay to such subdivision under such State legislation affecting cable system franchising requirements;

`(B) carry signals for public, educational, or governmental use from the point of origin of such signals to subscribers and provide facilities adequate to fulfill such requirements in accordance with subsection (f)(2); and

`(C) provide at least the number of channels for public, educational, or governmental use that it was providing as of May 31, 2005.

`(3) CALCULATION OF HISTORICAL SUPPORT- Historical support includes the value of all support provided for public, educational, or governmental use, including in-kind support and free services. The cable operator shall pay support equal to the greater of--

`(A) the value of the support provided in the most recent calendar year prior to the effective date of such State legislation affecting cable system franchising requirements; or

`(B) the value of the annual average support provided over the term of the franchise pursuant to which it operated prior to such effective date, taking into account the time value of money.

`(4) PAYMENTS- The amounts owed to the political subdivision under paragraph (2)(A) shall be paid annually, in quarterly installments, with the first payment being due 30 days after the date of enactment of the Community Access Preservation Act.

`(5) USES; DISPUTES-

`(A) USES- Support provided to any State or local political subdivision under this subsection shall be dedicated to public, educational, or governmental use of channel capacity.

`(B) DISPUTES- If there is a dispute as to amounts owed under this subsection, undisputed amounts shall be paid, and the Commission shall determine on an expedited basis what, if any, additional amounts are owed.'

(b) Franchise Fee Definition- Section 622(g)(2) of such Act (47 U.S.C. 542(g)(2)) is amended--

(1) in subparagraph (B), by striking `in the case of any franchise in effect on the date of the enactment of this title,';

(2) by striking subparagraph (C); and

(3) by redesignating subparagraphs (D) and (E) as subparagraphs (C) and (D), respectively.

(c) Cable Service Definition- Section 602(6) of such Act (47 U.S.C. 522(6)) is amended by striking `means' and inserting `means, regardless of the technology or transmission protocol used in the provision of service'.