

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

---

## 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.

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 Access  
5       Preservation Act” or the “CAP Act”.

6       **SEC. 2. AMENDMENTS.**

7       (a) IN GENERAL.—Section 611 of the Communica-  
8       tions Act of 1934 (47 U.S.C. 531) is amended—

1           (1) by redesignating subsection (f) as sub-  
2           section (h); and

3           (2) by inserting after subsection (e) the fol-  
4           lowing new subsections:

5           “(f) EQUIVALENCE.—

6           “(1) IN GENERAL.—In the case of any fran-  
7           chise under which channel capacity is designated  
8           under subsection (b), such channel capacity shall  
9           be—

10           “(A) at least equivalent in quality, accessi-  
11           bility, functionality, and placement to—

12           “(i) channel capacity used for re-  
13           quired carriage of local commercial tele-  
14           vision stations, as defined in section  
15           614(h)(1); or

16           “(ii) if no such stations are required  
17           to be carried, the channel capacity used to  
18           carry the primary signal of the network-af-  
19           filiated commercial television stations car-  
20           ried on the cable system; and

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

24           “(2) SIGNAL QUALITY AND CONTENT.—A cable  
25           operator shall—

1           “(A) carry signals for public, educational,  
2           or governmental use from the point of origin of  
3           such signals to subscribers without material  
4           degradation and without altering or removing  
5           content provided as part of the public, edu-  
6           cational, or governmental use; and

7           “(B) provide facilities adequate to fulfill  
8           such requirements.

9           “(3) WAIVER.—The requirements of paragraph  
10          (1) may be waived by a franchising authority if the  
11          franchise contains an explicit provision that such re-  
12          quirements shall not apply and such provision was  
13          adopted after a proceeding the conduct of which af-  
14          forded the public adequate notice and an oppor-  
15          tunity to participate.

16          “(4) ENFORCEMENT.—The requirements of this  
17          subsection may be enforced by a franchising author-  
18          ity or by the Commission.

19          “(5) ADDITIONAL REQUIREMENTS.—Nothing in  
20          this subsection prevents a franchising authority from  
21          establishing additional requirements with respect to  
22          the quality, accessibility, functionality, placement,  
23          and provision of channel capacity designated for  
24          public, educational, or governmental use.

1       “(g) PRESERVATION OF PUBLIC, EDUCATIONAL, AND  
2 GOVERNMENTAL USE.—

3               “(1) STUDY.—Within 180 days after the date  
4 of enactment of the Community Access Preservation  
5 Act, the Commission shall submit to Congress a re-  
6 port containing—

7                       “(A) an analysis of the impact of the en-  
8 actment of State video service franchising laws  
9 since 2005 on public, educational, and govern-  
10 mental use of cable systems;

11                      “(B) an analysis of the impact of the con-  
12 version from analog to digital transmission  
13 technologies on public, educational, and govern-  
14 mental use of cable systems; and

15                      “(C) recommendations for changes re-  
16 quired to this Act to preserve and advance lo-  
17 calism and public, educational, and govern-  
18 mental use of advanced communications sys-  
19 tems.

20               “(2) SUPPORT.—In States that adopted legisla-  
21 tion affecting cable system franchising requirements  
22 relating to support for public, educational, or gov-  
23 ernmental use of a cable system that became effec-  
24 tive after May 31, 2005, a cable operator shall, not-  
25 withstanding such legislation—

1           “(A) pay to any political subdivision in  
2           which the operator provides service the greater  
3           of—

4                   “(i) the historical support that the op-  
5                   erator, or its predecessor, provided for  
6                   public, educational, or governmental use of  
7                   the cable system in such subdivision in ac-  
8                   cordance with this subsection; or

9                   “(ii) the amount of any cash payment  
10                  that the operator is required to pay to  
11                  such subdivision under such State legisla-  
12                  tion affecting cable system franchising re-  
13                  quirements;

14           “(B) carry signals for public, educational,  
15           or governmental use from the point of origin of  
16           such signals to subscribers and provide facilities  
17           adequate to fulfill such requirements in accord-  
18           ance with subsection (f)(2); and

19           “(C) provide at least the number of chan-  
20           nels for public, educational, or governmental  
21           use that it was providing as of May 31, 2005.

22           “(3) CALCULATION OF HISTORICAL SUPPORT.—

23           Historical support includes the value of all support  
24           provided for public, educational, or governmental  
25           use, including in-kind support and free services. The

1 cable operator shall pay support equal to the greater  
2 of—

3 “(A) the value of the support provided in  
4 the most recent calendar year prior to the effec-  
5 tive date of such State legislation affecting  
6 cable system franchising requirements; or

7 “(B) the value of the annual average sup-  
8 port provided over the term of the franchise  
9 pursuant to which it operated prior to such ef-  
10 fective date, taking into account the time value  
11 of money.

12 “(4) PAYMENTS.—The amounts owed to the po-  
13 litical subdivision under paragraph (2)(A) shall be  
14 paid annually, in quarterly installments, with the  
15 first payment being due 30 days after the date of  
16 enactment of the Community Access Preservation  
17 Act.

18 “(5) USES; DISPUTES.—

19 “(A) USES.—Support provided to any  
20 State or local political subdivision under this  
21 subsection shall be dedicated to public, edu-  
22 cational, or governmental use of channel capac-  
23 ity.

24 “(B) DISPUTES.—If there is a dispute as  
25 to amounts owed under this subsection, undis-

1           puted amounts shall be paid, and the Commis-  
2           sion shall determine on an expedited basis what,  
3           if any, additional amounts are owed.”.

4           (b)   FRANCHISE FEE DEFINITION.—Section  
5 622(g)(2) of such Act (47 U.S.C. 542(g)(2)) is amend-  
6 ed—

7           (1) in subparagraph (B), by striking “in the  
8           case of any franchise in effect on the date of the en-  
9           actment of this title,”;

10          (2) by striking subparagraph (C); and

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

13          (c) CABLE SERVICE DEFINITION.—Section 602(6) of  
14 such Act (47 U.S.C. 522(6)) is amended by striking  
15 “means” and inserting “means, regardless of the tech-  
16 nology or transmission protocol used in the provision of  
17 service”.

○