

107TH CONGRESS
2^D SESSION

H. R. _____

IN THE HOUSE OF REPRESENTATIVES

Mr. NADLER introduced the following bill; which was referred to the
Committee on _____

A BILL

To amend the Communications Act of 1934 to improve the
consumer protections available to customers of
broadband 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 “_____ Act of 2002”.



1 **SEC. 2. CONSUMER PROTECTION REGULATIONS FOR**
 2 **BROADBAND SERVICES PROVIDED BY TELE-**
 3 **COMMUNICATIONS CARRIERS.**

4 Part I of title II of the Communications Act of 1934
 5 is amended by inserting after section 231 (47 U.S.C. 231)
 6 the following new section:

7 **“SEC. 231. CONSUMER PROTECTION REGULATIONS FOR**
 8 **BROADBAND SERVICES PROVIDED BY TELE-**
 9 **COMMUNICATIONS CARRIERS.**

10 “(a) REGULATIONS REQUIRED.—The Commission
 11 shall promulgate regulations to ensure that consumers
 12 have meaningful protections against unjust, unreasonable,
 13 discriminatory, and unfair practices by telecommuni-
 14 cations carriers involved in providing consumers with
 15 broadband services. In developing the administrative
 16 record upon which the Commission will base its regula-
 17 tions, the Commission shall affirmatively solicit comments
 18 and information from State commissions, State attorneys
 19 general, State consumer protection organizations, con-
 20 sumers, and others likely to have information relevant to
 21 the needs and interests of consumers in purchasing
 22 broadband services.

23 “(b) MINIMUM PROHIBITIONS OF REGULATIONS.—
 24 The regulations required by subsection (a) shall provide,
 25 at a minimum, that the following constitute unjust, unrea-
 26 sonable, discriminatory, and unfair practices by a tele-



1 communications carrier involved in providing consumers
2 with broadband services:

3 “(1) Failure by the telecommunications carrier
4 to confirm that the carrier actually has available the
5 facilities needed to provide the broadband service or-
6 dered by the consumer a minimum of five business
7 days prior to the date provided to the consumer for
8 the installation or activation of the service.

9 “(2) In the event that facilities are unavailable,
10 failure by the telecommunications carrier to advise
11 the consumer in a writing received at least 3 busi-
12 ness days prior to the date scheduled with the con-
13 sumer for the installation or activation of the serv-
14 ice.

15 “(3) In the event that facilities are unavailable,
16 failure to install or repair equipment or facilities as
17 necessary to provide broadband service to the con-
18 sumer within 45 days after the date initially pro-
19 vided to the consumer for the installation or activa-
20 tion of the service.

21 “(4) Any other practices that the Commission
22 determines, from time to time, constitute unjust, un-
23 reasonable, discriminatory, or unfair practices by a
24 telecommunications carrier offering broadband serv-
25 ices to consumers.



1 “(c) SANCTION FOR VIOLATIONS.—The regulations
2 promulgated pursuant to subsection (a) shall require that
3 the telecommunications carrier make substantial cash pay-
4 ments directly to the consumer, or provide up to 3 months
5 free service, at the consumer’s option, in the event that
6 the carrier engages in any of the practices identified as
7 unjust, unreasonable, discriminatory, or unfair in sub-
8 section (b) and in any regulations promulgated by the
9 Commission pursuant to this section.

10 “(d) FACILITIES-BASED APPLICATION.—In cases
11 where multiple telecommunications carriers are involved in
12 providing broadband service to a consumer using the same
13 facilities, the requirements of subsections (b)(1), (b)(2)
14 and (b)(3) (and associated Commission regulations) shall
15 apply to the entity that owns or maintains (or both) the
16 physical facilities used to provide the broadband service.
17 In cases where the consumer purchases broadband service
18 from one entity, which obtains the use of the underlying
19 physical facilities from another entity, the entity directly
20 dealing with the consumer shall be treated as the con-
21 sumer’s agent for all purposes under this section and the
22 Commission’s regulations.

23 “(e) EFFECTIVE DATE OF REGULATIONS.—The reg-
24 ulations required by subsection (a) shall be effective no
25 later than six months after the date of enactment of this



1 section. If for any reason those regulations have not taken
2 effect by such date, then the practices identified in sub-
3 sections (b)(1), (b)(2) and (b)(3) shall be deemed to be
4 prohibited directly by this section. In that event, and until
5 such time as the regulations required by subsection (a)
6 take effect, the term “substantial cash payment” shall
7 mean \$100.

8 “(f) PROCEDURES FOR COMPLAINTS.—The Commis-
9 sion shall adopt expedited and informal procedures by
10 which consumers can bring complaints alleging violations
11 of the requirements of this section or the Commission’s
12 regulations thereunder to the Commission for resolution.
13 Consumers shall be permitted to submit their complaints
14 via email and via a world wide web interface that the Com-
15 mission shall establish for this purpose. A consumer’s
16 complaint shall constitute prima facie evidence that the
17 violation alleged has occurred. Unless the telecommuni-
18 cations carrier produces documentation establishing by a
19 preponderance of the evidence that the carrier has com-
20 plied with the requirements alleged to have been violated,
21 the consumer shall prevail on his or her complaint.

22 “(g) JURISDICTION.—Notwithstanding any provision
23 of this title to the contrary, the regulations promulgated
24 pursuant to subsection (a) shall apply to all broadband
25 services offered to consumers by a telecommunications



1 carrier, irrespective of whether the Commission, a State
2 commission, or any other State or Federal department or
3 entity has regulatory or other jurisdiction over such
4 broadband services, in whole or in part.

5 “(h) NO PREEMPTION.—Nothing in this section shall
6 be construed to preempt or limit the authority of any State
7 or local government, or any other Federal agency (includ-
8 ing the Federal Trade Commission), to promulgate addi-
9 tional regulations imposing additional obligations on any
10 telecommunications carrier offering broadband services to
11 consumers.

12 “(i) DEFINITIONS.—For purposes of this section, the
13 following definitions shall apply:

14 “(1) BROADBAND SERVICES.—The term
15 ‘broadband services’ means any service that permits
16 the customer to send or receive data at a digital or
17 analog data rate that meets or exceeds the equiva-
18 lent of a digital rate of 128 kilobits per second.

19 “(2) CONSUMER.—The term ‘consumer’ means
20 any natural person ordering broadband services for
21 his or her personal use, and any business ordering
22 broadband services for business use, as long as the
23 business, prior to purchasing the broadband service,
24 purchased telephone service from one or more local
25 exchange carriers on ten or fewer voice-grade lines.



1 “(3) EXPEDITED PROCEDURES.—The term ‘ex-
2 pedited procedures’ means procedures to be estab-
3 lished by the Commission under which the time from
4 the lodging of a complaint to the final and appeal-
5 able resolution of the complaint shall be 30 days or
6 less. The Commission may delegate to subordinate
7 officers and employees the task of making final reso-
8 lution of any complaints under this section and
9 Commission regulations thereunder.

10 “(4) SUBSTANTIAL CASH PAYMENT.—The term
11 ‘substantial cash payment’ means an amount that is
12 no less than the sum of (A) 1.5 times the affected
13 telecommunications carrier’s undiscounted monthly
14 charge for the service ordered by the consumer, and
15 (B) the affected telecommunications carrier’s
16 undiscounted standard installation charge for the
17 service ordered by the consumer.

18 “(5) TELECOMMUNICATIONS CARRIER.—The
19 term ‘telecommunications carrier’ shall have the
20 same meaning as set forth in section 3(44), except
21 that for purposes of this section a provider of serv-
22 ices under spectrum authorizations pursuant to title
23 III of this Act shall not be considered telecommuni-
24 cations carriers. The requirements of this section
25 shall apply to any entity that offers broadband serv-



1 ices to consumers and that is also a telecommuni-
2 cations carrier as defined in section 3(44), with the
3 exception noted above, irrespective of whether the
4 broadband services being offered constitute ‘tele-
5 communications’ or ‘telecommunications service’
6 under this Act or are otherwise subject to regulation
7 by the Commission or by any State commission.

8 **[(j) JUDICIAL REVIEW.—**Jurisdiction to hear ap-
9 peals of any resolution of a consumer complaint under this
10 section or Commission regulations thereunder shall vest
11 solely in the United States District Court in the District
12 in which the affected consumer resides. An affected tele-
13 communications carrier seeking to appeal such a resolu-
14 tion shall be represented by outside counsel. Any appeal
15 by the affected telecommunications carrier, and any re-
16 sponse to such an appeal by a consumer, shall be accom-
17 panied by a sworn statement by a responsible officer of
18 the telecommunications carrier, asserting under penalty of
19 perjury, that the telecommunications carrier in fact com-
20 plied with the requirements of this section and/or associ-
21 ated Commission regulations with respect to the services
22 offered and/or provided to the affected consumer. **][**This
23 provision creates jurisdiction problems on referral of the
24 bill.”.

