

107TH CONGRESS  
1ST SESSION

# H. R. 496

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## AN ACT

To amend the Communications Act of 1934 to promote deployment of advanced services and foster the development of competition for the benefit of consumers in all regions of the Nation by relieving unnecessary burdens on the Nation's two percent local exchange telecommunications carriers, and for other purposes.



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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 “Independent Tele-  
5 communications Consumer Enhancement Act of 2001”.

6 **SEC. 2. FINDINGS AND PURPOSE.**

7 (a) FINDINGS.—Congress finds the following:

8 (1) The Telecommunications Act of 1996 was  
9 enacted to foster the rapid deployment of advanced  
10 telecommunications and information technologies  
11 and services to all Americans by promoting competi-  
12 tion and reducing regulation in telecommunications  
13 markets nationwide.

14 (2) The Telecommunications Act of 1996 spe-  
15 cifically recognized the unique abilities and cir-  
16 cumstances of local exchange carriers with fewer  
17 than two percent of the Nation’s subscriber lines in-  
18 stalled in the aggregate nationwide.

19 (3) Given the markets two percent carriers typi-  
20 cally serve, such carriers are uniquely positioned to  
21 accelerate the deployment of advanced services and  
22 competitive initiatives for the benefit of consumers  
23 in less densely populated regions of the Nation.

24 (4) Existing regulations are typically tailored to  
25 the circumstances of larger carriers and therefore

1 often impose disproportionate burdens on two per-  
2 cent carriers, impeding such carriers' deployment of  
3 advanced telecommunications services and competi-  
4 tive initiatives to consumers in less densely popu-  
5 lated regions of the Nation.

6 (5) Reducing regulatory burdens on two percent  
7 carriers will enable such carriers to devote additional  
8 resources to the deployment of advanced services  
9 and to competitive initiatives to benefit consumers in  
10 less densely populated regions of the Nation.

11 (6) Reducing regulatory burdens on two percent  
12 carriers will increase such carriers' ability to respond  
13 to marketplace conditions, allowing them to accel-  
14 erate deployment of advanced services and competi-  
15 tive initiatives to benefit consumers in less densely  
16 populated regions of the Nation.

17 (b) PURPOSES.—The purposes of this Act are—

18 (1) to accelerate the deployment of advanced  
19 services and the development of competition in the  
20 telecommunications industry for the benefit of con-  
21 sumers in all regions of the Nation, consistent with  
22 the Telecommunications Act of 1996, by reducing  
23 regulatory burdens on local exchange carriers with  
24 fewer than two percent of the Nation's subscriber  
25 lines installed in the aggregate nationwide;

1           (2) to improve such carriers' flexibility to un-  
2           dertake such initiatives; and

3           (3) to allow such carriers to redirect resources  
4           from paying the costs of such regulatory burdens to  
5           increasing investment in such initiatives.

6 **SEC. 3. DEFINITION.**

7           Section 3 of the Communications Act of 1934 (47  
8 U.S.C. 153) is amended—

9           (1) by redesignating paragraphs (51) and (52)  
10          as paragraphs (52) and (53), respectively; and

11          (2) by inserting after paragraph (50) the fol-  
12          lowing:

13                 “(51) TWO PERCENT CARRIER.—The term ‘two  
14                 percent carrier’ means an incumbent local exchange  
15                 carrier within the meaning of section 251(h) whose  
16                 access lines, when aggregated with the access lines  
17                 of any local exchange carrier that such incumbent  
18                 local exchange carrier directly or indirectly controls,  
19                 is controlled by, or is under common control with,  
20                 are fewer than two percent of the Nation’s sub-  
21                 scriber lines installed in the aggregate nationwide.”.

1 **SEC. 4. REGULATORY RELIEF FOR TWO PERCENT CAR-**  
2 **RIERS.**

3 Title II of the Communications Act of 1934 is  
4 amended by adding at the end thereof a new part IV as  
5 follows:

6 **“PART IV—PROVISIONS CONCERNING TWO**  
7 **PERCENT CARRIERS**

8 **“SEC. 281. REDUCED REGULATORY REQUIREMENTS FOR**  
9 **TWO PERCENT CARRIERS.**

10 “(a) **COMMISSION TO TAKE INTO ACCOUNT DIF-**  
11 **FERENCES.**—In adopting rules that apply to incumbent  
12 local exchange carriers (within the meaning of section  
13 251(h)), the Commission shall separately evaluate the bur-  
14 den that any proposed regulatory, compliance, or report-  
15 ing requirements would have on two percent carriers.

16 “(b) **EFFECT OF COMMISSION’S FAILURE TO TAKE**  
17 **INTO ACCOUNT DIFFERENCES.**—If the Commission  
18 adopts a rule that applies to incumbent local exchange car-  
19 riers and fails to separately evaluate the burden that any  
20 proposed regulatory, compliance, or reporting requirement  
21 would have on two percent carriers, the Commission shall  
22 not enforce the rule against two percent carriers unless  
23 and until the Commission performs such separate evalua-  
24 tion.

25 “(c) **ADDITIONAL REVIEW NOT REQUIRED.**—Noth-  
26 ing in this section shall be construed to require the Com-

1 mission to conduct a separate evaluation under subsection  
2 (a) if the rules adopted do not apply to two percent car-  
3 riers, or such carriers are exempted from such rules.

4 “(d) SAVINGS CLAUSE.—Nothing in this section shall  
5 be construed to prohibit any size-based differentiation  
6 among carriers mandated by this Act, chapter 6 of title  
7 5, United States Code, the Commission’s rules, or any  
8 other provision of law.

9 “(e) EFFECTIVE DATE.—The provisions of this sec-  
10 tion shall apply with respect to any rule adopted on or  
11 after the date of enactment of this section.

12 **“SEC. 282. LIMITATION OF REPORTING REQUIREMENTS.**

13 “(a) LIMITATION.—The Commission shall not require  
14 a two percent carrier—

15 “(1) to file cost allocation manuals or to have  
16 such manuals audited or attested, but a two percent  
17 carrier that qualifies as a class A carrier shall annu-  
18 ally certify to the Commission that the two percent  
19 carrier’s cost allocation complies with the rules of  
20 the Commission; or

21 “(2) to file Automated Reporting and Manage-  
22 ment Information Systems (ARMIS) reports.

23 “(b) PRESERVATION OF AUTHORITY.—Except as  
24 provided in subsection (a), nothing in this Act limits the  
25 authority of the Commission to obtain access to informa-

1 tion under sections 211, 213, 215, 218, and 220 with re-  
2 spect to two percent carriers.

3 **“SEC. 283. INTEGRATED OPERATION OF TWO PERCENT**  
4 **CARRIERS.**

5 “The Commission shall not require any two percent  
6 carrier to establish or maintain a separate affiliate to pro-  
7 vide any common carrier or noncommon carrier services,  
8 including local and interexchange services, commercial mo-  
9 bile radio services, advanced services (within the meaning  
10 of section 706 of the Telecommunications Act of 1996),  
11 paging, Internet, information services or other enhanced  
12 services, or other services. The Commission shall not re-  
13 quire any two percent carrier and its affiliates to maintain  
14 separate officers, directors, or other personnel, network fa-  
15 cilities, buildings, research and development departments,  
16 books of account, financing, marketing, provisioning, or  
17 other operations.

18 **“SEC. 284. PARTICIPATION IN TARIFF POOLS AND PRICE**  
19 **CAP REGULATION.**

20 “(a) NECA POOL.—The participation or withdrawal  
21 from participation by a two percent carrier of one or more  
22 study areas in the common line tariff administered and  
23 filed by the National Exchange Carrier Association or any  
24 successor tariff or administrator shall not obligate such  
25 carrier to participate or withdraw from participation in

1 such tariff for any other study area. The Commission may  
2 require a two percent carrier to give 60 days notice of  
3 its intent to participate or withdraw from participation in  
4 such common line tariff with respect to a study area. Ex-  
5 cept as permitted by section 310(f)(3), a two percent car-  
6 rier's election under this subsection shall be binding for  
7 one year from the date of the election.

8       “(b) PRICE CAP REGULATION.—A two percent car-  
9 rier may elect to be regulated by the Commission under  
10 price cap rate regulation, or elect to withdraw from such  
11 regulation, for one or more of its study areas. The Com-  
12 mission shall not require a carrier making an election  
13 under this subsection with respect to any study area or  
14 areas to make the same election for any other study area.  
15 Except as permitted by section 310(f)(3), a two percent  
16 carrier's election under this subsection shall be binding for  
17 one year from the date of the election.

18 **“SEC. 285. DEPLOYMENT OF NEW TELECOMMUNICATIONS**

19                   **SERVICES BY TWO PERCENT COMPANIES.**

20       “(a) ONE-DAY NOTICE OF DEPLOYMENT.—The  
21 Commission shall permit two percent carriers to introduce  
22 new interstate telecommunications services by filing a tar-  
23 iff on one day's notice showing the charges, classifications,  
24 regulations, and practices therefor, without obtaining a  
25 waiver, or make any other showing before the Commission

1 in advance of the tariff filing. The Commission shall not  
2 have authority to approve or disapprove the rate structure  
3 for such services shown in such tariff.

4 “(b) DEFINITION.—For purposes of subsection (a),  
5 the term ‘new interstate telecommunications service’  
6 means a class or subclass of service not previously offered  
7 by the two percent carrier that enlarges the range of serv-  
8 ice options available to ratepayers of such carrier.

9 **“SEC. 286. ENTRY OF COMPETING CARRIER.**

10 “(a) PRICING FLEXIBILITY.—Notwithstanding any  
11 other provision of this Act, any two percent carrier shall  
12 be permitted to deaverage its interstate switched or special  
13 access rates, file tariffs on one day’s notice, and file con-  
14 tract-based tariffs for interstate switched or special access  
15 services immediately upon certifying to the Commission  
16 that a telecommunications carrier unaffiliated with such  
17 carrier is engaged in facilities-based entry within such car-  
18 rier’s service area. A two percent carrier subject to rate-  
19 of-return regulation with respect to an interstate switched  
20 or special access service, for which pricing flexibility has  
21 been exercised pursuant to this subsection, shall compute  
22 its interstate rate of return based on the nondiscounted  
23 rate for such service.

24 “(b) PRICING DEREGULATION.—Notwithstanding  
25 any other provision of this Act, upon receipt by the Com-

1 mission of a certification by a two percent carrier that a  
2 local exchange carrier that is not a two percent carrier  
3 is engaged in facilities-based entry within the two percent  
4 carrier's service area, the Commission shall regulate such  
5 two percent carrier as non-dominant, and therefore shall  
6 not require the tariffing of the interstate service offerings  
7 of such two percent carrier.

8       “(c) PARTICIPATION IN EXCHANGE CARRIER ASSO-  
9 CIATION TARIFF.—A two percent carrier that meets the  
10 requirements of subsection (a) or (b) of this section with  
11 respect to one or more study areas shall be permitted to  
12 participate in the common line tariff administered and  
13 filed by the National Exchange Carrier Association or any  
14 successor tariff or administrator, by electing to include  
15 one or more of its study areas in such tariff.

16       “(d) DEFINITIONS.—For purposes of this section:

17               “(1) FACILITIES-BASED ENTRY.—The term ‘fa-  
18 cilities-based entry’ means, within the service area of  
19 a two percent carrier—

20                       “(A) the provision or procurement of local  
21 telephone exchange switching or its equivalent;  
22 and

23                       “(B) the provision of telephone exchange  
24 service to at least one unaffiliated customer.

1           “(2) CONTRACT-BASED TARIFF.—The term  
2           ‘contract-based tariff’ shall mean a tariff based on  
3           a service contract entered into between a two per-  
4           cent carrier and one or more customers of such car-  
5           rier. Such tariff shall include—

6                   “(A) the term of the contract, including  
7                   any renewal options;

8                   “(B) a brief description of each of the  
9                   services provided under the contract;

10                  “(C) minimum volume commitments for  
11                  each service, if any;

12                  “(D) the contract price for each service or  
13                  services at the volume levels committed to by  
14                  the customer or customers;

15                  “(E) a brief description of any volume dis-  
16                  counts built into the contract rate structure;  
17                  and

18                  “(F) a general description of any other  
19                  classifications, practices, and regulations affect-  
20                  ing the contract rate.

21           “(3) SERVICE AREA.—The term ‘service area’  
22           has the same meaning as in section 214(e)(5).

1 **“SEC. 287. SAVINGS PROVISIONS.**

2 “(a) COMMISSION AUTHORITY.—Nothing in this part  
3 shall be construed to restrict the authority of the Commis-  
4 sion under sections 201 through 208.

5 “(b) RURAL TELEPHONE COMPANY RIGHTS.—Noth-  
6 ing in this part shall be construed to diminish the rights  
7 of rural telephone companies otherwise accorded by this  
8 Act, or the rules, policies, procedures, guidelines, and  
9 standards of the Commission as of the date of enactment  
10 of this section.”.

11 **SEC. 5. LIMITATION ON MERGER REVIEW.**

12 (a) AMENDMENT.—Section 310 of the Communica-  
13 tions Act of 1934 (47 U.S.C. 310) is amended by adding  
14 at the end the following:

15 “(f) DEADLINE FOR MAKING PUBLIC INTEREST DE-  
16 TERMINATION.—

17 “(1) TIME LIMIT.—In connection with any  
18 merger between two percent carriers, or the acquisi-  
19 tion, directly or indirectly, by a two percent carrier  
20 or its affiliate of securities or assets of another two  
21 percent carrier or its affiliate, if the merged or ac-  
22 quiring carrier remains a two percent carrier after  
23 the merger or acquisition, the Commission shall  
24 make any determinations required by this section  
25 and section 214, and shall rule on any petition for  
26 waiver of the Commission’s rules or other request re-

1       lated to such determinations, not later than 60 days  
2       after the date an application with respect to such  
3       merger or acquisition is submitted to the Commis-  
4       sion.

5               “(2) APPROVAL ABSENT ACTION.—If the Com-  
6       mission does not approve or deny an application as  
7       described in paragraph (1) by the end of the period  
8       specified, the application shall be deemed approved  
9       on the day after the end of such period. Any such  
10      application deemed approved under this subsection  
11      shall be deemed approved without conditions.

12              “(3) ELECTION PERMITTED.—The Commission  
13      shall permit a two percent carrier to make an elec-  
14      tion pursuant to section 284 with respect to any  
15      local exchange facilities acquired as a result of a  
16      merger or acquisition that is subject to the review  
17      deadline established in paragraph (1) of this sub-  
18      section.”.

19              (b) EFFECTIVE DATE.—The provisions of this sec-  
20      tion shall apply with respect to any application that is sub-  
21      mitted to the Commission on or after the date of enact-  
22      ment of this Act. Applications pending with the Commis-  
23      sion on the date of enactment of this Act shall be subject  
24      to the requirements of this section as if they had been

1 filed with the Commission on the date of enactment of  
2 this Act.

3 **SEC. 6. TIME LIMITS FOR ACTION ON PETITIONS FOR RE-**  
4 **CONSIDERATION OR WAIVER.**

5 (a) AMENDMENT.—Section 405 of the Communica-  
6 tions Act of 1934 (47 U.S.C. 405) is amended by adding  
7 to the end the following:

8 “(c) EXPEDITED ACTION REQUIRED.—

9 “(1) TIME LIMIT.—Within 90 days after receiv-  
10 ing from a two percent carrier a petition for recon-  
11 sideration or other review filed under this section or  
12 a petition for waiver of a rule, policy, or other Com-  
13 mission requirement, the Commission shall issue an  
14 order granting or denying such petition. If the Com-  
15 mission fails to act on a petition for waiver subject  
16 to the requirements of this section within this 90-  
17 day period, the relief sought in such petition shall be  
18 deemed granted. If the Commission fails to act on  
19 a petition for reconsideration or other review subject  
20 to the requirements of this section within such 90-  
21 day period, the Commission’s enforcement of any  
22 rule the reconsideration or other review of which was  
23 specifically sought by the petitioning party shall be  
24 stayed with respect to that party until the Commis-

1 sion issues an order granting or denying such peti-  
2 tion.

3 “(2) FINALITY OF ACTION.—Any order issued  
4 under paragraph (1), or any grant of a petition for  
5 waiver that is deemed to occur as a result of the  
6 Commission’s failure to act under paragraph (1),  
7 shall be a final order and may be appealed.”.

8 (b) EFFECTIVE DATE.—The provisions of this sec-  
9 tion shall apply with respect to any petition for reconsider-  
10 ation or other review or petition for waiver that is sub-  
11 mitted to the Commission on or after the date of enact-  
12 ment of this Act. Petitions for reconsideration or petitions  
13 for waiver pending with the Commission on the date of  
14 enactment of this Act shall be subject to the requirements  
15 of this section as if they had been filed on the date of  
16 enactment of this Act.

Passed the House of Representatives March 21,  
2001.

Attest:

*Clerk.*