

# Union Calendar No. 15

107<sup>TH</sup> CONGRESS  
1<sup>ST</sup> SESSION

# H. R. 496

**[Report No. 107-20]**

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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## IN THE HOUSE OF REPRESENTATIVES

FEBRUARY 7, 2001

Mrs. CUBIN (for herself, Mr. GORDON, Mr. BARRETT of Wisconsin, Mr. PICKERING, and Mr. LARGENT) introduced the following bill; which was referred to the Committee on Energy and Commerce

MARCH 13, 2001

Additional sponsors: Mr. SHIMKUS, Mr. BERRY, Mr. HUTCHINSON, Mr. PETERSON of Minnesota, Mr. SIMPSON, Mr. PORTMAN, Mr. DOOLITTLE, Mr. OTTER, and Mr. BEREUTER

MARCH 13, 2001

Reported with an amendment, committed to the Committee of the Whole House on the State of the Union, and ordered to be printed

[Strike out all after the enacting clause and insert the part printed in italics]

[For text of introduced bill, see copy of bill as introduced on February 7, 2001]

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## A BILL

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.

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 en-*  
9 *acted to foster the rapid deployment of advanced tele-*  
10 *communications and information technologies and*  
11 *services to all Americans by promoting competition*  
12 *and reducing regulation in telecommunications mar-*  
13 *kets nationwide.*

14                *(2) The Telecommunications Act of 1996 specifi-*  
15 *cally recognized the unique abilities and cir-*  
16 *cumstances of local exchange carriers with fewer than*  
17 *two percent of the Nation's subscriber lines installed*  
18 *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 in*  
23 *less densely populated regions of the Nation.*

1           (4) *Existing regulations are typically tailored to*  
2 *the circumstances of larger carriers and therefore*  
3 *often impose disproportionate burdens on two percent*  
4 *carriers, impeding such carriers' deployment of ad-*  
5 *vanced telecommunications services and competitive*  
6 *initiatives to consumers in less densely populated re-*  
7 *gions of the Nation.*

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

13           (6) *Reducing regulatory burdens on two percent*  
14 *carriers will increase such carriers' ability to respond*  
15 *to marketplace conditions, allowing them to accelerate*  
16 *deployment of advanced services and competitive ini-*  
17 *tiatives to benefit consumers in less densely populated*  
18 *regions of the Nation.*

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

20           (1) *to accelerate the deployment of advanced*  
21 *services and the development of competition in the*  
22 *telecommunications industry for the benefit of con-*  
23 *sumers in all regions of the Nation, consistent with*  
24 *the Telecommunications Act of 1996, by reducing reg-*  
25 *ulatory burdens on local exchange carriers with fewer*

1 *than two percent of the Nation's subscriber lines in-*  
2 *stalled in the aggregate nationwide;*

3 *(2) to improve such carriers' flexibility to under-*  
4 *take such initiatives; and*

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

8 **SEC. 3. DEFINITION.**

9 *Section 3 of the Communications Act of 1934 (47*  
10 *U.S.C. 153) is amended—*

11 *(1) by redesignating paragraphs (51) and (52)*  
12 *as paragraphs (52) and (53), respectively; and*

13 *(2) by inserting after paragraph (50) the fol-*  
14 *lowing:*

15 *“(51) TWO PERCENT CARRIER.—The term ‘two*  
16 *percent carrier’ means an incumbent local exchange*  
17 *carrier within the meaning of section 251(h) whose*  
18 *access lines, when aggregated with the access lines of*  
19 *any local exchange carrier that such incumbent local*  
20 *exchange carrier directly or indirectly controls, is*  
21 *controlled by, or is under common control with, are*  
22 *fewer than two percent of the Nation's subscriber lines*  
23 *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 amended*  
4 *by adding at the end thereof a new part IV as follows:*

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

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

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

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

23 *“(c) ADDITIONAL REVIEW NOT REQUIRED.—Nothing*  
24 *in this section shall be construed to require the Commission*  
25 *to conduct a separate evaluation under subsection (a) if the*

1 *rules adopted do not apply to two percent carriers, or such*  
2 *carriers are exempted from such rules.*

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

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

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

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

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

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

22 “(b) *PRESERVATION OF AUTHORITY.*—*Except as pro-*  
23 *vided in subsection (a), nothing in this Act limits the au-*  
24 *thority of the Commission to obtain access to information*

1 *under sections 211, 213, 215, 218, and 220 with respect*  
2 *to two percent carriers.*

3 **“SEC. 283. INTEGRATED OPERATION OF TWO PERCENT CAR-**  
4 **RIERS.**

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), pag-*  
11 *ing, Internet, information services or other enhanced serv-*  
12 *ices, or other services. The Commission shall not require*  
13 *any two percent carrier and its affiliates to maintain sepa-*  
14 *rate officers, directors, or other personnel, network facilities,*  
15 *buildings, research and development departments, books of*  
16 *account, financing, marketing, provisioning, or other oper-*  
17 *ations.*

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 car-*  
25 *rier to participate or withdraw from participation in such*

1 *tariff for any other study area. The Commission may re-*  
2 *quire a two percent carrier to give 60 days notice of its*  
3 *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 one*  
7 *year from the date of the election.*

8       “(b) *PRICE CAP REGULATION.*—*A two percent carrier*  
9 *may elect to be regulated by the Commission under price*  
10 *cap rate regulation, or elect to withdraw from such regula-*  
11 *tion, for one or more of its study areas. The Commission*  
12 *shall not require a carrier making an election under this*  
13 *subsection with respect to any study area or areas to make*  
14 *the same election for any other study area. Except as per-*  
15 *mitted by section 310(f)(3), a two percent carrier's election*  
16 *under this subsection shall be binding for one year from*  
17 *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 Com-*  
21 *mission shall permit two percent carriers to introduce new*  
22 *interstate telecommunications services by filing a tariff on*  
23 *one day's notice showing the charges, classifications, regula-*  
24 *tions, and practices therefor, without obtaining a waiver,*  
25 *or make any other showing before the Commission in ad-*

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

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

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

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

8       “(c) *PARTICIPATION IN EXCHANGE CARRIER ASSOCIA-*  
9 *TION TARIFF.*—A two percent carrier that meets the re-  
10 quirements of subsection (a) or (b) of this section with re-  
11 spect to one or more study areas shall be permitted to par-  
12 ticipate in the common line tariff administered and filed  
13 by the National Exchange Carrier Association or any suc-  
14 cessor tariff or administrator, by electing to include one or  
15 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 ‘con-*  
2 *tract-based tariff’ shall mean a tariff based on a serv-*  
3 *ice contract entered into between a two percent car-*  
4 *rier and one or more customers of such carrier. Such*  
5 *tariff shall include—*

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

8                   “(B) *a brief description of each of the serv-*  
9 *ices 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 the*  
14 *customer or customers;*

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

17                  “(F) *a general description of any other clas-*  
18 *sifications, practices, and regulations affecting*  
19 *the contract rate.*

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

22 **“SEC. 287. SAVINGS PROVISIONS.**

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

1       “(b) *RURAL TELEPHONE COMPANY RIGHTS.*—Nothing  
2 *in this part shall be construed to diminish the rights of*  
3 *rural telephone companies otherwise accorded by this Act,*  
4 *or the rules, policies, procedures, guidelines, and standards*  
5 *of the Commission as of the date of enactment of this sec-*  
6 *tion.*”.

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

8       (a) *AMENDMENT.*—Section 310 of the Communications  
9 Act of 1934 (47 U.S.C. 310) is amended by adding at the  
10 end the following:

11       “(f) *DEADLINE FOR MAKING PUBLIC INTEREST DE-*  
12 *TERMINATION.*—

13               “(1) *TIME LIMIT.*—In connection with any  
14 merger between two percent carriers, or the acquisi-  
15 tion, directly or indirectly, by a two percent carrier  
16 or its affiliate of securities or assets of another two  
17 percent carrier or its affiliate, if the merged or ac-  
18 quiring carrier remains a two percent carrier after  
19 the merger or acquisition, the Commission shall make  
20 any determinations required by this section and sec-  
21 tion 214, and shall rule on any petition for waiver  
22 of the Commission’s rules or other request related to  
23 such determinations, not later than 60 days after the  
24 date an application with respect to such merger or  
25 acquisition is submitted to the Commission.

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

8           “(3) *ELECTION PERMITTED.*—The Commission  
9           shall permit a two percent carrier to make an election  
10          pursuant to section 284 with respect to any local ex-  
11          change facilities acquired as a result of a merger or  
12          acquisition that is subject to the review deadline es-  
13          tablished in paragraph (1) of this subsection.”.

14          (b) *EFFECTIVE DATE.*—The provisions of this section  
15          shall apply with respect to any application that is sub-  
16          mitted to the Commission on or after the date of enactment  
17          of this Act. Applications pending with the Commission on  
18          the date of enactment of this Act shall be subject to the re-  
19          quirements of this section as if they had been filed with  
20          the Commission on the date of enactment of this Act.

21       **SEC. 6. TIME LIMITS FOR ACTION ON PETITIONS FOR RE-**  
22       **CONSIDERATION OR WAIVER.**

23          (a) *AMENDMENT.*—Section 405 of the Communications  
24          Act of 1934 (47 U.S.C. 405) is amended by adding to the  
25          end the following:

1       “(c) *EXPEDITED ACTION REQUIRED.*—

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

19              “(2) *FINALITY OF ACTION.*—Any order issued  
20      under paragraph (1), or any grant of a petition for  
21      waiver that is deemed to occur as a result of the Com-  
22      mission’s failure to act under paragraph (1), shall be  
23      a final order and may be appealed.”.

24              “(b) *EFFECTIVE DATE.*—The provisions of this section  
25      shall apply with respect to any petition for reconsideration

1 *or other review or petition for waiver that is submitted to*  
2 *the Commission on or after the date of enactment of this*  
3 *Act. Petitions for reconsideration or petitions for waiver*  
4 *pending with the Commission on the date of enactment of*  
5 *this Act shall be subject to the requirements of this section*  
6 *as if they had been filed on the date of enactment of this*  
7 *Act.*

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