

Union Calendar No. 557

106TH CONGRESS
2^D SESSION

H. R. 3850

[Report No. 106-926]

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.

IN THE HOUSE OF REPRESENTATIVES

MARCH 8, 2000

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

OCTOBER 3, 2000

Additional sponsors: Mr. OXLEY, Mr. GREEN of Wisconsin, Mr. PETRI, Mr. BURR of North Carolina, Mr. HILLEARY, Mr. DEAL of Georgia, Mr. PORTMAN, Mr. KLECZKA, Mr. MORAN of Kansas, Mr. LARGENT, Mr. BROWN of Ohio, Mr. COBURN, Mr. DOOLITTLE, Mr. SPRATT, Mr. RYAN of Wisconsin, Mr. CLEMENT, Mr. CHABOT, Mr. KIND, Mr. BOEHNER, Mr. DICKEY, Mr. STRICKLAND, Mr. SAWYER, Mr. KLINK, Mr. BOUCHER, Mr. GOODLATTE, Mr. LUCAS of Kentucky, Mr. GILLMOR, Mr. BERRY, Mr. HUTCHINSON, and Mr. SNYDER.

OCTOBER 3, 2000

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 italic]

[For text of introduced bill, see copy of bill as introduced on March 8, 2000]

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 2000”.*

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*

1 *two percent of the Nation's subscriber lines installed*
2 *in the aggregate nationwide.*

3 *(3) Given the markets two percent carriers typi-*
4 *cally serve, such carriers are uniquely positioned to*
5 *accelerate the deployment of advanced services and*
6 *competitive initiatives for the benefit of consumers in*
7 *less densely populated regions of the Nation.*

8 *(4) Existing regulations are typically tailored to*
9 *the circumstances of larger carriers and therefore*
10 *often impose disproportionate burdens on two percent*
11 *carriers, impeding such carriers' deployment of ad-*
12 *vanced telecommunications services and competitive*
13 *initiatives to consumers in less densely populated re-*
14 *gions of the Nation.*

15 *(5) Reducing regulatory burdens on two percent*
16 *carriers will enable such carriers to devote additional*
17 *resources to the deployment of advanced services and*
18 *to competitive initiatives to benefit consumers in less*
19 *densely populated regions of the Nation.*

20 *(6) Reducing regulatory burdens on two percent*
21 *carriers will increase such carriers' ability to respond*
22 *to marketplace conditions, allowing them to accelerate*
23 *deployment of advanced services and competitive ini-*
24 *tiatives to benefit consumers in less densely populated*
25 *regions of the Nation.*

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

2 (1) *to accelerate the deployment of advanced*
3 *services and the development of competition in the*
4 *telecommunications industry for the benefit of con-*
5 *sumers in all regions of the Nation, consistent with*
6 *the Telecommunications Act of 1996, by reducing reg-*
7 *ulatory burdens on local exchange carriers with fewer*
8 *than two percent of the Nation’s subscriber lines in-*
9 *stalled in the aggregate nationwide;*

10 (2) *to improve such carriers’ flexibility to under-*
11 *take such initiatives; and*

12 (3) *to allow such carriers to redirect resources*
13 *from paying the costs of such regulatory burdens to*
14 *increasing investment in such initiatives.*

15 **SEC. 3. DEFINITION.**

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

18 (1) *by redesignating paragraphs (51) and (52)*
19 *as paragraphs (52) and (53), respectively; and*

20 (2) *by inserting after paragraph (50) the fol-*
21 *lowing:*

22 “(51) **TWO PERCENT CARRIER.**—*The term ‘two*
23 *percent carrier’ means an incumbent local exchange*
24 *carrier within the meaning of section 251(h) that has*

1 *fewer than two percent of the Nation’s subscriber lines*
2 *installed in the aggregate nationwide.”.*

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

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

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

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

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

17 **“(b) EFFECT OF RECONSIDERATION OR WAIVER.—***If*
18 *the Commission adopts a rule that applies to incumbent*
19 *local exchange carriers and fails to separately evaluate the*
20 *burden that any proposed regulatory, compliance, or report-*
21 *ing requirement would have on two percent carriers, the*
22 *Commission shall not enforce the rule against two percent*
23 *carriers unless and until the Commission performs such*
24 *separate evaluation.*

1 “(c) *ADDITIONAL REVIEW NOT REQUIRED.*—*Nothing*
2 *in this section shall be construed to require the Commission*
3 *to conduct a separate evaluation under subsection (a) if the*
4 *rules adopted do not apply to two percent carriers, or such*
5 *carriers are exempted from such rules.*

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

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

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

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

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

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

24 “(b) *PRESERVATION OF AUTHORITY.*—*Except as pro-*
25 *vided in subsection (a), nothing in this Act limits the au-*

1 *thority of the Commission to obtain access to information*
2 *under sections 211, 213, 215, 218, and 220 with respect*
3 *to two percent carriers.*

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

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

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

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

1 rier to participate or withdraw from participation in such
2 tariff for any other study area.

3 “(b) *PRICE CAP REGULATION.*—A two percent carrier
4 may elect to be regulated by the Commission under price
5 cap rate regulation, or elect to withdraw from such regula-
6 tion, for one or more of its study areas at any time. The
7 Commission shall not require a carrier making an election
8 under this paragraph with respect to any study area or
9 areas to make the same election for any other study area.

10 **“SEC. 285. DEPLOYMENT OF NEW TELECOMMUNICATIONS**
11 **SERVICES BY TWO PERCENT COMPANIES.**

12 “The Commission shall permit two percent carriers to
13 introduce new interstate telecommunications services by fil-
14 ing a tariff on one day’s notice showing the charges, classi-
15 fications, regulations and practices therefor, without ob-
16 taining a waiver, or make any other showing before the
17 Commission in advance of the tariff filing. The Commission
18 shall not have authority to approve or disapprove the rate
19 structure for such services shown in such tariff.

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

21 “(a) *PRICING FLEXIBILITY.*—Notwithstanding any
22 other provision of this Act, any two percent carrier shall
23 be permitted to deaverage its interstate switched or special
24 access rates, file tariffs on one day’s notice, and file con-
25 tract-based tariffs for interstate switched or special access

1 *services immediately upon certifying to the Commission*
2 *that a telecommunications carrier unaffiliated with such*
3 *carrier is engaged in facilities-based entry within such car-*
4 *rier's service area.*

5 “(b) *PRICING DEREGULATION.*—*Notwithstanding any*
6 *other provision of this Act, upon receipt by the Commission*
7 *of a certification by a two percent carrier that a local ex-*
8 *change carrier that is not a two percent carrier is engaged*
9 *in facilities-based entry within the two percent carrier's*
10 *service area, the Commission shall regulate such two percent*
11 *carrier as non-dominant, and therefore shall not require the*
12 *tariffing of the interstate service offerings of such two per-*
13 *cent carrier.*

14 “(c) *PARTICIPATION IN EXCHANGE CARRIER ASSOCIA-*
15 *TION TARIFF.*—*A two percent carrier that meets the re-*
16 *quirements of subsection (a) or (b) of this section with re-*
17 *spect to one or more study areas shall be permitted to par-*
18 *ticipate in the common line tariff administered and filed*
19 *by the National Exchange Carrier Association or any suc-*
20 *cessor tariff or administrator, by electing to include one or*
21 *more of its study areas in such tariff.*

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

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

1 “(A) the provision or procurement of local
2 telephone exchange switching capability; and

3 “(B) the provision of local exchange service
4 to at least one unaffiliated customer.

5 “(2) *CONTRACT-BASED TARIFF*.—The term ‘con-
6 tract-based tariff’ shall mean a tariff based on a serv-
7 ice contract entered into between a two percent car-
8 rier and one or more customers of such carrier. Such
9 tariff shall include—

10 “(A) the term of the contract, including any
11 renewal options;

12 “(B) a brief description of each of the serv-
13 ices provided under the contract;

14 “(C) minimum volume commitments for
15 each service, if any;

16 “(D) the contract price for each service or
17 services at the volume levels committed to by the
18 customer or customers;

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

21 “(F) a general description of any other clas-
22 sifications, practices, and regulations affecting
23 the contract rate.

24 “(3) *SERVICE AREA*.—The term ‘service area’ has
25 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 205 and 208.*

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

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

12 “(a) *AMENDMENT.*—*Section 310 of the Communications*
13 *Act of 1934 (47 U.S.C. 310) is amended by adding at the*
14 *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 the securities or assets of another*
21 *two percent carrier or its affiliate, the Commission*
22 *shall make any determination required by subsection*
23 *(d) of this section or section 214 not later than 60*
24 *days after the date an application with respect to*
25 *such merger 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 **(b) *EFFECTIVE DATE.***—*The provisions of this section*
9 *shall apply with respect to any application that is sub-*
10 *mitted to the Commission on or after the date of enactment*
11 *of this Act. Applications pending with the Commission on*
12 *the date of enactment of this Act shall be subject to the re-*
13 *quirements of this section as if they had been filed with*
14 *the Commission on the date of enactment of this Act.*

15 **SEC. 6. TIME LIMITS FOR ACTION ON PETITIONS FOR RE-**
16 **CONSIDERATION OR WAIVER.**

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

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

21 **“(1) *TIME LIMIT.***—*Within 90 days after receiv-*
22 *ing from a two percent carrier a petition for recon-*
23 *sideration filed under this section or a petition for*
24 *waiver of a rule, policy, or other Commission require-*
25 *ment, the Commission shall issue an order granting*

1 *or denying such petition. If the Commission fails to*
2 *act on a petition for waiver subject to the require-*
3 *ments of this section within this 90-day period, the*
4 *relief sought in such petition shall be deemed granted.*
5 *If the Commission fails to act on a petition for recon-*
6 *sideration subject to the requirements of this section*
7 *within this 90 day period, the Commission’s enforce-*
8 *ment of any rule the reconsideration of which was*
9 *specifically sought by the petitioning party shall be*
10 *stayed with respect to that party until the Commis-*
11 *sion issues an order granting or denying such peti-*
12 *tion.*

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

18 *(b) EFFECTIVE DATE.—The provisions of this section*
19 *shall apply with respect to any petition for reconsideration*
20 *or petition for waiver that is submitted to the Commission*
21 *on or after the date of enactment of this Act. Pending peti-*
22 *tions for reconsideration or petitions for waiver shall be*
23 *subject to the requirements of this section as if they had*
24 *been filed on the date of enactment of this Act.*

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