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2D SESSION

S. 3235

To amend the Internal Revenue Code of 1986 to provide for a deferral of tax on gain from the sale of telecommunications businesses in specific circumstances or a tax credit and other incentives to promote diversity of ownership in telecommunications businesses.

IN THE SENATE OF THE UNITED STATES

OCTOBER 25 (legislative day, SEPTEMBER 22), 2000

Mr. MCCAIN (for himself and Mr. BURNS) introduced the following bill; which was read twice and referred to the Committee on Finance

A BILL

To amend the Internal Revenue Code of 1986 to provide for a deferral of tax on gain from the sale of telecommunications businesses in specific circumstances or a tax credit and other incentives to promote diversity of ownership in telecommunications businesses.

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 “Telecommunications
5 Ownership Diversification Act of 2000”.

1 **SEC. 2. FINDINGS AND PURPOSES.**

2 (a) FINDINGS.—The Congress makes the following
3 findings:

4 (1) Current trends in the telecommunications
5 industry show that there is increasing convergence
6 among various media, including broadcasting, cable
7 television, and Internet-based businesses, and that
8 these media are providing competing sources of
9 news, information, and entertainment.

10 (2) This convergence and competitiveness will
11 continue, and therefore it should be recognized in
12 both telecommunications and tax policy.

13 (3) Notwithstanding these trends, diversifying
14 the ownership of telecommunications facilities re-
15 mains a pre-eminent public interest concern.

16 (4) A market-based, voluntary system of invest-
17 ment incentives is the most effective, lawful, and
18 economically sound means of facilitating entry into
19 the telecommunications industry.

20 (5) Opportunities for new entrants to partici-
21 pate in the telecommunications industry have sub-
22 stantially decreased since the end of the Federal
23 Communications Commission's tax certificate policy
24 in 1995, particularly in light of the increase in tax-
25 free like-kind exchanges despite the most robust pe-
26 riod of transfers of radio and television stations in

1 history. Small businesses, and businesses owned or
2 controlled by members of minority groups or by
3 women, have been at a particular disadvantage, as
4 indicated by their historic under representation as
5 owners of telecommunications facilities.

6 (6) Access to and cost of capital has been a
7 substantial obstacle to new entry into telecommuni-
8 cations by small businesses and businesses owned or
9 controlled by members of minority groups and by
10 women who want to be long-term, active participants
11 in the telecommunications industry, because they do
12 not currently own properties that can be utilized in
13 like-kind exchanges, they are either unable to secure
14 financing from lending institutions and equipment
15 manufacturers at all, or else cannot secure financing
16 terms as advantageous as those offered to large in-
17 dustry participants.

18 (7) Telecommunications facilities owned by new
19 entrants may not be as attractive to investors be-
20 cause their start-up costs are often high, their rev-
21 enue streams are uncertain, and their profit margins
22 are unknown.

23 (8) It is consistent with the public interest, and
24 with the pro-competition policies of the Tele-
25 communications Act of 1996, to provide incentives

1 that will facilitate the ability of existing owners of
2 converging telecommunications media to transact
3 business so as to improve their ability to compete,
4 while the reinvestment of gains realized from such
5 transactions will also facilitate the acquisition of
6 telecommunications facilities by small businesses, es-
7 pecially those owned or controlled by members of mi-
8 nority groups and by women, thereby diversifying
9 the ownership of telecommunications facilities.

10 (9) Permitting sellers of telecommunications fa-
11 cilities to defer taxation of gains from transactions
12 involving small businesses and businesses owned or
13 controlled by members of minority groups and by
14 women, and resulting from investments in capital
15 funds whose stated purpose is to provide capital for
16 such entities, will further the development of a com-
17 petitive and diverse United States information dis-
18 tribution economy without governmental intrusion in
19 private investment decisions.

20 (10) The public interest would not be served by
21 attempts to diversify the ownership of telecommuni-
22 cations businesses by small businesses or businesses
23 owned or controlled by minorities and women
24 through any approach that would involve the use of
25 mandated set-asides or quotas.

1 (b) PURPOSE.—The purpose of this Act is to facili-
 2 tate voluntary, pro-competitive transactions involving con-
 3 verging telecommunications media that will promote diver-
 4 sification in, and broaden the participation in, the tele-
 5 communications industry by small businesses, and busi-
 6 nesses owned or controlled by members of minority groups
 7 and women.

8 **SEC. 3. NONRECOGNITION OF GAIN ON QUALIFIED SALES**
 9 **OF TELECOMMUNICATIONS BUSINESSES.**

10 (a) IN GENERAL.—Subchapter O of chapter 1 of the
 11 Internal Revenue Code of 1986 (relating to gain or loss
 12 on disposition of property) is amended by inserting after
 13 part IV the following new part:

14 **“PART V—CERTAIN SALES OF**
 15 **TELECOMMUNICATIONS BUSINESSES**

“Sec. 1071. Nonrecognition of gain on certain sales of tele-
 communications businesses.

16 **“SEC. 1071. NONRECOGNITION OF GAIN ON CERTAIN SALES**
 17 **OF TELECOMMUNICATIONS BUSINESSES.**

18 “(a) IN GENERAL.—In the case of any qualified tele-
 19 communications sale, at the election of the taxpayer, such
 20 sale shall be treated as an involuntary conversion of prop-
 21 erty within the meaning of section 1033.

22 “(b) LIMITATION ON AMOUNT OF GAIN ON WHICH
 23 TAX MAY BE DEFERRED.—The amount of gain on any
 24 qualified telecommunications sale which is not recognized

1 by reason of this section shall not exceed \$250,000,000
2 per transaction and shall not exceed \$83,333,333 per tax-
3 able year. Excess amounts can be carried forward in fu-
4 ture years subject to the annual limit.

5 “(c) QUALIFIED TELECOMMUNICATIONS SALE.—For
6 purposes of this section—

7 “(1) IN GENERAL.—The term ‘qualified tele-
8 communications sale’ means any sale to an eligible
9 purchaser of—

10 “(A) the assets of a telecommunications
11 business, or

12 “(B) stock in a corporation if, immediately
13 after such sale—

14 “(i) the eligible purchaser controls
15 such corporation, and

16 “(ii) substantially all of the assets of
17 such corporation are assets of 1 or more
18 telecommunications businesses.

19 “(d) SPECIAL RULES.—

20 “(1) IN GENERAL.—In applying section 1033
21 for purposes of subsection (a) of this section, stock
22 of a corporation operating a telecommunications
23 business, whether or not representing control of such
24 corporation, shall be treated as property similar or

1 related in service or use to the property sold in the
2 qualified telecommunications sale.

3 “(2) ELECTION TO REDUCE BASIS RATHER
4 THAN RECOGNIZE REMAINDER OF GAIN.—If—

5 “(A) a taxpayer elects the treatment under
6 subsection (a) with respect to any qualified tele-
7 communications sale, and

8 “(B) an amount of gain would (but for
9 this paragraph) be recognized on such sale
10 other than by reason of subsection (b),

11 then the amount of gain described in subparagraph
12 (B) shall not be recognized to the extent that the
13 taxpayer elects to reduce the basis of depreciable
14 property (as defined in section 1017(b)(3)) held by
15 the taxpayer immediately after the sale or acquired
16 in the same taxable year. The manner and amount
17 of such reduction shall be determined under regula-
18 tions prescribed by the Secretary.

19 “(3) BASIS.—For basis of property acquired on
20 a sale or exchange treated as an involuntary conver-
21 sion under subsection (a), see section 1033(b).

22 “(e) RECAPTURE OF TAX BENEFIT IF TELE-
23 COMMUNICATIONS BUSINESS RESOLD WITHIN 3 YEARS,
24 ETC.—

1 “(1) IN GENERAL.—If, within 3 years after the
2 date of any qualified telecommunications sale, there
3 is a recapture event with respect to the property in-
4 volved in such sale, then the purchaser’s tax imposed
5 by this chapter for the taxable year in which such
6 event occurs shall be increased by 20 percent of the
7 lesser of the consideration furnished by the pur-
8 chaser in such sale or the dollar amount specified in
9 subsection (b).

10 “(2) EXCEPTION FOR REINVESTED AMOUNTS.—
11 Paragraph (1) shall not apply to any recapture event
12 which is a sale if—

13 “(A) the sale is a qualified telecommuni-
14 cations sale, or

15 “(B) during the 60-day period beginning
16 on the date of such sale, the taxpayer is the
17 purchaser in another qualified telecommuni-
18 cations sale in which the consideration fur-
19 nished by the taxpayer is not less than the
20 amount realized on the recapture event sale.

21 “(3) RECAPTURE EVENT.—For purposes of this
22 subsection, the term ‘recapture event’ means, with
23 respect to any qualified telecommunications sale—

24 “(A) any sale or other disposition of the
25 assets or stock referred to in subsection (c)(1)

1 which were acquired by the taxpayer in such
2 sale, and

3 “(B) in the case of a qualified tele-
4 communications sale described in subsection
5 (c)(1)(B)(ii)—

6 “(i), any sale or other disposition of a
7 telecommunications business by the cor-
8 poration referred to in such subsection, or

9 “(ii) any other transaction which re-
10 sults in the eligible purchaser business not
11 having control (as defined in subsection
12 (c)(4)) of such corporation.

13 “(f) DEFINITIONS.—For purposes of this section—

14 “(1) ELIGIBLE PURCHASER.—The term ‘eligible
15 purchaser’ means—

16 “(A) the Telecommunications Development
17 Fund established under section 714 of the
18 Communications Act of 1934 (47 U.S.C. 614),
19 or any wholly-owned affiliate of that Fund;

20 “(B) an entity or individual that is a tele-
21 communications business after the purchase
22 and before the purchase is—

23 “(i) a broadcasting station providing
24 television services and having not more
25 than 5 percent of market share as deter-

1 mined by the Federal Communications
2 Commission’s clearance data;

3 “(ii) a radio station having a market
4 share below 10 percent of advertising reve-
5 nues in the relevant local market and own-
6 ership of less than 50 radio stations na-
7 tionally; or

8 “(iii) any other telecommunications
9 business having no more than 5 percent of
10 national subscribers; and

11 meets the control requirement of paragraph (4); or

12 “(C) An entity qualified under section 851
13 and that more than 50 percent of its gross in-
14 come is derived from equity investment in enti-
15 ties that qualify under paragraph (1)(B).

16 “(2) TELECOMMUNICATIONS BUSINESS.—The
17 term ‘telecommunications business’ means—

18 “(A) substantially all the assets of a facil-
19 ity engaged in electronic communications, in-
20 cluding a cable system (as defined in section
21 602(7) of the Communications Act of 1934 (47
22 U.S.C. 532(7)), a radio station (as defined in
23 section 3(35) of that Act (47 U.S.C. 153(35)),
24 a broadcasting station providing television serv-
25 ice (as defined in section 3(49) of that Act (47

1 U.S.C. 153(49)), a provider of direct broadcast
2 satellite service (as defined in section 335(b)(5)
3 of that Act (47 U.S.C. 335(b)(5)), a provider
4 of video programming (as defined in section
5 602(20) of that Act (47 U.S.C. 602(20)); a
6 provider of commercial mobile services (as de-
7 fined in section 332(d)(1) of that Act (47
8 U.S.C. 332(d)(1)), a telecommunications carrier
9 (as defined in section 3(44) of that Act (47
10 U.S.C. 153(44)), a reseller of telecommuni-
11 cations service or commercial mobile service; a
12 multichannel multipoint distribution service;

13 “(B) stock possessing at least 80 percent
14 of the total combined voting power of all classes
15 of stock entitled to vote and at least 80 percent
16 of the total number of shares of all other class-
17 es of stock of a corporation substantially all of
18 the assets of which consist, directly or indi-
19 rectly, of assets described in subparagraph (A);
20 and

21 “(C) 80 percent or more of the total inter-
22 est in the capital and profits of a partnership
23 substantially all of the assets of which consist,
24 directly or indirectly, of assets described in sub-
25 paragraph (A).

1 “(3) PURCHASE.—The taxpayer shall be consid-
2 ered to have purchased a property if, but for sub-
3 section (d), the unadjusted basis of the property
4 would be its cost within the meaning of section
5 1012.

6 “(4) CONTROL.—

7 “(A) INDIVIDUALS.—For purposes of para-
8 graph (1)(B), an individual who meets the re-
9 quirements of paragraph (5) also meets the re-
10 quirements of this paragraph.

11 “(B) ENTITIES.—For purposes of para-
12 graph (1)(B), an entity meets the requirement
13 of this paragraph if the requirements of sub-
14 paragraph (C), (D), or (E) are satisfied.

15 “(C) 30-PERCENT TEST.—The require-
16 ments of this subparagraph are satisfied if—

17 “(i) with respect to any entity which
18 is a corporation, individuals who meet the
19 requirements of paragraph (5) own 30 per-
20 cent or more in value of the outstanding
21 stock of the corporation, and more than 50
22 percent of the total combined voting power
23 of all classes of stock entitled to vote of the
24 corporation; and

1 “(ii) with respect to any entity which
2 is a partnership, individuals who meet the
3 requirements of paragraph (5) own 30 per-
4 cent or more of the capital interest and the
5 profits interest in the partnership, and
6 more than 50 percent of the total com-
7 bined voting power of all classes of part-
8 nership interests entitled to vote.

9 “(D) 15-PERCENT TEST.—The require-
10 ments of this subparagraph are satisfied if—

11 “(i) with respect to any entity which
12 is a corporation—

13 “(I) individuals who meet the re-
14 quirements of paragraph (5) own 15
15 percent or more in value of the out-
16 standing stock of the corporation, and
17 more than 50 percent of the total
18 combined voting power of all classes
19 of stock entitled to vote of the cor-
20 poration; and

21 “(II) no other person owns more
22 than 25 percent in value of the out-
23 standing stock of the corporation; and

24 “(ii) with respect to any entity which
25 is a partnership—

1 “(I) individuals who meet the re-
2 quirements of paragraph (5) own 15
3 percent or more of the capital interest
4 and profits interest of the partner-
5 ship, and more than 50 percent of the
6 total combined voting power of all
7 classes of partnership interests enti-
8 tled to vote; and

9 “(II) no other person owns more
10 than 25 percent of the capital interest
11 and profits interest of the partner-
12 ship.

13 “(E) PUBLICLY-TRADED CORPORATIONS
14 TEST.—The requirements of this subparagraph
15 are satisfied if, with respect to a corporation
16 the securities of which are traded on an estab-
17 lished securities market—

18 “(i) individuals who meet the require-
19 ments of paragraph (5) own 50 percent or
20 more of the total combined voting power of
21 all classes of stock entitled to vote of the
22 corporation; and

23 “(ii) the stock owned by those individ-
24 uals is not subject to any agreement, ar-
25 rangement, or understanding which pro-

1 vides for, or relates to, the voting of the
2 stock in any manner by, or at the direction
3 of, any person other than an eligible indi-
4 vidual who meets the requirements of para-
5 graph (5), or the right of any person other
6 than one of those individuals to acquire the
7 voting power through purchase of shares
8 or otherwise.

9 “(F) CONSTRUCTIVE OWNERSHIP.—In ap-
10 plying subparagraphs (C), (D), and (E), the fol-
11 lowing rules apply:

12 “(i) Stock or partnership interests
13 owned, directly or indirectly, by or for a
14 corporation, partnership, estate, or trust
15 shall be considered as being owned propor-
16 tionately by or for its shareholders, part-
17 ners, or beneficiaries.

18 “(ii) An individual shall be considered
19 as owning stock and partnership interests
20 owned, directly or indirectly, by or for his
21 family.

22 “(iii) An individual owning (otherwise
23 than by the application of clause (ii)) any
24 stock in corporation shall be considered as
25 owning the stock or partnership interests

1 owned, directly or indirectly, by or for his
2 partner.

3 “(iv) An individual owning (otherwise
4 than by the application of clause (ii)) any
5 partnership interest in a partnership shall
6 be considered as owning the stock or part-
7 nership interests owned, directly or indi-
8 rectly, by or for his partner.

9 “(v) The family of an individual shall
10 include only his brothers and sisters
11 (whether by the whole or half blood),
12 spouse, ancestors, and lineal descendants.

13 “(vi) Stock or partnership interests
14 constructively owned by a person by reason
15 of the application of clause (i) shall, for
16 the purposes of applying clause (i), (ii),
17 (iii), or (iv), be treated as actually owned
18 by that person, but stock constructively
19 owned by an individual by reason of the
20 application of clause (ii), (iii), or (iv) shall
21 not be treated as owned by that individual
22 for the purpose of again applying any of
23 those clauses in order to make another the
24 constructive owner of the stock or partner-
25 ship interests.

1 “(5) INDIVIDUALS.—An individual is described
2 in this paragraph if that individual is—

3 “(A) a United States citizen; or

4 “(B) a United States citizen who is—

5 “(i) a woman;

6 “(ii) a Black or African American;

7 “(iii) a Latino or Hispanic American;

8 “(iv) an Asian American, Native Ha-
9 waiian, or other Pacific Islander; or

10 “(v) an American Indian, Alaskan In-
11 dian, American Eskimo, or an Aluet.

12 “(g) EFFECTIVE DATE.—The amendments made by
13 this section apply with respect to a sale described in sec-
14 tion 1071(a) of the Internal Revenue Code of 1986 (as
15 added by this section) of a telecommunications business
16 or any equity interest on or after the date of enactment
17 of this Act.”.

18 **SEC. 4. TELECOMMUNICATIONS BUSINESS CREDIT.**

19 (a) IN GENERAL.—Subpart E of part IV of sub-
20 chapter A of chapter 1 of the Internal Revenue Code of
21 1986 (relating to rules for computing investment credit)
22 is amended by inserting after section 48 the following:

23 **“SEC. 48A. TELECOMMUNICATIONS BUSINESS CREDIT.**

24 “For purposes of section 46, there is allowed as a
25 credit against the tax imposed by this chapter for any tax-

1 able year an amount equal to 10 percent of the taxable
 2 income of any taxpayer that at all times during that tax-
 3 able year—

4 “(1) is a local exchange carrier (as defined in
 5 section 3(44) of the Communications Act of 1934
 6 (47 U.S.C. 153(44)));

7 “(2) is not a Bell operating company (as de-
 8 fined in section 3(4) of that Act (47 U.S.C.
 9 153(4))); and

10 “(3) is headquartered in an area designated as
 11 an empowerment zone by the Secretary of Housing
 12 and Urban Development.”.

13 (b) CONFORMING AMENDMENTS.—

14 (1) AMENDMENT OF SECTION 46.—Section 46
 15 of such Code (relating to amount of credit) is
 16 amended by—

17 (A) striking “and” in paragraph (2);

18 (B) striking “credit.” in paragraph (3) and
 19 inserting “credit; and”; and

20 (C) adding at the end the following:

21 “(4) the telecommunications business credit.”.

22 (2) CLERICAL AMENDMENTS.—

23 (A) The analysis for part III of subchapter
 24 O of chapter 1 of such Code is amended by
 25 adding at the end thereof the following:

“1046. Sale of telecommunications business.”.

1 (B) The table of sections for Subpart E of
2 part IV of subchapter A of chapter 1 of such
3 Code is amended by inserting after the item re-
4 lating to section 48 the following:

“48A. Telecommunications business credit.”.

5 (c) **TECHNICAL AND CONFORMING CHANGES.**—The
6 Secretary of the Treasury shall, within 150 days after the
7 date of enactment of this Act, submit to the Committee
8 on Ways and Means of the House of Representatives and
9 the Committee on Finance of the Senate, a draft of any
10 technical and conforming changes in the Internal Revenue
11 Code of 1986 which are necessary to reflect throughout
12 the Code the changes in the substantive provisions of the
13 Code made by subsection (a) of this section.

14 **SEC. 5. EXCLUSION OF 50 PERCENT OF GAIN.**

15 Section 1202 of the Internal Revenue Code of 1986
16 (relating to 50-percent exclusion for gain from certain
17 small business stock) is amended—

18 (1) by striking subsection (a) and inserting the
19 following:

20 “(a) **50-PERCENT EXCLUSION.**—

21 “(1) **TAXPAYERS NOT CORPORATIONS.**—In the
22 case of a taxpayer other than a corporation, gross
23 income does not include 50 percent of any gain from
24 the sale or exchange of qualified small business
25 stock held for more than 5 years.

1 “(2) CERTAIN TELECOMMUNICATIONS INVEST-
2 MENTS BY CORPORATIONS AND INVESTMENT COMPA-
3 NIES.—Gross income does not include 50 percent of
4 any gain from the sale or exchange of stock in an
5 eligible purchaser (as defined in section 1071(f)(1))
6 engaged in a telecommunications business (as de-
7 fined in section 1071(f)(2)) held for more than 5
8 years.”;

9 (2) by striking subparagraphs (A) and (B) of
10 subsection (b)(1) and inserting the following:

11 “(A) in the case of gain from the sale or
12 exchange of qualified small business stock held
13 for more than 5 years—

14 “(i) \$10,000,000 reduced by the ag-
15 gregate amount of eligible gain taken into
16 account by the taxpayer under subsection
17 (a) for prior taxable years and attributable
18 to dispositions of stock issued by such cor-
19 porations; or

20 “(ii) 10 times the aggregate adjusted
21 bases of qualified small business stock
22 issued by such corporations and disposed
23 of by the taxpayer during the taxable year;

24 “(B) in the case of gain from the sale or
25 exchange of stock in an eligible purchaser en-

1 gaged in a telecommunications business for
2 more than 5 years—

3 “(i) \$20,000,000 reduced by the ag-
4 gregate amount of eligible gain taken into
5 account by the taxpayer under subsection
6 (a) for prior taxable years and attributable
7 to dispositions of stock issued by an eligi-
8 ble purchaser engaged in a telecommuni-
9 cations business; or

10 “(ii) 15 times the aggregate adjusted
11 bases of stock of an eligible purchaser en-
12 gaged in a telecommunications business
13 issued by such eligible purchaser and dis-
14 posed of by the taxpayer during the tax-
15 able year.”;

16 (3) by striking “years.” in subsection (b)(2)
17 and inserting “years or any gain from the sale or ex-
18 change of stock in an eligible purchaser engaged in
19 a telecommunications business held for more than 5
20 years.”; and

21 (4) by striking “ ‘\$10,000,000’.” in subsection
22 (b)(3)(A) and inserting “ ‘\$10,000,000’, and para-
23 graph (1)(B) shall be applied by substituting
24 ‘\$10,000,000’ for ‘\$20,000,000’.”.

1 **SEC. 6. EFFECTIVE DATE.**

2 (a) TAXABLE YEARS.—The amendments made by
3 section 4 shall apply to taxable years beginning after June
4 30, 2000.

5 (b) SALES.—The amendments made by section 5
6 shall apply to sales after June 30, 2000.

7 **SEC. 7. BIENNIAL PROGRAM AUDITS BY GAO.**

8 No later than January 1, 2003, and no less fre-
9 quently than every 2 years thereafter, the Comptroller
10 General shall audit the administration of sections of the
11 Internal Revenue Code of 1986 added or amended by sec-
12 tion 3 of this Act, and issue a report on the results of
13 that audit. The Comptroller General shall include in the
14 report, notwithstanding any provision of section 6103 of
15 the Internal Revenue Code of 1986 to the contrary—

16 (1) a list of eligible purchasers (as defined in
17 section 1071(g)(1) of such Code) and any other tax-
18 payer receiving a benefit from the operation of sec-
19 tion 48A, 167, 197, 1044, 1046, 1202, or 1244A of
20 such Code as that section was added or amended by
21 section 3 of this Act; and

22 (2) an assessment of the effect the amendments
23 made by section 3 of this Act have had with respect
24 to increasing new entry into the telecommunications
25 industry by small businesses and businesses owned

1 or controlled by members of minority groups and
2 women.

