

107TH CONGRESS
1ST SESSION

S. 1359

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 SENATE OF THE UNITED STATES

AUGUST 3, 2001

Mr. BURNS (for himself, Mr. BREAUX, Mr. HAGEL, Mrs. LINCOLN, and Mr. ENZI) introduced the following bill; which was read twice and referred to the Committee on Commerce, Science, and Transportation

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,*

1 **SECTION 1. SHORT TITLE.**

2 This Act may be cited as the “Facilitating Access to
3 Speedy Transmissions for Networks, E-commerce and
4 Telecommunications (FASTNET) Act”.

5 **SEC. 2. FINDINGS AND PURPOSE.**

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

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

13 (2) The Telecommunications Act of 1966 spe-
14 cifically recognized the unique abilities and cir-
15 cumstances of local exchange carriers with fewer
16 than two percent of the Nation’s subscriber lines in-
17 stalled in the aggregate nationwide.

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

23 (4) Existing regulations are typically tailored to
24 the circumstances of larger carriers and therefore
25 often impose disproportionate burdens on two per-
26 cent carriers, impeding such carriers’ deployment of

1 advanced telecommunications services and competi-
2 tive initiatives to consumers in less densely popu-
3 lated regions of the Nation.

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

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

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

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

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

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

4 **SEC. 3. DEFINITION.**

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

7 (1) by redesignating paragraphs (51) and (52)
8 as paragraphs (52) and (53), respectively; and

9 (2) by inserting after paragraph (50) the fol-
10 lowing:

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

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

22 Title II of the Communications Act of 1934 is
23 amended by adding at the end thereof a new part IV as
24 follows:

1 **“PART IV—PROVISIONS CONCERNING TWO**
2 **PERCENT CARRIERS**

3 **“SEC. 281. REDUCED REGULATORY REQUIREMENTS FOR**
4 **TWO PERCENT CARRIERS.**

5 “(a) COMMISSION TO TAKE INTO ACCOUNT DIF-
6 FERENCES.—In adopting rules that apply to incumbent
7 local exchange carriers (within the meaning of section
8 251(h)), the Commission shall separately evaluate the bur-
9 den that any proposed regulatory, compliance, or report-
10 ing requirements would have on two percent carriers.

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

20 “(c) ADDITIONAL REVIEW NOT REQUIRED.—Noth-
21 ing in this section shall be construed to require the Com-
22 mission to conduct a separate evaluation under subsection
23 (a) if the rules adopted do not apply to two percent car-
24 riers, or such carriers are exempted from such rules.

25 “(d) SAVINGS CLAUSE.—Nothing in this section shall
26 be construed to prohibit any size-based differentiation

1 among carriers mandated by this Act, chapter 6 of title
2 5, United State Code, the Commission's rules, or any
3 other provision of law.

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

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

8 “(a) LIMITATION.—The Commission shall not require
9 a two percent carrier—

10 “(1) to file cost allocation manuals or to have
11 such manuals audited or attested, but a two percent
12 carrier that qualifies as a class A carrier shall annu-
13 ally certify to the Commission that the two percent
14 carrier's cost allocation complies with the rules of
15 the Commission; or

16 “(2) to file Automated Reporting and Manage-
17 ment Information Systems (ARMIS) reports, except
18 for purposes of section 224.

19 “(b) PRESERVATION OF AUTHORITY.—Except as
20 provided in subsection (a), nothing in this Act limits the
21 authority of the Commission to obtain access to informa-
22 tion under sections 211, 213, 215, 218, and 220 with re-
23 spect to two percent carriers.

1 **“SEC. 283. INTEGRATED OPERATION OF TWO PERCENT**
2 **CARRIERS.**

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

16 **“SEC. 284. PARTICIPATION IN TARIFF POOLS AND PRICE**
17 **CAP REGULATION.**

18 “(a) NECA POOL.—The participation or withdrawal
19 from participation by a two percent carrier of one or more
20 study areas in the common line tariff administered and
21 filed by the National Exchange Carrier Association or any
22 successor tariff or administrator shall not obligate such
23 carrier to participate or withdraw from participation in
24 such tariff for any other study area. The Commission may
25 require a two percent carrier to give 60 days notice of
26 its intent to participate or withdraw from participation in

1 such common line tariff with respect to a study area. Ex-
2 cept as permitted by section 310(f)(3), a two percent car-
3 rier's election under this subsection shall be binding for
4 one year from the date of the election.

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

15 **“SEC. 285. DEPLOYMENT OF NEW TELECOMMUNICATIONS**
16 **SERVICES BY TWO PERCENT COMPANIES.**

17 “(a) ONE-DAY NOTICE OF DEPLOYMENT.—The
18 Commission shall permit two percent carriers to introduce
19 new interstate telecommunications services by filing a tar-
20 iff on one day's notice showing the charges, classifications,
21 regulations, and practices therefor, without obtaining a
22 waiver, or make any other showing before the Commission
23 in advance of the tariff filing. The Commission shall not
24 have authority to approve or disapprove the rate structure
25 for such services shown in such tariff.

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

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

7 “(a) PRICING FLEXIBILITY.—Notwithstanding any
8 other provision of this Act, any two percent carrier shall
9 be permitted to de-average its interstate switched or spe-
10 cial access rates, file tariffs on one day’s notice, and file
11 contract-based tariffs for interstate switched or special ac-
12 cess services immediately upon certifying to the Commis-
13 sion that a telecommunications carrier unaffiliated with
14 such carrier is engaged in facilities-based entry within
15 such carrier’s service area. A two percent carrier subject
16 to rate-of-return regulation with respect to an interstate
17 switched or special access service, for which pricing flexi-
18 bility has been exercised pursuant to this subsection, shall
19 compute its interstate rate of return based on the nondis-
20 counted rate for such service.

21 “(b) STREAMLINED PRICING REGULATION.—Not-
22 withstanding any other provision of this Act, upon receipt
23 by the Commission of a certification by a two percent car-
24 rier that—

25 “(1) a local exchange carrier, or its affiliate, or

1 “(2) a local exchange carrier operated by, or
2 owned in whole or part by, a governmental author-
3 ity,
4 is engaged in facilities-based entry within the two percent
5 carrier’s service area, the Commission shall regulate the
6 two percent carrier as non-dominant and shall not require
7 the tariffing of the interstate service offerings of the two
8 percent carrier.

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

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

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

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

24 “(B) the provision of telephone exchange
25 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 “(c) STATE AUTHORITY.—Nothing in this part shall
12 be construed to limit or affect any authority (as of August
13 1, 2001) of the States over charges, classifications, prac-
14 tices, services, facilities, or regulations for or in connection
15 with intrastate communications service by wire or radio
16 of any carrier.”.

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

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

21 “(f) DEADLINE FOR MAKING PUBLIC INTEREST DE-
22 TERMINATION.—

23 “(1) TIME LIMIT.—In connection with any
24 merger between two percent carriers, or the acquisi-
25 tion, directly or indirectly, by a two percent carrier
26 or its affiliate of securities or assets of another car-

1 rier or its affiliate, if the merged or acquiring carrier
2 remains a two percent carrier after the merger or
3 acquisition, the Commission shall make any deter-
4 minations required by this section and section 214,
5 and shall rule on any petition for waiver of the Com-
6 mission's rules or other request related to such de-
7 terminations, not later than 60 days after the date
8 an application with respect to such merger or acqui-
9 sition is submitted to the Commission.

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

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

24 (b) EFFECTIVE DATE.—The provisions of this sec-
25 tion shall apply with respect to any application that is sub-

1 mitted to the Commission on or after the date of enact-
2 ment of this Act. Applications pending with the Commis-
3 sion on the date of enactment of this Act shall be subject
4 to the requirements of this section as if they had been
5 filed with the Commission on the date of enactment of
6 this Act.

7 **SEC. 6. TIME LIMITS FOR ACTION ON PETITIONS FOR RE-**
8 **CONSIDERATION OR WAIVER.**

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

12 “(c) EXPEDITED ACTION REQUIRED.—

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

1 rule the reconsideration or other review of which was
2 specifically sought by the petitioning party shall be
3 stayed with respect to that party until the Commis-
4 sion issues an order granting or denying such peti-
5 tion.

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

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

20 **SEC. 7. NATIONAL SECURITY AND LAW ENFORCEMENT EX-**
21 **CEPTIONS.**

22 Notwithstanding sections 310 and 405 of the Com-
23 munications Act of 1934 (47 U.S.C. 310 and 405), the
24 60-day time period under section 310(f)(1) of that Act,
25 as added by section 5 of this Act, and the 90-day time

1 period under section 405(c)(1) of that Act, as added by
2 section 6 of this Act, shall not apply to a petition or appli-
3 cation under section 310 or 405 if an Executive Branch
4 agency with cognizance over national security, law enforce-
5 ment, or public safety matters, including the Department
6 of Defense, Department of Justice, and the Federal Bu-
7 reau of Investigation, submits a written filing to the Fed-
8 eral Communications Commission advising the Commis-
9 sion that the petition or application may present national
10 security, law enforcement, or public safety concerns that
11 may not be resolved within the 60-day or 90-day time pe-
12 riod, respectively.

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