

108TH CONGRESS
1ST SESSION

H. R. 768

To amend the Internal Revenue Code of 1986 to provide a broadband Internet access tax credit.

IN THE HOUSE OF REPRESENTATIVES

FEBRUARY 13, 2003

Mr. ENGLISH (for himself, Mr. MATSUI, Mr. HAYES, Mr. BALLENGER, Mr. McINNIS, Mr. DREIER, Mr. HAYWORTH, Mr. BURR, Mr. WICKER, Mr. WELLER, Mr. TERRY, Mr. FOLEY, Mrs. JONES of Ohio, Mr. BECERRA, Mr. HONDA, Ms. DELAURO, Mr. FROST, Mr. CROWLEY, Mr. PETERSON of Pennsylvania, Mrs. CAPPS, Mr. KIND, Mr. ROSS, Mr. OLVER, Mr. McHUGH, Mr. GRIJALVA, Mr. UDALL of New Mexico, Ms. WATSON, Mr. GRAVES, Mr. SIMMONS, Mr. MOORE, Mr. SWEENEY, Ms. BERKLEY, Mr. FILNER, Mr. JANKLOW, Mr. GORDON, Mr. MCINTYRE, Mr. KING of Iowa, Mr. PAUL, Ms. NORTON, Mr. QUINN, Mr. BARTLETT of Maryland, Mr. SIMPSON, Mr. SHUSTER, Mr. OTTER, Mr. LUCAS of Oklahoma, Mr. HEFLEY, Mr. SESSIONS, Mr. DOOLEY of California, Ms. ESHOO, Mr. CUNNINGHAM, Mr. DICKS, Ms. EDDIE BERNICE JOHNSON of Texas, Mr. BOEHLERT, Mr. GONZALEZ, Mr. REYES, Mr. CRAMER, Mr. GREEN of Wisconsin, Mr. DOOLITTLE, Ms. GRANGER, Mr. WELDON of Pennsylvania, Mr. RADANOVICH, Mr. CALVERT, Mr. ISAKSON, Mr. NETHERCUTT, Mr. WALSH, Mr. HASTINGS of Washington, Mr. REHBERG, Mr. GILLMOR, Mr. BAIRD, Mrs. LOWEY, Mr. THOMPSON of California, Mr. MILLER of North Carolina, Mr. SAXTON, Mr. YOUNG of Alaska, Mr. LARSON of Connecticut, Mr. TOWNS, Mr. SCHIFF, Mr. CASE, Ms. WOOLSEY, Mr. CARDOZA, Mrs. BONO, Mr. OSBORNE, Mr. WEINER, Mr. FLETCHER, Mrs. CAPITO, Mr. OSE, Ms. HART, Mr. TURNER of Texas, Mr. PEARCE, Mr. INSLEE, Mrs. JOHNSON of Connecticut, Mr. POMBO, Mr. ROGERS of Michigan, Mr. BERMAN, Mr. UPTON, Mr. TOM DAVIS of Virginia, Mr. KENNEDY of Minnesota, Mr. LATOURETTE, Mr. GOODLATTE, Mr. CASTLE, Mr. POMEROY, Ms. SLAUGHTER, Mr. LEWIS of Georgia, and Mrs. CUBIN) introduced the following bill; which was referred to the Committee on Ways and Means

A BILL

To amend the Internal Revenue Code of 1986 to provide
a broadband Internet access tax credit.

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. BROADBAND INTERNET ACCESS TAX CREDIT.**

4 (a) IN GENERAL.—Subpart E of part IV of chapter
5 1 of the Internal Revenue Code of 1986 (relating to rules
6 for computing investment credit) is amended by inserting
7 after section 48 the following new section:

8 **“SEC. 48A. BROADBAND INTERNET ACCESS CREDIT.**

9 “(a) GENERAL RULE.—For purposes of section 46,
10 the broadband credit for any taxable year is the sum of—

11 “(1) the current generation broadband credit,
12 plus

13 “(2) the next generation broadband credit.

14 “(b) CURRENT GENERATION BROADBAND CREDIT;
15 NEXT GENERATION BROADBAND CREDIT.—For purposes
16 of this section—

17 “(1) CURRENT GENERATION BROADBAND
18 CREDIT.—The current generation broadband credit
19 for any taxable year is equal to 10 percent of the
20 qualified expenditures incurred with respect to quali-
21 fied equipment providing current generation

1 broadband services to qualified subscribers and
2 taken into account with respect to such taxable year.

3 “(2) NEXT GENERATION BROADBAND CRED-
4 IT.—The next generation broadband credit for any
5 taxable year is equal to 20 percent of the qualified
6 expenditures incurred with respect to qualified
7 equipment providing next generation broadband
8 services to qualified subscribers and taken into ac-
9 count with respect to such taxable year.

10 “(c) WHEN EXPENDITURES TAKEN INTO AC-
11 COUNT.—For purposes of this section—

12 “(1) IN GENERAL.—Qualified expenditures with
13 respect to qualified equipment shall be taken into ac-
14 count with respect to the first taxable year in
15 which—

16 “(A) current generation broadband services
17 are provided through such equipment to quali-
18 fied subscribers, or

19 “(B) next generation broadband services
20 are provided through such equipment to quali-
21 fied subscribers.

22 “(2) LIMITATION.—

23 “(A) IN GENERAL.—Qualified expenditures
24 shall be taken into account under paragraph (1)
25 only with respect to qualified equipment—

1 “(i) the original use of which com-
2 mences with the taxpayer, and

3 “(ii) which is placed in service,
4 after December 31, 2002.

5 “(B) SALE-LEASEBACKS.—For purposes of
6 subparagraph (A), if property—

7 “(i) is originally placed in service
8 after December 31, 2002, by any person,
9 and

10 “(ii) sold and leased back by such per-
11 son within 3 months after the date such
12 property was originally placed in service,
13 such property shall be treated as originally
14 placed in service not earlier than the date on
15 which such property is used under the leaseback
16 referred to in clause (ii).

17 “(d) SPECIAL ALLOCATION RULES.—

18 “(1) CURRENT GENERATION BROADBAND SERV-
19 ICES.—For purposes of determining the current gen-
20 eration broadband credit under subsection (a)(1)
21 with respect to qualified equipment through which
22 current generation broadband services are provided,
23 if the qualified equipment is capable of serving both
24 qualified subscribers and other subscribers, the

1 qualified expenditures shall be multiplied by a frac-
2 tion—

3 “(A) the numerator of which is the sum of
4 the number of potential qualified subscribers
5 within the rural areas and the underserved
6 areas which the equipment is capable of serving
7 with current generation broadband services, and

8 “(B) the denominator of which is the total
9 potential subscriber population of the area
10 which the equipment is capable of serving with
11 current generation broadband services.

12 “(2) NEXT GENERATION BROADBAND SERV-
13 ICES.—For purposes of determining the next genera-
14 tion broadband credit under subsection (a)(2) with
15 respect to qualified equipment through which next
16 generation broadband services are provided, if the
17 qualified equipment is capable of serving both quali-
18 fied subscribers and other subscribers, the qualified
19 expenditures shall be multiplied by a fraction—

20 “(A) the numerator of which is the sum
21 of—

22 “(i) the number of potential qualified
23 subscribers within the rural areas and un-
24 derserved areas, plus

1 “(ii) the number of potential qualified
2 subscribers within the area consisting only
3 of residential subscribers not described in
4 clause (i),

5 which the equipment is capable of serving with
6 next generation broadband services, and

7 “(B) the denominator of which is the total
8 potential subscriber population of the area
9 which the equipment is capable of serving with
10 next generation broadband services.

11 “(e) DEFINITIONS.—For purposes of this section—

12 “(1) ANTENNA.—The term ‘antenna’ means
13 any device used to transmit or receive signals
14 through the electromagnetic spectrum, including sat-
15 ellite equipment.

16 “(2) CABLE OPERATOR.—The term ‘cable oper-
17 ator’ has the meaning given such term by section
18 602(5) of the Communications Act of 1934 (47
19 U.S.C. 522(5)).

20 “(3) COMMERCIAL MOBILE SERVICE CAR-
21 RIER.—The term ‘commercial mobile service carrier’
22 means any person authorized to provide commercial
23 mobile radio service as defined in section 20.3 of
24 title 47, Code of Federal Regulations.

1 “(4) CURRENT GENERATION BROADBAND SERV-
2 ICE.—The term ‘current generation broadband serv-
3 ice’ means the transmission of signals at a rate of
4 at least 1,000,000 bits per second to the subscriber
5 and at least 128,000 bits per second from the sub-
6 scriber.

7 “(5) MULTIPLEXING OR DEMULTIPLEXING.—
8 The term ‘multiplexing’ means the transmission of 2
9 or more signals over a single channel, and the term
10 ‘demultiplexing’ means the separation of 2 or more
11 signals previously combined by compatible multi-
12 plexing equipment.

13 “(6) NEXT GENERATION BROADBAND SERV-
14 ICE.—The term ‘next generation broadband service’
15 means the transmission of signals at a rate of at
16 least 22,000,000 bits per second to the subscriber
17 and at least 5,000,000 bits per second from the sub-
18 scriber.

19 “(7) NONRESIDENTIAL SUBSCRIBER.—The
20 term ‘nonresidential subscriber’ means any person
21 who purchases broadband services which are deliv-
22 ered to the permanent place of business of such per-
23 son.

24 “(8) OPEN VIDEO SYSTEM OPERATOR.—The
25 term ‘open video system operator’ means any person

1 authorized to provide service under section 653 of
2 the Communications Act of 1934 (47 U.S.C. 573).

3 “(9) OTHER WIRELESS CARRIER.—The term
4 ‘other wireless carrier’ means any person (other than
5 a telecommunications carrier, commercial mobile
6 service carrier, cable operator, open video system op-
7 erator, or satellite carrier) providing current genera-
8 tion broadband services or next generation
9 broadband service to subscribers through the wire-
10 less transmission of energy through radio or light
11 waves.

12 “(10) PACKET SWITCHING.—The term ‘packet
13 switching’ means controlling or routing the path of
14 a digitized transmission signal which is assembled
15 into packets or cells.

16 “(11) PROVIDER.—The term ‘provider’ means,
17 with respect to any qualified equipment any—

18 “(A) cable operator,

19 “(B) commercial mobile service carrier,

20 “(C) open video system operator,

21 “(D) satellite carrier,

22 “(E) telecommunications carrier, or

23 “(F) other wireless carrier,

1 providing current generation broadband services or
2 next generation broadband services to subscribers
3 through such qualified equipment.

4 “(12) PROVISION OF SERVICES.—A provider
5 shall be treated as providing services to 1 or more
6 subscribers if—

7 “(A) such a subscriber has been passed by
8 the provider’s equipment and can be connected
9 to such equipment for a standard connection
10 fee,

11 “(B) the provider is physically able to de-
12 liver current generation broadband services or
13 next generation broadband services, as applica-
14 ble, to such a subscriber without making more
15 than an insignificant investment with respect to
16 such subscriber,

17 “(C) the provider has made reasonable ef-
18 forts to make such subscribers aware of the
19 availability of such services,

20 “(D) such services have been purchased by
21 1 or more such subscribers, and

22 “(E) such services are made available to
23 such subscribers at average prices comparable
24 to those at which the provider makes available

1 similar services in any areas in which the pro-
2 vider makes available such services.

3 “(13) QUALIFIED EQUIPMENT.—

4 “(A) IN GENERAL.—The term ‘qualified
5 equipment’ means equipment which provides
6 current generation broadband services or next
7 generation broadband services—

8 “(i) at least a majority of the time
9 during periods of maximum demand to
10 each subscriber who is utilizing such serv-
11 ices, and

12 “(ii) in a manner substantially the
13 same as such services are provided by the
14 provider to subscribers through equipment
15 with respect to which no credit is allowed
16 under subsection (a)(1).

17 “(B) ONLY CERTAIN INVESTMENT TAKEN
18 INTO ACCOUNT.—Except as provided in sub-
19 paragraph (C) or (D), equipment shall be taken
20 into account under subparagraph (A) only to
21 the extent it—

22 “(i) extends from the last point of
23 switching to the outside of the unit, build-
24 ing, dwelling, or office owned or leased by

1 a subscriber in the case of a telecommuni-
2 cations carrier,

3 “(ii) extends from the customer side
4 of the mobile telephone switching office to
5 a transmission/receive antenna (including
6 such antenna) owned or leased by a sub-
7 scribe in the case of a commercial mobile
8 service carrier,

9 “(iii) extends from the customer side
10 of the headend to the outside of the unit,
11 building, dwelling, or office owned or
12 leased by a subscriber in the case of a
13 cable operator or open video system oper-
14 ator, or

15 “(iv) extends from a transmission/re-
16 ceive antenna (including such antenna)
17 which transmits and receives signals to or
18 from multiple subscribers, to a trans-
19 mission/receive antenna (including such
20 antenna) on the outside of the unit, build-
21 ing, dwelling, or office owned or leased by
22 a subscriber in the case of a satellite car-
23 rier or other wireless carrier, unless such
24 other wireless carrier is also a tele-
25 communications carrier.

1 “(C) PACKET SWITCHING EQUIPMENT.—

2 Packet switching equipment, regardless of loca-
3 tion, shall be taken into account under subpara-
4 graph (A) only if it is deployed in connection
5 with equipment described in subparagraph (B)
6 and is uniquely designed to perform the func-
7 tion of packet switching for current generation
8 broadband services or next generation
9 broadband services, but only if such packet
10 switching is the last in a series of such func-
11 tions performed in the transmission of a signal
12 to a subscriber or the first in a series of such
13 functions performed in the transmission of a
14 signal from a subscriber.

15 “(D) MULTIPLEXING AND

16 DEMULTIPLEXING EQUIPMENT.—Multiplexing
17 and demultiplexing equipment shall be taken
18 into account under subparagraph (A) only to
19 the extent it is deployed in connection with
20 equipment described in subparagraph (B) and
21 is uniquely designed to perform the function of
22 multiplexing and demultiplexing packets or cells
23 of data and making associated application
24 adaptions, but only if such multiplexing or
25 demultiplexing equipment is located between

1 packet switching equipment described in sub-
2 paragraph (C) and the subscriber's premises.

3 “(14) QUALIFIED EXPENDITURE.—

4 “(A) IN GENERAL.—The term ‘qualified
5 expenditure’ means any amount—

6 “(i) chargeable to capital account with
7 respect to the purchase and installation of
8 qualified equipment (including any up-
9 grades thereto) for which depreciation is
10 allowable under section 168, and

11 “(ii) incurred after December 31,
12 2002, and before January 1, 2008.

13 “(B) CERTAIN SATELLITE EXPENDITURES
14 EXCLUDED.—Such term shall not include any
15 expenditure with respect to the launching of
16 any satellite equipment.

17 “(C) LEASED EQUIPMENT.—Such term
18 shall include so much of the purchase price paid
19 by the lessor of equipment subject to a lease de-
20 scribed in subsection (c)(2)(B) as is attrib-
21 utable to expenditures incurred by the lessee
22 which would otherwise be described in subpara-
23 graph (A).

24 “(15) QUALIFIED SUBSCRIBER.—The term
25 ‘qualified subscriber’ means—

1 “(A) with respect to the provision of cur-
2 rent generation broadband services—

3 “(i) any nonresidential subscriber
4 maintaining a permanent place of business
5 in a rural area or underserved area, or

6 “(ii) any residential subscriber resid-
7 ing in a dwelling located in a rural area or
8 underserved area which is not a saturated
9 market, and

10 “(B) with respect to the provision of next
11 generation broadband services—

12 “(i) any nonresidential subscriber
13 maintaining a permanent place of business
14 in a rural area or underserved area, or

15 “(ii) any residential subscriber.

16 “(16) RESIDENTIAL SUBSCRIBER.—The term
17 ‘residential subscriber’ means any individual who
18 purchases broadband services which are delivered to
19 such individual’s dwelling.

20 “(17) RURAL AREA.—The term ‘rural area’
21 means any census tract which—

22 “(A) is not within 10 miles of any incor-
23 porated or census designated place containing
24 more than 25,000 people, and

1 “(B) is not within a county or county
2 equivalent which has an overall population den-
3 sity of more than 500 people per square mile of
4 land.

5 “(18) RURAL SUBSCRIBER.—The term ‘rural
6 subscriber’ means any residential subscriber residing
7 in a dwelling located in a rural area or nonresiden-
8 tial subscriber maintaining a permanent place of
9 business located in a rural area.

10 “(19) SATELLITE CARRIER.—The term ‘sat-
11 ellite carrier’ means any person using the facilities
12 of a satellite or satellite service licensed by the Fed-
13 eral Communications Commission and operating in
14 the Fixed-Satellite Service under part 25 of title 47
15 of the Code of Federal Regulations or the Direct
16 Broadcast Satellite Service under part 100 of title
17 47 of such Code to establish and operate a channel
18 of communications for distribution of signals, and
19 owning or leasing a capacity or service on a satellite
20 in order to provide such distribution.

21 “(20) SATURATED MARKET.—The term ‘satu-
22 rated market’ means any census tract in which, as
23 of the date of the enactment of this section—

24 “(A) current generation broadband services
25 have been provided by a single provider to 85

1 percent or more of the total number of potential
2 residential subscribers residing in dwellings lo-
3 cated within such census tract, and

4 “(B) such services can be utilized—

5 “(i) at least a majority of the time
6 during periods of maximum demand by
7 each such subscriber who is utilizing such
8 services, and

9 “(ii) in a manner substantially the
10 same as such services are provided by the
11 provider to subscribers through equipment
12 with respect to which no credit is allowed
13 under subsection (a)(1).

14 “(21) SUBSCRIBER.—The term ‘subscriber’
15 means any person who purchases current generation
16 broadband services or next generation broadband
17 services.

18 “(22) TELECOMMUNICATIONS CARRIER.—The
19 term ‘telecommunications carrier’ has the meaning
20 given such term by section 3(44) of the Communica-
21 tions Act of 1934 (47 U.S.C. 153(44)), but—

22 “(A) includes all members of an affiliated
23 group of which a telecommunications carrier is
24 a member, and

1 “(B) does not include any commercial mo-
2 bile service carrier.

3 “(23) TOTAL POTENTIAL SUBSCRIBER POPU-
4 LATION.—The term ‘total potential subscriber popu-
5 lation’ means, with respect to any area and based on
6 the most recent census data, the total number of po-
7 tential residential subscribers residing in dwellings
8 located in such area and potential nonresidential
9 subscribers maintaining permanent places of busi-
10 ness located in such area.

11 “(24) UNDERSERVED AREA.—The term ‘under-
12 served area’ means any census tract which is located
13 in—

14 “(A) an empowerment zone or enterprise
15 community designated under section 1391,

16 “(B) the District of Columbia Enterprise
17 Zone established under section 1400,

18 “(C) a renewal community designated
19 under section 1400E, or

20 “(D) a low-income community designated
21 under section 45D.

22 “(25) UNDERSERVED SUBSCRIBER.—The term
23 ‘underserved subscriber’ means any residential sub-
24 scriber residing in a dwelling located in an under-
25 served area or nonresidential subscriber maintaining

1 a permanent place of business located in an under-
2 served area.”.

3 (b) CREDIT TO BE PART OF INVESTMENT CREDIT.—
4 Section 46 of the Internal Revenue Code of 1986 (relating
5 to the amount of investment credit) is amended by striking
6 “and” at the end of paragraph (2), by striking the period
7 at the end of paragraph (3) and inserting “, and”, and
8 by adding at the end the following:

9 “(4) the broadband Internet access credit.”

10 (c) SPECIAL RULE FOR MUTUAL OR COOPERATIVE
11 TELEPHONE COMPANIES.—Section 501(c)(12)(B) of the
12 Internal Revenue Code of 1986 (relating to list of exempt
13 organizations) is amended by striking “or” at the end of
14 clause (iii), by striking the period at the end of clause (iv)
15 and inserting “, or”, and by adding at the end the fol-
16 lowing new clause:

17 “(v) from the sale of property subject
18 to a lease described in section
19 48A(c)(2)(B), but only to the extent such
20 income does not in any year exceed an
21 amount equal to the credit for qualified ex-
22 penditures which would be determined
23 under section 48A for such year if the mu-
24 tual or cooperative telephone company was
25 not exempt from taxation and was treated

1 as the owner of the property subject to
2 such lease.”.

3 (d) CONFORMING AMENDMENT.—The table of sec-
4 tions for subpart E of part IV of subchapter A of chapter
5 1 of the Internal Revenue Code of 1986 is amended by
6 inserting after the item relating to section 48 the fol-
7 lowing:

“Sec. 48A. Broadband internet access credit.”.

8 (e) DESIGNATION OF CENSUS TRACTS.—

9 (1) IN GENERAL.—The Secretary of the Treas-
10 ury shall, not later than 90 days after the date of
11 the enactment of this Act, designate and publish
12 those census tracts meeting the criteria described in
13 paragraphs (17) and (24) of section 48A(e) of the
14 Internal Revenue Code of 1986 (as added by this
15 section). In making such designations, the Secretary
16 of the Treasury shall consult with such other depart-
17 ments and agencies as the Secretary determines ap-
18 propriate.

19 (2) SATURATED MARKET.—

20 (A) IN GENERAL.—For purposes of desig-
21 nating and publishing those census tracts meet-
22 ing the criteria described in subsection (e)(20)
23 of such section 48A—

24 (i) the Secretary of the Treasury shall
25 prescribe not later than 30 days after the

1 date of the enactment of this Act the form
2 upon which any provider which takes the
3 position that it meets such criteria with re-
4 spect to any census tract shall submit a
5 list of such census tracts (and any other
6 information required by the Secretary) not
7 later than 60 days after the date of the
8 publication of such form, and

9 (ii) the Secretary of the Treasury
10 shall publish an aggregate list of such cen-
11 sus tracts submitted and the applicable
12 providers not later than 30 days after the
13 last date such submissions are allowed
14 under clause (i).

15 (B) NO SUBSEQUENT LISTS REQUIRED.—

16 The Secretary of the Treasury shall not be re-
17 quired to publish any list of census tracts meet-
18 ing such criteria subsequent to the list de-
19 scribed in subparagraph (A)(ii).

20 (C) AUTHORITY TO DISREGARD FALSE
21 SUBMISSIONS.—In addition to imposing any
22 other applicable penalties, the Secretary of the
23 Treasury shall have the discretion to disregard
24 any form described in subparagraph (A)(i) on

1 which a provider knowingly submitted false in-
2 formation.

3 (f) OTHER REGULATORY MATTERS.—

4 (1) PROHIBITION.—No Federal or State agency
5 or instrumentality shall adopt regulations or rate-
6 making procedures that would have the effect of
7 confiscating any credit or portion thereof allowed
8 under section 48A of the Internal Revenue Code of
9 1986 (as added by this section) or otherwise sub-
10 verting the purpose of this section.

11 (2) TREASURY REGULATORY AUTHORITY.—It is
12 the intent of Congress in providing the broadband
13 Internet access credit under section 48A of the In-
14 ternal Revenue Code of 1986 (as added by this sec-
15 tion) to provide incentives for the purchase, installa-
16 tion, and connection of equipment and facilities of-
17 fering expanded broadband access to the Internet for
18 users in certain low income and rural areas of the
19 United States, as well as to residential users nation-
20 wide, in a manner that maintains competitive neu-
21 trality among the various classes of providers of
22 broadband services. Accordingly, the Secretary of
23 the Treasury shall prescribe such regulations as may
24 be necessary or appropriate to carry out the pur-
25 poses of section 48A of such Code, including—

1 (A) regulations to determine how and when
2 a taxpayer that incurs qualified expenditures
3 satisfies the requirements of section 48A of
4 such Code to provide broadband services, and

5 (B) regulations describing the information,
6 records, and data taxpayers are required to pro-
7 vide the Secretary to substantiate compliance
8 with the requirements of section 48A of such
9 Code.

10 (g) EFFECTIVE DATE.—The amendments made by
11 this section shall apply to expenditures incurred after De-
12 cember 31, 2002.

○