

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

# H. R. 496

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

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

---

## 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”.

1 **SEC. 2. FINDINGS AND PURPOSE.**

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

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

9 (2) The Telecommunications Act of 1996 spe-  
10 cifically recognized the unique abilities and cir-  
11 cumstances of local exchange carriers with fewer  
12 than two percent of the Nation’s subscriber lines in-  
13 stalled in the aggregate nationwide.

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

19 (4) Existing regulations are typically tailored to  
20 the circumstances of larger carriers and therefore  
21 often impose disproportionate burdens on two per-  
22 cent carriers, impeding such carriers’ deployment of  
23 advanced telecommunications services and competi-  
24 tive initiatives to consumers in less densely popu-  
25 lated regions of the Nation.

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

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

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

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

21           (2) to improve such carriers' flexibility to un-  
22 dertake such initiatives; and

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

1 **SEC. 3. DEFINITION.**

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

4 (1) by redesignating paragraphs (51) and (52)  
5 as paragraphs (52) and (53), respectively; and

6 (2) by inserting after paragraph (50) the fol-  
7 lowing:

8 “(51) TWO PERCENT CARRIER.—The term ‘two  
9 percent carrier’ means an incumbent local exchange  
10 carrier within the meaning of section 251(h) that  
11 has fewer than two percent of the Nation’s sub-  
12 scriber lines installed in the aggregate nationwide.”.

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

15 Title II of the Communications Act of 1934 is  
16 amended by adding at the end thereof a new part IV as  
17 follows:

18 **“PART IV—PROVISIONS CONCERNING TWO**  
19 **PERCENT CARRIERS**

20 **“SEC. 281. REDUCED REGULATORY REQUIREMENTS FOR**  
21 **TWO PERCENT CARRIERS.**

22 “(a) COMMISSION TO TAKE INTO ACCOUNT DIF-  
23 FERENCES.—In adopting rules that apply to incumbent  
24 local exchange carriers (within the meaning of section  
25 251(h)), the Commission shall separately evaluate the bur-

1 den that any proposed regulatory, compliance, or report-  
2 ing requirements would have on two percent carriers.

3 “(b) EFFECT OF RECONSIDERATION OR WAIVER.—

4 If the Commission adopts a rule that applies to incumbent  
5 local exchange carriers and fails to separately evaluate the  
6 burden that any proposed regulatory, compliance, or re-  
7 porting requirement would have on two percent carriers,  
8 the Commission shall not enforce the rule against two per-  
9 cent carriers unless and until the Commission performs  
10 such separate evaluation.

11 “(c) ADDITIONAL REVIEW NOT REQUIRED.—Noth-

12 ing in this section shall be construed to require the Com-  
13 mission to conduct a separate evaluation under subsection  
14 (a) if the rules adopted do not apply to two percent car-  
15 riers, or such carriers are exempted from such rules.

16 “(d) SAVINGS CLAUSE.—Nothing in this section shall

17 be construed to prohibit any size-based differentiation  
18 among carriers mandated by this Act, chapter 6 of title  
19 5, United States Code, the Commission’s rules, or any  
20 other provision of law.

21 “(e) EFFECTIVE DATE.—The provisions of this sec-

22 tion shall apply with respect to any rule adopted on or  
23 after the date of enactment of this section.

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

2 “(a) LIMITATION.—The Commission shall not require  
3 a two percent carrier—

4 “(1) to file cost allocation manuals or to have  
5 such manuals audited, but a two percent carrier that  
6 qualifies as a class A carrier shall annually certify  
7 to the Commission that the two percent carrier’s  
8 cost allocation complies with the rules of the Com-  
9 mission; or

10 “(2) to file Automated Reporting and Manage-  
11 ment Information Systems (ARMIS) reports.

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

17 **“SEC. 283. INTEGRATED OPERATION OF TWO PERCENT**  
18 **CARRIERS.**

19 “The Commission shall not require any two percent  
20 carrier to establish or maintain a separate affiliate to pro-  
21 vide any common carrier or noncommon carrier services,  
22 including local and interexchange services, commercial mo-  
23 bile radio services, advanced services (within the meaning  
24 of section 706 of the Telecommunications Act of 1996),  
25 paging, Internet, information services or other enhanced  
26 services, or other services. The Commission shall not re-

1 quire any two percent carrier and its affiliates to maintain  
2 separate officers, directors, or other personnel, network fa-  
3 cilities, buildings, research and development departments,  
4 books of account, financing, marketing, provisioning, or  
5 other operations.

6 **“SEC. 284. PARTICIPATION IN TARIFF POOLS AND PRICE**  
7 **CAP REGULATION.**

8 “(a) NECA POOL.—The participation or withdrawal  
9 from participation by a two percent carrier of one or more  
10 study areas in the common line tariff administered and  
11 filed by the National Exchange Carrier Association or any  
12 successor tariff or administrator shall not obligate such  
13 carrier to participate or withdraw from participation in  
14 such tariff for any other study area.

15 “(b) PRICE CAP REGULATION.—A two percent car-  
16 rier may elect to be regulated by the Commission under  
17 price cap rate regulation, or elect to withdraw from such  
18 regulation, for one or more of its study areas at any time.  
19 The Commission shall not require a carrier making an  
20 election under this paragraph with respect to any study  
21 area or areas to make the same election for any other  
22 study area.

1 **“SEC. 285. DEPLOYMENT OF NEW TELECOMMUNICATIONS**  
2 **SERVICES BY TWO PERCENT COMPANIES.**

3 “The Commission shall permit two percent carriers  
4 to introduce new interstate telecommunications services by  
5 filing a tariff on one day’s notice showing the charges,  
6 classifications, regulations and practices therefor, without  
7 obtaining a waiver, or make any other showing before the  
8 Commission in advance of the tariff filing. The Commis-  
9 sion shall not have authority to approve or disapprove the  
10 rate structure for such services shown in such tariff.

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

12 “(a) **PRICING FLEXIBILITY.**—Notwithstanding any  
13 other provision of this Act, any two percent carrier shall  
14 be permitted to deaverage its interstate switched or special  
15 access rates, file tariffs on one day’s notice, and file con-  
16 tract-based tariffs for interstate switched or special access  
17 services immediately upon certifying to the Commission  
18 that a telecommunications carrier unaffiliated with such  
19 carrier is engaged in facilities-based entry within such car-  
20 rier’s service area.

21 “(b) **PRICING DEREGULATION.**—Notwithstanding  
22 any other provision of this Act, upon receipt by the Com-  
23 mission of a certification by a two percent carrier that a  
24 local exchange carrier that is not a two percent carrier  
25 is engaged in facilities-based entry within the two percent  
26 carrier’s service area, the Commission shall regulate such

1 two percent carrier as non-dominant, and therefore shall  
 2 not require the tariffing of the interstate service offerings  
 3 of such two percent carrier.

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

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

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

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

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

20 “(2) CONTRACT-BASED TARIFF.—The term  
 21 ‘contract-based tariff’ shall mean a tariff based on  
 22 a service contract entered into between a two per-  
 23 cent carrier and one or more customers of such car-  
 24 rier. Such tariff shall include—

1           “(A) the term of the contract, including  
2 any renewal options;

3           “(B) a brief description of each of the  
4 services provided under the contract;

5           “(C) minimum volume commitments for  
6 each service, if any;

7           “(D) the contract price for each service or  
8 services at the volume levels committed to by  
9 the customer or customers;

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

13           “(F) a general description of any other  
14 classifications, practices, and regulations affect-  
15 ing the contract rate.

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

18 **“SEC. 287. SAVINGS PROVISIONS.**

19           “(a) COMMISSION AUTHORITY.—Nothing in this part  
20 shall be construed to restrict the authority of the Commis-  
21 sion under sections 201 through 205 and 208.

22           “(b) RURAL TELEPHONE COMPANY RIGHTS.—Noth-  
23 ing in this part shall be construed to diminish the rights  
24 of rural telephone companies otherwise accorded by this  
25 Act, or the rules, policies, procedures, guidelines, and

1 standards of the Commission as of the date of enactment  
2 of this section.”.

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

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

7 “(f) DEADLINE FOR MAKING PUBLIC INTEREST DE-  
8 TERMINATION.—

9 “(1) TIME LIMIT.—In connection with any  
10 merger between two percent carriers, or the acquisi-  
11 tion, directly or indirectly, by a two percent carrier  
12 or its affiliate of the securities or assets of another  
13 two percent carrier or its affiliate, the Commission  
14 shall make any determination required by subsection  
15 (d) of this section or section 214 not later than 60  
16 days after the date an application with respect to  
17 such merger is submitted to the Commission.

18 “(2) APPROVAL ABSENT ACTION.—If the Com-  
19 mission does not approve or deny an application as  
20 described in paragraph (1) by the end of the period  
21 specified, the application shall be deemed approved  
22 on the day after the end of such period. Any such  
23 application deemed approved under this subsection  
24 shall be deemed approved without conditions.”.

1 (b) EFFECTIVE DATE.—The provisions of this sec-  
2 tion shall apply with respect to any application that is sub-  
3 mitted to the Commission on or after the date of enact-  
4 ment of this Act. Applications pending with the Commis-  
5 sion on the date of enactment of this Act shall be subject  
6 to the requirements of this section as if they had been  
7 filed with the Commission on the date of enactment of  
8 this Act.

9 **SEC. 6. TIME LIMITS FOR ACTION ON PETITIONS FOR RE-**  
10 **CONSIDERATION OR WAIVER.**

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

14 “(c) EXPEDITED ACTION REQUIRED.—

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

1       ments of this section within this 90 day period, the  
2       Commission’s enforcement of any rule the reconsid-  
3       eration of which was specifically sought by the peti-  
4       tioning party shall be stayed with respect to that  
5       party until the Commission issues an order granting  
6       or denying such petition.

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

12      (b) EFFECTIVE DATE.—The provisions of this sec-  
13      tion shall apply with respect to any petition for reconsider-  
14      ation or petition for waiver that is submitted to the Com-  
15      mission on or after the date of enactment of this Act.  
16      Pending petitions for reconsideration or petitions for waiv-  
17      er shall be subject to the requirements of this section as  
18      if they had been filed on the date of enactment of this  
19      Act.

○