

106TH CONGRESS
2^D SESSION

S. 2698

To amend the Internal Revenue Code of 1986 to provide an incentive to ensure that all Americans gain timely and equitable access to the Internet over current and future generations of broadband capability.

IN THE SENATE OF THE UNITED STATES

JUNE 8, 2000

Mr. MOYNIHAN (for himself, Mr. KERRY, Mr. ROCKEFELLER, Ms. SNOWE, Mr. ALLARD, Mr. BAUCUS, Mr. BREAUX, Mr. BROWNBACK, Mr. BRYAN, Mr. BUNNING, Mr. BURNS, Mr. DASCHLE, Mr. DURBIN, Mr. HOLLINGS, Mr. HUTCHINSON, Mr. JOHNSON, Mr. KENNEDY, Mr. KERREY, Ms. LANDRIEU, Mrs. LINCOLN, Ms. MIKULSKI, Mr. REID, Mr. ROBB, Mr. ROBERTS, Mr. SCHUMER, Mr. THURMOND, Mr. ENZI, Mrs. BOXER, and Mr. DEWINE) 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 an incentive to ensure that all Americans gain timely and equitable access to the Internet over current and future generations of broadband capability.

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 “Broadband Internet
5 Access Act of 2000”.

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

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

3 (1) The Internet has been the single greatest
4 contributor to the unprecedented economic expansion
5 experienced by the United States over the last 8
6 years.

7 (2) Increasing the speed that Americans can ac-
8 cess the Internet is necessary to ensure the contin-
9 ued expansion.

10 (3) Today, most residential Internet users, es-
11 pecially those located in low income and rural areas,
12 are extremely limited in the type of information they
13 can send and receive over the Internet because their
14 means of access is limited to “narrowband” commu-
15 nications media, typically conventional phone lines at
16 a maximum speed of 56,000 bits per second.

17 (4) Similarly, small businesses in low income
18 and rural areas are also deprived of full information
19 access because of their dependence on narrowband
20 facilities.

21 (5) By contrast, many residential users located
22 in higher income urban and suburban areas and
23 urban business users can access the Internet from a
24 variety of carriers at current generation broadband
25 speeds in excess of 1,500,000 bits per second, giving

1 them a choice among carriers and high-speed access
2 to a wide array of audio and data applications.

3 (6) The result is a growing disparity in the
4 speed of access to the Internet and the opportunities
5 it creates between subscribers located in low income
6 and rural areas and subscribers located in higher in-
7 come urban and suburban areas.

8 (7) At the same time, experts project that,
9 under current financial and regulatory conditions,
10 the facilities needed to transmit next generation
11 broadband services over the Internet to residential
12 users at speeds in excess of 10,000,000 bits per sec-
13 ond will not be as ubiquitously available as is tele-
14 phone service until sometime between the years 2030
15 and 2040.

16 (8) Experts also believe that, under current fi-
17 nancial and regulatory conditions, the disparity in
18 access will be exacerbated with the deployment of
19 next generation broadband capability.

20 (9) The disparity in current broadband access
21 to the Internet, the slow pace of deployment of next
22 generation broadband capability, and the projected
23 disparity in access to such capability will likely prove
24 detrimental to the on-going economic expansion.

1 (10) It is, therefore, appropriate for Congress
2 to take action to narrow the current and future dis-
3 parity in the level of broadband access to the Inter-
4 net, and to accelerate deployment of next generation
5 broadband capability.

6 (b) PURPOSE.—The purpose of this Act is to accel-
7 erate deployment of current generation broadband access
8 to the Internet for users located in certain low income and
9 rural areas and to accelerate deployment of next genera-
10 tion broadband access for all Americans.

11 **SEC. 3. BROADBAND CREDIT.**

12 (a) IN GENERAL.—Subpart E of part IV of chapter
13 1 of the Internal Revenue Code of 1986 (relating to rules
14 for computing investment credit) is amended by inserting
15 after section 48 the following new section:

16 **“SEC. 48A. BROADBAND CREDIT.**

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

19 “(1) the current generation broadband credit,
20 plus

21 “(2) the next generation broadband credit.

22 “(b) CURRENT GENERATION BROADBAND CREDIT;
23 NEXT GENERATION BROADBAND CREDIT.—For purposes
24 of this section—

1 “(1) CURRENT GENERATION BROADBAND
2 CREDIT.—The current generation broadband credit
3 for any taxable year is equal to 10 percent of the
4 qualified expenditures incurred with respect to quali-
5 fied equipment offering current generation
6 broadband services to rural subscribers or under-
7 served subscribers and taken into account with re-
8 spect to such taxable year.

9 “(2) NEXT GENERATION BROADBAND CRED-
10 IT.—The next generation broadband credit for any
11 taxable year is equal to 20 percent of the qualified
12 expenditures incurred with respect to qualified
13 equipment offering next generation broadband serv-
14 ices to all rural subscribers, all underserved sub-
15 scribers, or any other residential subscribers and
16 taken into account with respect to such taxable year.

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

19 “(1) IN GENERAL.—Qualified expenditures with
20 respect to qualified equipment shall be taken into ac-
21 count with respect to the first taxable year in which
22 current generation broadband services or next gen-
23 eration broadband services are offered by the tax-
24 payer through such equipment to subscribers.

1 “(2) OFFER OF SERVICES.—For purposes of
2 paragraph (1), the offer of current generation
3 broadband services or next generation broadband
4 services through qualified equipment occurs when
5 such class of service is purchased by and provided
6 to at least 10 percent of the subscribers described
7 in subsection (b) which such equipment is capable
8 of serving through the legal or contractual area ac-
9 cess rights or obligations of the taxpayer.

10 “(d) SPECIAL ALLOCATION RULES.—

11 “(1) CURRENT GENERATION BROADBAND SERV-
12 ICES.—For purposes of determining the current gen-
13 eration broadband credit under subsection (a)(1), if
14 the qualified equipment is capable of serving both
15 the subscribers described under subsection (b)(1)
16 and other subscribers, the qualified expenditures
17 shall be multiplied by a fraction—

18 “(A) the numerator of which is the sum of
19 the total potential subscriber populations within
20 the rural areas and the underserved areas
21 which the equipment is capable of serving, and

22 “(B) the denominator of which is the total
23 potential subscriber population of the area
24 which the equipment is capable of serving.

1 “(2) NEXT GENERATION BROADBAND SERV-
2 ICES.—For purposes of determining the next genera-
3 tion broadband credit under subsection (a)(2), if the
4 qualified equipment is capable of serving both the
5 subscribers described under subsection (b)(2) and
6 other subscribers, the qualified expenditures shall be
7 multiplied by a fraction—

8 “(A) the numerator of which is the sum
9 of—

10 “(i) the total potential subscriber pop-
11 ulations within the rural areas and under-
12 served areas, plus

13 “(ii) the total potential subscriber
14 population of the area consisting only of
15 residential subscribers not described in
16 clause (i),

17 which the equipment is capable of serving, and

18 “(B) the denominator of which is the total
19 potential subscriber population of the area
20 which the equipment is capable of serving.

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

22 “(1) ANTENNA.—The term ‘antenna’ means
23 any device used to transmit or receive signals
24 through the electromagnetic spectrum, including sat-
25 ellite equipment.

1 “(2) CABLE OPERATOR.—The term ‘cable oper-
2 ator’ has the meaning given such term by section
3 602(5) of the Communications Act of 1934 (47
4 U.S.C. 522(5)).

5 “(3) COMMERCIAL MOBILE SERVICE CAR-
6 RIER.—The term ‘commercial mobile service carrier’
7 means any person authorized to provide commercial
8 mobile radio service as defined in section 20.3 of
9 title 47, Code of Federal Regulations.

10 “(4) CURRENT GENERATION BROADBAND SERV-
11 ICE.—The term ‘current generation broadband serv-
12 ice’ means the transmission of signals at a rate of
13 at least 1,500,000 bits per second to the subscriber
14 and at least 200,000 bits per second from the sub-
15 scriber.

16 “(5) NEXT GENERATION BROADBAND SERV-
17 ICE.—The term ‘next generation broadband service’
18 means the transmission of signals at a rate of at
19 least 22,000,000 bits per second to the subscriber
20 and at least 10,000,000 bits per second from the
21 subscriber.

22 “(6) NONRESIDENTIAL SUBSCRIBER.—The
23 term ‘nonresidential subscriber’ means a person or
24 entity who purchases broadband services which are

1 delivered to the permanent place of business of such
2 person or entity.

3 “(7) OPEN VIDEO SYSTEM OPERATOR.—The
4 term ‘open video system operator’ means any person
5 authorized to provide service under section 653 of
6 the Communications Act of 1934 (47 U.S.C. 573).

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

15 “(9) PACKET SWITCHING.—The term ‘packet
16 switching’ means controlling or routing the path of
17 a digitized transmission signal which is assembled
18 into packets or cells.

19 “(10) QUALIFIED EQUIPMENT.—

20 “(A) IN GENERAL.—The term ‘qualified
21 equipment’ means equipment capable of pro-
22 viding current generation broadband services or
23 next generation broadband services at any time
24 to each subscriber who is utilizing such services.

1 “(B) ONLY CERTAIN INVESTMENT TAKEN
2 INTO ACCOUNT.—Except as provided in sub-
3 paragraph (C), equipment shall be taken into
4 account under subparagraph (A) only to the ex-
5 tent it—

6 “(i) extends from the last point of
7 switching to the outside of the unit, build-
8 ing, dwelling, or office owned or leased by
9 a subscriber in the case of a telecommuni-
10 cations carrier,

11 “(ii) extends from the customer side
12 of the mobile telephone switching office to
13 a transmission/receive antenna (including
14 such antenna) on the outside of the unit,
15 building, dwelling, or office owned or
16 leased by a subscriber in the case of a
17 commercial mobile service carrier,

18 “(iii) extends from the customer side
19 of the headend to the outside of the unit,
20 building, dwelling, or office owned or
21 leased by a subscriber in the case of a
22 cable operator or open video system oper-
23 ator, or

24 “(iv) extends from a transmission/re-
25 ceive antenna (including such antenna)

1 which transmits and receives signals to or
2 from multiple subscribers to a trans-
3 mission/receive antenna (including such
4 antenna) on the outside of the unit, build-
5 ing, dwelling, or office owned or leased by
6 a subscriber in the case of a satellite car-
7 rier or other wireless carrier, unless such
8 other wireless carrier is also a tele-
9 communications carrier.

10 “(C) PACKET SWITCHING EQUIPMENT.—
11 Packet switching equipment, regardless of loca-
12 tion, shall be taken into account under subpara-
13 graph (A) only if it is deployed in connection
14 with equipment described in subparagraph (B)
15 and it is uniquely designed to perform the func-
16 tion of packet switching for current generation
17 broadband services or next generation
18 broadband services, but only if such packet
19 switching is the last in a series of such func-
20 tions performed in the transmission of a signal
21 to a subscriber or the first in a series of such
22 functions performed in the transmission of a
23 signal from a subscriber.

24 “(11) QUALIFIED EXPENDITURE.—

1 “(A) IN GENERAL.—The term ‘qualified
2 expenditure’ means any amount chargeable to
3 capital account with respect to the purchase
4 and installation of qualified equipment (includ-
5 ing any upgrades thereto) for which deprecia-
6 tion is allowable under section 168.

7 “(B) CERTAIN SATELLITE EXPENDITURES
8 EXCLUDED.—Such term shall not include any
9 expenditure with respect to the launching of
10 any satellite equipment.

11 “(12) RESIDENTIAL SUBSCRIBER.—The term
12 ‘residential subscriber’ means an individual who pur-
13 chases broadband services which are delivered to
14 such individual’s dwelling.

15 “(13) RURAL SUBSCRIBER.—

16 “(A) IN GENERAL.—The term ‘rural sub-
17 scriber’ means a residential subscriber residing
18 in a dwelling located in a rural area or nonresi-
19 dential subscriber maintaining a permanent
20 place of business located in a rural area.

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

23 “(i) is not within 10 miles of any in-
24 corporated or census designated place con-
25 taining more than 25,000 people, and

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

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

17 “(15) SUBSCRIBER.—The term ‘subscriber’
18 means a person who purchases current generation
19 broadband services or next generation broadband
20 services.

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

1 “(A) includes all members of an affiliated
2 group of which a telecommunications carrier is
3 a member, and

4 “(B) does not include a commercial mobile
5 service carrier.

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

14 “(18) UNDERSERVED SUBSCRIBER.—

15 “(A) IN GENERAL.—The term ‘under-
16 served subscriber’ means a residential sub-
17 scriber residing in a dwelling located in an un-
18 derserved area or nonresidential subscriber
19 maintaining a permanent place of business lo-
20 cated in an underserved area.

21 “(B) UNDERSERVED AREA.—The term
22 ‘underserved area’ means any census tract—

23 “(i) the poverty level of which is at
24 least 30 percent (based on the most recent
25 census data),

1 “(ii) the median family income of
2 which does not exceed—

3 “(I) in the case of a census tract
4 located in a metropolitan statistical
5 area, 70 percent of the greater of the
6 metropolitan area median family in-
7 come or the statewide median family
8 income, and

9 “(II) in the case of a census tract
10 located in a nonmetropolitan statis-
11 tical area, 70 percent of the non-
12 metropolitan statewide median family
13 income, or

14 “(iii) which is located in an empower-
15 ment zone or enterprise community des-
16 ignated under section 1391.

17 “(f) DESIGNATION OF CENSUS TRACTS.—The Sec-
18 retary shall, not later than 90 days after the date of the
19 enactment of this section, designate and publish those cen-
20 sus tracts meeting the criteria described in paragraphs
21 (13)(B) and (18)(B) of subsection (e), and such tracts
22 shall remain so designated for the period ending with the
23 termination date described in subsection (g).

24 “(g) TERMINATION.—This section shall not apply to
25 expenditures incurred after December 31, 2005.”

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

7 “(4) the broadband credit.”

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

15 “(v) from sources not described in
16 subparagraph (A), but only to the extent
17 such income does not in any year exceed
18 an amount equal to the credit for qualified
19 expenditures which would be determined
20 under section 48A for such year if the mu-
21 tual or cooperative telephone company was
22 not exempt from taxation.”

23 (d) CONFORMING AMENDMENT.—The table of sec-
24 tions for subpart E of part IV of subchapter A of chapter
25 1 of the Internal Revenue Code of 1986 is amended by

1 inserting after the item relating to section 48 the following
2 new item:

“Sec. 48A. Broadband credit.”

3 (e) EFFECTIVE DATES.—

4 (1) IN GENERAL.—Except as provided in para-
5 graph (2), the amendments made by this section
6 shall apply to expenditures incurred after December
7 31, 2000.

8 (2) SPECIAL RULE.—The amendments made by
9 subsection (e) shall apply to amounts received after
10 December 31, 2000.

11 **SEC. 4. REGULATORY MATTERS.**

12 No Federal or State agency or instrumentality shall
13 adopt regulations or ratemaking procedures that would
14 have the effect of confiscating any credit or portion thereof
15 allowed under section 48A of the Internal Revenue Code
16 of 1986 (as added by section 3) or otherwise subverting
17 the purpose of this Act.

18 **SEC. 5. STUDY AND REPORT.**

19 (a) SENSE OF CONGRESS.—It is the sense of Con-
20 gress that in order to maintain competitive neutrality, the
21 credit allowed under section 48A of the Internal Revenue
22 Code of 1986 (as added by section 3) should be adminis-
23 tered in such a manner so as to ensure that each class
24 of carrier receives the same level of financial incentive to

1 deploy current generation broadband services and next
2 generation broadband services.

3 (b) STUDY AND REPORT.—The Secretary of the
4 Treasury shall, within 180 days after the effective date
5 of section 3, study the impact of the credit allowed under
6 section 48A of the Internal Revenue Code of 1986 (as
7 added by section 3) on the relative competitiveness of po-
8 tential classes of carriers of current generation broadband
9 services and next generation broadband services, and shall
10 report to Congress the findings of such study, together
11 with any legislative or regulatory proposals determined to
12 be necessary to ensure that the purposes of such credit
13 can be furthered without impacting competitive neutrality
14 among such classes of carriers.

○