

INDEPENDENT TELECOMMUNICATIONS CONSUMER  
 ENHANCEMENT ACT OF 2001

MARCH 13, 2001.—Committed to the Committee of the Whole House on the State  
 of the Union and ordered to be printed

Mr. TAUZIN, from the Committee on Energy and Commerce,  
 submitted the following

R E P O R T

[To accompany H.R. 496]

[Including cost estimate of the Congressional Budget Office]

The Committee on Energy and Commerce, to whom was referred the bill (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, having considered the same, report favorably thereon with an amendment and recommend that the bill as amended do pass.

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## AMENDMENT

The amendment is as follows:  
Strike all after the enacting clause and insert the following:

**SECTION 1. SHORT TITLE.**

This Act may be cited as the “Independent Telecommunications Consumer Enhancement Act of 2001”.

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

(a) FINDINGS.—Congress finds the following:

(1) The Telecommunications Act of 1996 was enacted to foster the rapid deployment of advanced telecommunications and information technologies and services to all Americans by promoting competition and reducing regulation in telecommunications markets nationwide.

(2) The Telecommunications Act of 1996 specifically recognized the unique abilities and circumstances of local exchange carriers with fewer than two percent of the Nation’s subscriber lines installed in the aggregate nationwide.

(3) Given the markets two percent carriers typically serve, such carriers are uniquely positioned to accelerate the deployment of advanced services and competitive initiatives for the benefit of consumers in less densely populated regions of the Nation.

(4) Existing regulations are typically tailored to the circumstances of larger carriers and therefore often impose disproportionate burdens on two percent carriers, impeding such carriers’ deployment of advanced telecommunications services and competitive initiatives to consumers in less densely populated regions of the Nation.

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

(6) Reducing regulatory burdens on two percent carriers will increase such carriers’ ability to respond to marketplace conditions, allowing them to accelerate deployment of advanced services and competitive initiatives to benefit consumers in less densely populated regions of the Nation.

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

(1) to accelerate the deployment of advanced services and the development of competition in the telecommunications industry for the benefit of consumers in all regions of the Nation, consistent with the Telecommunications Act of 1996, by reducing regulatory burdens on local exchange carriers with fewer than two percent of the Nation’s subscriber lines installed in the aggregate nationwide;

(2) to improve such carriers’ flexibility to undertake such initiatives; and

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

**SEC. 3. DEFINITION.**

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

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

(2) by inserting after paragraph (50) the following:

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

**SEC. 4. REGULATORY RELIEF FOR TWO PERCENT CARRIERS.**

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

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

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

“(a) COMMISSION TO TAKE INTO ACCOUNT DIFFERENCES.—In adopting rules that apply to incumbent local exchange carriers (within the meaning of section 251(h)),

the Commission shall separately evaluate the burden that any proposed regulatory, compliance, or reporting requirements would have on two percent carriers.

“(b) EFFECT OF COMMISSION’S FAILURE TO TAKE INTO ACCOUNT DIFFERENCES.—If the Commission adopts a rule that applies to incumbent local exchange carriers and fails to separately evaluate the burden that any proposed regulatory, compliance, or reporting requirement would have on two percent carriers, the Commission shall not enforce the rule against two percent carriers unless and until the Commission performs such separate evaluation.

“(c) ADDITIONAL REVIEW NOT REQUIRED.—Nothing in this section shall be construed to require the Commission to conduct a separate evaluation under subsection (a) if the rules adopted do not apply to two percent carriers, or such carriers are exempted from such rules.

“(d) SAVINGS CLAUSE.—Nothing in this section shall be construed to prohibit any size-based differentiation among carriers mandated by this Act, chapter 6 of title 5, United States Code, the Commission’s rules, or any other provision of law.

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

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

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

“(1) to file cost allocation manuals or to have such manuals audited or attested, but a two percent carrier that qualifies as a class A carrier shall annually certify to the Commission that the two percent carrier’s cost allocation complies with the rules of the Commission; or

“(2) to file Automated Reporting and Management Information Systems (ARMIS) reports.

“(b) PRESERVATION OF AUTHORITY.—Except as provided in subsection (a), nothing in this Act limits the authority of the Commission to obtain access to information under sections 211, 213, 215, 218, and 220 with respect to two percent carriers.

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

“The Commission shall not require any two percent carrier to establish or maintain a separate affiliate to provide any common carrier or noncommon carrier services, including local and interexchange services, commercial mobile radio services, advanced services (within the meaning of section 706 of the Telecommunications Act of 1996), paging, Internet, information services or other enhanced services, or other services. The Commission shall not require any two percent carrier and its affiliates to maintain separate officers, directors, or other personnel, network facilities, buildings, research and development departments, books of account, financing, marketing, provisioning, or other operations.

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

“(a) NECA POOL.—The participation or withdrawal from participation by a two percent carrier of one or more study areas in the common line tariff administered and filed by the National Exchange Carrier Association or any successor tariff or administrator shall not obligate such carrier to participate or withdraw from participation in such tariff for any other study area. The Commission may require a two percent carrier to give 60 days notice of its intent to participate or withdraw from participation in such common line tariff with respect to a study area. Except as permitted by section 310(f)(3), a two percent carrier’s election under this subsection shall be binding for one year from the date of the election.

“(b) PRICE CAP REGULATION.—A two percent carrier may elect to be regulated by the Commission under price cap rate regulation, or elect to withdraw from such regulation, for one or more of its study areas. The Commission shall not require a carrier making an election under this subsection with respect to any study area or areas to make the same election for any other study area. Except as permitted by section 310(f)(3), a two percent carrier’s election under this subsection shall be binding for one year from the date of the election.

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

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

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

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

“(a) **PRICING FLEXIBILITY.**—Notwithstanding any other provision of this Act, any two percent carrier shall be permitted to deaverage its interstate switched or special access rates, file tariffs on one day’s notice, and file contract-based tariffs for interstate switched or special access services immediately upon certifying to the Commission that a telecommunications carrier unaffiliated with such carrier is engaged in facilities-based entry within such carrier’s service area. A two percent carrier subject to rate-of-return regulation with respect to an interstate switched or special access service, for which pricing flexibility has been exercised pursuant to this subsection, shall compute its interstate rate of return based on the nondiscounted rate for such service.

“(b) **PRICING DEREGULATION.**—Notwithstanding any other provision of this Act, upon receipt by the Commission of a certification by a two percent carrier that a local exchange carrier that is not a two percent carrier is engaged in facilities-based entry within the two percent carrier’s service area, the Commission shall regulate such two percent carrier as non-dominant, and therefore shall not require the tariffing of the interstate service offerings of such two percent carrier.

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

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

“(1) **FACILITIES-BASED ENTRY.**—The term ‘facilities-based entry’ means, within the service area of a two percent carrier—

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

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

“(2) **CONTRACT-BASED TARIFF.**—The term ‘contract-based tariff’ shall mean a tariff based on a service contract entered into between a two percent carrier and one or more customers of such carrier. Such tariff shall include—

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

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

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

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

“(E) a brief description of any volume discounts built into the contract rate structure; and

“(F) a general description of any other classifications, practices, and regulations affecting the contract rate.

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

**“SEC. 287. SAVINGS PROVISIONS.**

“(a) **COMMISSION AUTHORITY.**—Nothing in this part shall be construed to restrict the authority of the Commission under sections 201 through 208.

“(b) **RURAL TELEPHONE COMPANY RIGHTS.**—Nothing in this part shall be construed to diminish the rights of rural telephone companies otherwise accorded by this Act, or the rules, policies, procedures, guidelines, and standards of the Commission as of the date of enactment of this section.”

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

(a) **AMENDMENT.**—Section 310 of the Communications Act of 1934 (47 U.S.C. 310) is amended by adding at the end the following:

“(f) **DEADLINE FOR MAKING PUBLIC INTEREST DETERMINATION.**—

“(1) **TIME LIMIT.**—In connection with any merger between two percent carriers, or the acquisition, directly or indirectly, by a two percent carrier or its affiliate of securities or assets of another two percent carrier or its affiliate, if the merged or acquiring carrier remains a two percent carrier after the merger or acquisition, the Commission shall make any determinations required by this section and section 214, and shall rule on any petition for waiver of the Commission’s rules or other request related to such determinations, not later than 60 days after the date an application with respect to such merger or acquisition is submitted to the Commission.

“(2) **APPROVAL ABSENT ACTION.**—If the Commission does not approve or deny an application as described in paragraph (1) by the end of the period specified, the application shall be deemed approved on the day after the end of such pe-

riod. Any such application deemed approved under this subsection shall be deemed approved without conditions.

“(3) ELECTION PERMITTED.—The Commission shall permit a two percent carrier to make an election pursuant to section 284 with respect to any local exchange facilities acquired as a result of a merger or acquisition that is subject to the review deadline established in paragraph (1) of this subsection.”

(b) EFFECTIVE DATE.—The provisions of this section shall apply with respect to any application that is submitted to the Commission on or after the date of enactment of this Act. Applications pending with the Commission on the date of enactment of this Act shall be subject to the requirements of this section as if they had been filed with the Commission on the date of enactment of this Act.

**SEC. 6. TIME LIMITS FOR ACTION ON PETITIONS FOR RECONSIDERATION OR WAIVER.**

(a) AMENDMENT.—Section 405 of the Communications Act of 1934 (47 U.S.C. 405) is amended by adding to the end the following:

“(c) EXPEDITED ACTION REQUIRED.—

“(1) TIME LIMIT.—Within 90 days after receiving from a two percent carrier a petition for reconsideration or other review filed under this section or a petition for waiver of a rule, policy, or other Commission requirement, the Commission shall issue an order granting or denying such petition. If the Commission fails to act on a petition for waiver subject to the requirements of this section within this 90-day period, the relief sought in such petition shall be deemed granted. If the Commission fails to act on a petition for reconsideration or other review subject to the requirements of this section within such 90-day period, the Commission’s enforcement of any rule the reconsideration or other review of which was specifically sought by the petitioning party shall be stayed with respect to that party until the Commission issues an order granting or denying such petition.

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

(b) EFFECTIVE DATE.—The provisions of this section shall apply with respect to any petition for reconsideration or other review or petition for waiver that is submitted to the Commission on or after the date of enactment of this Act. Petitions for reconsideration or petitions for waiver pending with the Commission on the date of enactment of this Act shall be subject to the requirements of this section as if they had been filed on the date of enactment of this Act.

PURPOSE AND SUMMARY

The purpose of H.R. 496, the Independent Telecommunications Consumer Enhancement Act of 2001, is to reduce the regulatory burden imposed upon two percent telecommunications carriers so that they may more effectively respond to competition in rural and less-densely populated areas.

BACKGROUND AND NEED FOR LEGISLATION

In February 1998, the Independent Telephone and Telecommunications Alliance (ITTA), a group of 14 mid-size incumbent local exchange carriers (ILECs) that each have less than two percent of the nation’s installed subscriber lines, petitioned the Federal Communications Commission (FCC) to forbear from a number of regulations. In May 1999, the FCC released six orders which denied the vast majority of ITTA’s requests, but granted limited relief on some grounds. As a result, two percent carriers argue that the regulatory burdens imposed by the FCC prevent them from being fully competitive in a competitive environment. H.R. 496 would legislatively remedy some of the items denied by the FCC and would, additionally, relieve other regulatory burdens imposed on two percent carriers.

## COMMITTEE HEARINGS

The Committee has held no hearings on H.R. 496. During the 106th Congress, however, the Subcommittee on Telecommunications, Trade, and Consumer Protection held a hearing on July 20, 2000 on H.R. 3850, legislation that was comparable to H.R. 496. The Subcommittee received testimony from: Carol E. Matthey, Deputy Chief, Common Carrier Bureau, Federal Communications Commission; Larry F. Darby, Darby Associates, Communications Consultants; John Sumpter, Vice President of Regulatory Affairs, PacWest Telecomm, Inc., on behalf of Association for Local Telecommunications Services; Jack Mueller, Cincinnati Telephone Company/BroadWing; and David Cole, Senior Vice President of Operations Support, CenturyTel, Inc.

## COMMITTEE CONSIDERATION

On February 28, 2001, the Full Committee met in open markup session and ordered H.R. 496 reported to the House, with an amendment in the nature of a substitute offered by Representative Cubin, by a voice vote, a quorum being present.

## COMMITTEE VOTES

Clause 3(b) of Rule XIII of the Rules of the House of Representatives requires the Committee to list the record votes on the motion to report legislation and amendments thereto. There were no record votes taken in connection with ordering H.R. 496 reported. A motion by Mr. Tauzin to order H.R. 496 reported to the House, with amendment, was agreed to by a voice vote.

## STATEMENT OF GENERAL PERFORMANCE GOALS AND OBJECTIVES

H.R. 496 will reduce the regulatory burden imposed upon two percent telecommunications carriers so that they may more effectively respond to competition in rural and less-densely populated areas.

## NEW BUDGET AUTHORITY, ENTITLEMENT AUTHORITY, AND TAX EXPENDITURES

In compliance with clause 3(c)(2) of Rule XIII of the Rules of the House of Representatives, the Committee finds that H.R. 496, the Independent Telecommunications Consumer Enhancement Act, would result in no new or increased budget authority, entitlement authority, or tax expenditures or revenues.

## COMMITTEE COST ESTIMATE

The Committee adopts as its own the cost estimate prepared by the Director of the Congressional Budget Office pursuant to section 402 of the Congressional Budget Act of 1974.

## CONGRESSIONAL BUDGET OFFICE ESTIMATE

U.S. CONGRESS,  
CONGRESSIONAL BUDGET OFFICE,  
*Washington, DC, March 12, 2001.*

Hon. W.J. "BILLY" TAUZIN,  
*Chairman, Committee on Energy and Commerce, House of Representatives, Washington, DC.*

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for H.R. 496, the Independent Telecommunications Consumer Enhancement Act of 2001.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contact is Ken Johnson.

Sincerely,

STEVEN LIEBERMAN  
(For Dan L. Crippen, Director).

Enclosure.

*H.R. 496—Independent Telecommunications Consumer Enhancement Act of 2001*

H.R. 496 would exempt small telecommunications carriers from certain rules and reporting requirements administered by the Federal Communications Commission (FCC). The bill also would require the FCC to grant or deny merger petitions from these companies within 60 days, and all reconsideration and waiver petitions within 90 days.

CBO estimates that H.R. 496 would have no significant impact on the federal budget. However, the bill could affect direct spending, so pay-as-you-go procedures would apply. H.R. 496 contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act and would impose no costs on state, local, or tribal governments.

Based on information from the FCC, CBO estimates that implementing H.R. 496 would cost the agency about \$3 million in the first year after enactment and \$2 million a year thereafter. The commission would need more staff to investigate the costs incurred by small telecommunications carriers, which the bill would exempt from certain reporting requirements. The FCC also would have to hire additional personnel to review merger, reconsideration, and waiver petitions in order to meet the bill's deadlines for acting on such petitions. Under current law, enforcement and regulatory costs that the agency incurs are offset by fees charged to the industries that the FCC regulates. Therefore, CBO expects that the net costs of implementing these provisions would be negligible.

H.R. 496 would affect application fees the FCC collects to offset costs associated with tariff filings and other applications from the telecommunications industry. Those licensing fees are recorded in the budget as offsetting receipts. Based on information from the FCC, CBO expects that, under H.R. 496, small telecommunications carriers might file slightly fewer tariffs. However, CBO estimates that the effect on application fees would not be significant.

The CBO staff contact for this estimate is Ken Johnson. This estimate was approved by Robert A. Sunshine, Assistant Director for Budget Analysis.

## FEDERAL MANDATES STATEMENT

The Committee adopts as its own the estimate of Federal mandates prepared by the Director of the Congressional Budget Office pursuant to section 423 of the Unfunded Mandates Reform Act.

## ADVISORY COMMITTEE STATEMENT

No advisory committees within the meaning of section 5(b) of the Federal Advisory Committee Act were created by this legislation.

## CONSTITUTIONAL AUTHORITY STATEMENT

Pursuant to clause 3(d)(1) of Rule XIII of the Rules of the House of Representatives, the Committee finds that the Constitutional authority for this legislation is provided in Article I, section 8, clause 3, which grants Congress the power to regulate commerce with foreign nations, among the several States, and with the Indian tribes.

## APPLICABILITY TO LEGISLATIVE BRANCH

The Committee finds that the legislation does not relate to the terms and conditions of employment or access to public services or accommodations within the meaning of section 102(b)(3) of the Congressional Accountability Act.

## SECTION-BY-SECTION ANALYSIS OF THE LEGISLATION

*Section 1. Short title*

Section 1 establishes the short title of the bill, the “Independent Telecommunications Consumer Enhancement Act of 2001.”

*Section 2. Findings and purpose*

Section 2 makes certain Congressional findings and describes the purposes of the bill.

*Section 3. Definition*

Section 3 defines the term “two percent carrier” as an incumbent local exchange carrier within the meaning of section 251(h) whose access lines, when aggregated with the access lines of any local exchange carrier that such incumbent local exchange carrier directly or indirectly controls, is controlled by, or is under common control with, are fewer than two percent of the Nation’s subscriber lines installed in the aggregate nationwide.

*Section 4. Regulatory relief for two percent carriers*

Section 4 of the bill adds a new section 281 to the Communications Act of 1934 (47 U.S.C. §151 et seq.) that requires the FCC to separately evaluate the burden that any proposed regulation would have on two percent carriers. If the FCC fails to separately evaluate such regulations, the Commission is not permitted to enforce the rule against two percent carriers. If the proposed regulation does not apply to two percent carriers, a separate evaluation is not required. This section applies to any rule adopted on or after the date of enactment of the bill.

New section 282 of the Communications Act exempts two percent carriers from filing and auditing or attesting cost allocation manu-

als and annual Automated Reporting and Management Information Systems reports. Two percent carriers that qualify as Class A carriers must annually certify that they are complying with cost allocation rules. Except for the provisions contained in section 282, nothing in this bill is meant to limit the authority of the FCC to request or obtain access to information currently allowed under the Communications Act. The elimination of CAM and ARMIS burdens would not affect other Commission reporting requirements such as Form 492 and Form 499.

New section 283 of the Communications Act prevents the FCC from requiring a two percent carrier to establish a separate affiliate to provide any common carrier or noncommon carrier service, including local and interexchange services, commercial mobile radio service, advanced services (within the meaning of section 706 of the Communications Act), paging, Internet, information services or other enhanced services. Although Section 283 prevents the Commission from requiring two percent carriers to maintain separate books of account, this provision does not relieve two percent carriers of their obligation to comply with existing cost allocation requirements.

New section 284 of the Communications Act eliminates the “all or nothing rules” relating to the National Exchange Carrier Association (NECA) common line tariff pool and price cap regulations. This section allows two percent carriers to participate in NECA’s common line tariff in one or more study areas, and elect to be regulated as a price cap carrier for one or more study areas. However, a two percent carrier is not required to participate in NECA’s common line tariff in every one of its study areas, nor is the carrier required to elect price cap regulation in every one of its study areas. After a two percent carrier has elected to participate or withdraw from the NECA common line tariff for a particular study area, or to be regulated as a price cap carrier for a particular study area, the choice may not be changed for at least one year unless a change in ownership occurs.

New section 285 of the Communications Act allows two percent carriers to introduce new interstate services by filing a tariff with one day’s notice, without obtaining a waiver, and prevents the FCC from approving or disapproving the rate structure. The term “new interstate telecommunications service” means a class or subclass of service not previously offered that enlarges the carrier’s range of service options.

New section 286 of the Communications Act allows a two percent carrier to deaverage its interstate switched or special access rates, file a tariff with one day’s notice, or file contract-based tariffs for interstate switched or special access services upon certifying that the carrier faces competition from a facilities-based carrier. However, a two percent carrier subject to rate of return regulation may not compute its interstate rate of return based on a discounted rate offered for an interstate service. Upon certifying that a two percent carrier faces competition from a facilities-based competitor that is not a two percent carrier, the FCC must regulate a two percent carrier as non-dominant, and, therefore, shall not require the tariffing of interstate service offerings. A two percent carrier that qualifies for pricing flexibility or non-dominant treatment in any study area shall not be required to exercise such regulatory relief

for that study area. A two percent carrier may not include access lines for which pricing flexibility or non-dominant treatment has been exercised in the common line tariff administered and filed by the National Exchange Carrier Association or any successor tariff or administrator. The term “Facilities-based entry” is defined as the provision or procurement of local telephone exchange switching or its equivalent and the provision of telephone exchange service to at least one unaffiliated customer.

New section 287 of the Communications Act includes a savings provision providing that nothing in this section is to be construed to restrict the authority of the FCC under sections 201 through 208 of the Communications Act or to diminish the rights of rural telephone companies under the Communications Act or any related rules, policies, procedures, guidelines, and standards of the FCC.

*Section 5. Limitation on merger review*

Section 5 amends section 310 of the Communications Act (47 U.S.C. §310) by adding a deadline for making a public interest determination on the application or any associated waiver or request. This provision was intended to apply in instances where a merger between two percent carriers, or the acquisition of a two percent carrier or the assets or securities of another carrier by a two percent carrier, results in a two percent carrier. The FCC, in making a determination under section 214 and 310 of the Communications Act, must make a determination not later than 60 days after the date an application is filed with the FCC. If the FCC fails to approve or deny the application within 60 days, the merger application is deemed approved without conditions. This section is effective with respect to any application submitted to the FCC on or after the date of enactment. Merger applications pending at the FCC on the date of enactment shall be subject to this section as if they had been filed with the FCC on the date of enactment.

*Section 6. Time limits for action on petitions for reconsideration or waiver*

Section 6 amends section 405 of the Communications Act (47 U.S.C. §405) by requiring the FCC to act on waiver and reconsideration petitions filed by two percent carriers within 90 days of filing. If no action is taken on a waiver petition within 90 days, the petition is deemed granted. If no action is taken on a petition for reconsideration within 90 days, the Commission’s enforcement of any rule the reconsideration of which was specifically sought shall be stayed with respect to that party until the Commission issues an order granting or denying the petition. This section applies to other reviews conducted by the Commission that involve two-percent carriers.

CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with clause 3(e) of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italic, existing law in which no change is proposed is shown in roman):

**COMMUNICATIONS ACT OF 1934**

\* \* \* \* \*

**TITLE I—GENERAL PROVISIONS**

\* \* \* \* \*

**SEC. 3. DEFINITIONS.**

For the purposes of this Act, unless the context otherwise requires—

(1) \* \* \*

\* \* \* \* \*

(51) *TWO PERCENT CARRIER.*—The term “two percent carrier” means an incumbent local exchange carrier within the meaning of section 251(h) whose access lines, when aggregated with the access lines of any local exchange carrier that such incumbent local exchange carrier directly or indirectly controls, is controlled by, or is under common control with, are fewer than two percent of the Nation’s subscriber lines installed in the aggregate nationwide.

[(51)] (52) *UNITED STATES.*—The term “United States” means the several States and Territories, the District of Columbia, and the possessions of the United States, but does not include the Canal Zone.

[(52)] (53) *WIRE COMMUNICATION.*—The term “wire communication” or “communication by wire” means the transmission of writing, signs, signals, pictures, and sounds of all kinds by aid of wire, cable, or other like connection between the points of origin and reception of such transmission, including all instrumentalities, facilities, apparatus, and services (among other things, the receipt, forwarding, and delivery of communications) incidental to such transmission.

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**TITLE II—COMMON CARRIERS**

\* \* \* \* \*

**PART IV—PROVISIONS CONCERNING TWO PERCENT CARRIERS**

**SEC. 281. REDUCED REGULATORY REQUIREMENTS FOR TWO PERCENT CARRIERS.**

(a) *COMMISSION TO TAKE INTO ACCOUNT DIFFERENCES.*—In adopting rules that apply to incumbent local exchange carriers (within the meaning of section 251(h)), the Commission shall separately evaluate the burden that any proposed regulatory, compliance, or reporting requirements would have on two percent carriers.

(b) *EFFECT OF COMMISSION’S FAILURE TO TAKE INTO ACCOUNT DIFFERENCES.*—If the Commission adopts a rule that applies to incumbent local exchange carriers and fails to separately evaluate the burden that any proposed regulatory, compliance, or reporting requirement would have on two percent carriers, the Commission

shall not enforce the rule against two percent carriers unless and until the Commission performs such separate evaluation.

(c) **ADDITIONAL REVIEW NOT REQUIRED.**—Nothing in this section shall be construed to require the Commission to conduct a separate evaluation under subsection (a) if the rules adopted do not apply to two percent carriers, or such carriers are exempted from such rules.

(d) **SAVINGS CLAUSE.**—Nothing in this section shall be construed to prohibit any size-based differentiation among carriers mandated by this Act, chapter 6 of title 5, United States Code, the Commission's rules, or any other provision of law.

(e) **EFFECTIVE DATE.**—The provisions of this section shall apply with respect to any rule adopted on or after the date of enactment of this section.

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

(a) **LIMITATION.**—The Commission shall not require a two percent carrier—

(1) to file cost allocation manuals or to have such manuals audited or attested, but a two percent carrier that qualifies as a class A carrier shall annually certify to the Commission that the two percent carrier's cost allocation complies with the rules of the Commission; or

(2) to file Automated Reporting and Management Information Systems (ARMIS) reports.

(b) **PRESERVATION OF AUTHORITY.**—Except as provided in subsection (a), nothing in this Act limits the authority of the Commission to obtain access to information under sections 211, 213, 215, 218, and 220 with respect to two percent carriers.

**SEC. 283. INTEGRATED OPERATION OF TWO PERCENT CARRIERS.**

The Commission shall not require any two percent carrier to establish or maintain a separate affiliate to provide any common carrier or noncommon carrier services, including local and interexchange services, commercial mobile radio services, advanced services (within the meaning of section 706 of the Telecommunications Act of 1996), paging, Internet, information services or other enhanced services, or other services. The Commission shall not require any two percent carrier and its affiliates to maintain separate officers, directors, or other personnel, network facilities, buildings, research and development departments, books of account, financing, marketing, provisioning, or other operations.

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

(a) **NECA POOL.**—The participation or withdrawal from participation by a two percent carrier of one or more study areas in the common line tariff administered and filed by the National Exchange Carrier Association or any successor tariff or administrator shall not obligate such carrier to participate or withdraw from participation in such tariff for any other study area. The Commission may require a two percent carrier to give 60 days notice of its intent to participate or withdraw from participation in such common line tariff with respect to a study area. Except as permitted by section 310(f)(3), a two percent carrier's election under this subsection shall be binding for one year from the date of the election.

(b) **PRICE CAP REGULATION.**—A two percent carrier may elect to be regulated by the Commission under price cap rate regulation, or

elect to withdraw from such regulation, for one or more of its study areas. The Commission shall not require a carrier making an election under this subsection with respect to any study area or areas to make the same election for any other study area. Except as permitted by section 310(f)(3), a two percent carrier's election under this subsection shall be binding for one year from the date of the election.

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

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

(b) **DEFINITION.**—For purposes of subsection (a), the term “new interstate telecommunications service” means a class or subclass of service not previously offered by the two percent carrier that enlarges the range of service options available to ratepayers of such carrier.

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

(a) **PRICING FLEXIBILITY.**—Notwithstanding any other provision of this Act, any two percent carrier shall be permitted to deaverage its interstate switched or special access rates, file tariffs on one day's notice, and file contract-based tariffs for interstate switched or special access services immediately upon certifying to the Commission that a telecommunications carrier unaffiliated with such carrier is engaged in facilities-based entry within such carrier's service area. A two percent carrier subject to rate-of-return regulation with respect to an interstate switched or special access service, for which pricing flexibility has been exercised pursuant to this subsection, shall compute its interstate rate of return based on the nondiscounted rate for such service.

(b) **PRICING DEREGULATION.**—Notwithstanding any other provision of this Act, upon receipt by the Commission of a certification by a two percent carrier that a local exchange carrier that is not a two percent carrier is engaged in facilities-based entry within the two percent carrier's service area, the Commission shall regulate such two percent carrier as non-dominant, and therefore shall not require the tariffing of the interstate service offerings of such two percent carrier.

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

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

(1) **FACILITIES-BASED ENTRY.**—The term “facilities-based entry” means, within the service area of a two percent carrier—

- (A) the provision or procurement of local telephone exchange switching or its equivalent; and
  - (B) the provision of telephone exchange service to at least one unaffiliated customer.
- (2) **CONTRACT-BASED TARIFF.**—The term “contract-based tariff” shall mean a tariff based on a service contract entered into between a two percent carrier and one or more customers of such carrier. Such tariff shall include—
- (A) the term of the contract, including any renewal options;
  - (B) a brief description of each of the services provided under the contract;
  - (C) minimum volume commitments for each service, if any;
  - (D) the contract price for each service or services at the volume levels committed to by the customer or customers;
  - (E) a brief description of any volume discounts built into the contract rate structure; and
  - (F) a general description of any other classifications, practices, and regulations affecting the contract rate.
- (3) **SERVICE AREA.**—The term “service area” has the same meaning as in section 214(e)(5).

**SEC. 287. SAVINGS PROVISIONS.**

- (a) **COMMISSION AUTHORITY.**—Nothing in this part shall be construed to restrict the authority of the Commission under sections 201 through 208.
- (b) **RURAL TELEPHONE COMPANY RIGHTS.**—Nothing in this part shall be construed to diminish the rights of rural telephone companies otherwise accorded by this Act, or the rules, policies, procedures, guidelines, and standards of the Commission as of the date of enactment of this section.

**TITLE III—PROVISIONS RELATING TO RADIO**

**PART I—GENERAL PROVISIONS**

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**SEC. 310. LIMITATION ON HOLDING AND TRANSFER OF LICENSES.**

- (a) \* \* \*
- \* \* \* \* \*
- (f) **DEADLINE FOR MAKING PUBLIC INTEREST DETERMINATION.**—
  - (1) **TIME LIMIT.**—In connection with any merger between two percent carriers, or the acquisition, directly or indirectly, by a two percent carrier or its affiliate of securities or assets of another two percent carrier or its affiliate, if the merged or acquiring carrier remains a two percent carrier after the merger or acquisition, the Commission shall make any determinations required by this section and section 214, and shall rule on any petition for waiver of the Commission’s rules or other request related to such determinations, not later than 60 days after the date an application with respect to such merger or acquisition is submitted to the Commission.

(2) *APPROVAL ABSENT ACTION.*—If the Commission does not approve or deny an application as described in paragraph (1) by the end of the period specified, the application shall be deemed approved on the day after the end of such period. Any such application deemed approved under this subsection shall be deemed approved without conditions.

(3) *ELECTION PERMITTED.*—The Commission shall permit a two percent carrier to make an election pursuant to section 284 with respect to any local exchange facilities acquired as a result of a merger or acquisition that is subject to the review deadline established in paragraph (1) of this subsection.

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**TITLE IV—PROCEDURAL AND ADMINISTRATIVE PROVISIONS**

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**SEC. 405. RECONSIDERATIONS.**

(a) \* \* \*

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(c) *EXPEDITED ACTION REQUIRED.*—

(1) *TIME LIMIT.*—Within 90 days after receiving from a two percent carrier a petition for reconsideration or other review filed under this section or a petition for waiver of a rule, policy, or other Commission requirement, the Commission shall issue an order granting or denying such petition. If the Commission fails to act on a petition for waiver subject to the requirements of this section within this 90-day period, the relief sought in such petition shall be deemed granted. If the Commission fails to act on a petition for reconsideration or other review subject to the requirements of this section within such 90-day period, the Commission’s enforcement of any rule the reconsideration or other review of which was specifically sought by the petitioning party shall be stayed with respect to that party until the Commission issues an order granting or denying such petition.

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

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