

AMENDMENT TO H.R. 1542**OFFERED BY****(Substitute)**

Strike all after the enacting clause and insert the following:

1 **SECTION 1. SHORT TITLE.**

2 This Act may be cited as the “Internet Freedom and
3 Broadband Deployment Act of 2001”.

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

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

6 (1) Internet access services are inherently inter-
7 state and international in nature, and should there-
8 fore not be subject to regulation by the States.

9 (2) The imposition of regulations by the Fed-
10 eral Communications Commission and the States
11 has impeded the rapid delivery of high speed Inter-
12 net access services and Internet backbone services to
13 the public, thereby reducing consumer choice and
14 welfare.

15 (3) The Telecommunications Act of 1996 rep-
16 resented a careful balance between the need to open
17 up local telecommunications markets to competition
18 and the need to increase competition in the provision
19 of interLATA voice telecommunications services.



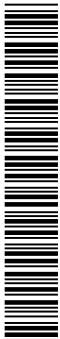
1 (4) In enacting the prohibition on Bell oper-
2 ating company provision of interLATA services,
3 Congress recognized that certain telecommunications
4 services have characteristics that render them in-
5 compatible with the prohibition on Bell operating
6 company provision of interLATA services, and ex-
7 empted such services from the interLATA prohibi-
8 tion.

9 (5) High speed data services and Internet back-
10 bone services constitute unique markets that are
11 likewise incompatible with the prohibition on Bell
12 operating company provision of interLATA services.

13 (6) Since the enactment of the Telecommuni-
14 cations Act of 1996, the Federal Communications
15 Commission has construed the prohibition on Bell
16 operating company provision of interLATA services
17 in a manner that has impeded the development of
18 advanced telecommunications services, thereby lim-
19 iting consumer choice and welfare.

20 (7) Internet users should have choice among
21 competing Internet service providers.

22 (8) Internet service providers should have the
23 right to interconnect with high speed data networks
24 in order to provide service to Internet users.



1 (b) PURPOSES.—It is therefore the purpose of this
2 Act to provide market incentives for the rapid delivery of
3 advanced telecommunications services—

4 (1) by deregulating high speed data services,
5 Internet backbone services, and Internet access serv-
6 ices;

7 (2) by clarifying that the prohibition on Bell op-
8 erating company provision of interLATA services
9 does not extend to the provision of high speed data
10 services and Internet backbone services;

11 (3) by ensuring that consumers can choose
12 among competing Internet service providers; and

13 (4) by ensuring that Internet service providers
14 can interconnect with competitive high speed data
15 networks in order to provide Internet access service
16 to the public.

17 **SEC. 3. DEFINITIONS**

18 (a) AMENDMENTS.—Section 3 of the Communica-
19 tions Act of 1934 (47 U.S.C. 153) is amended—

20 (1) by redesignating paragraph (20) as para-
21 graph (21);

22 (2) by redesignating paragraphs (21) through
23 (52) as paragraphs (26) through (54), respectively;

24 (3) by inserting after paragraph (19) the fol-
25 lowing new paragraph:



1 “(20) HIGH SPEED DATA SERVICE.—The term
2 ‘high speed data service’ means any service that con-
3 sists of or includes the offering of a capability to
4 transmit, using a packet-switched or successor tech-
5 nology, information at a rate that is generally not
6 less than 384 kilobits per second in at least one di-
7 rection. Such term does not include special access
8 service offered through dedicated transport links be-
9 tween a customer’s premises and an interexchange
10 carrier’s switch or point of presence.”;

11 (4) by inserting after paragraph (21) the fol-
12 lowing new paragraphs:

13 “(22) INTERNET.—The term ‘Internet’ means
14 collectively the myriad of computer and tele-
15 communications facilities, including equipment and
16 operating software, which comprise the inter-
17 connected world-wide network of networks that em-
18 ploy the Transmission Control Protocol/Internet
19 Protocol, or any predecessor or successor protocols
20 to such protocol, to communicate information of all
21 kinds by wire or radio.

22 “(23) INTERNET ACCESS SERVICE.—The term
23 ‘Internet access service’ means a service that com-
24 bines computer processing, information storage, pro-



1 tocol conversion, and routing with transmission to
2 enable users to access Internet content and services.

3 “(24) INTERNET BACKBONE.—The term ‘Inter-
4 net backbone’ means a network that carries Internet
5 traffic over high-capacity long-haul transmission fa-
6 cilities and that is interconnected with other such
7 networks via private peering relationships.

8 “(25) INTERNET BACKBONE SERVICE.—The
9 term ‘Internet backbone service’ means any
10 interLATA service that consists of or includes the
11 transmission by means of an Internet backbone of
12 any data or packets, including any writing, signs,
13 signals, pictures, sounds, voice, or video related to
14 the transmission of such data or packets, and shall
15 include related local connectivity.”.

16 (b) CONFORMING AMENDMENTS.—

17 (1) Section 230(f) of the Communications Act
18 of 1934 (47 U.S.C. 230(f)) is amended—

19 (A) by striking paragraph (1); and

20 (B) by redesignating paragraphs (2)
21 through (4) as paragraphs (1) through (3), re-
22 spectively.

23 (2) Section 223(h)(2) of such Act (47 U.S.C.
24 223(h)(2)) is amended by striking “230(f)(2)” and
25 inserting “230(f)(1)”.



1 **SEC. 4. LIMITATION ON AUTHORITY TO REGULATE HIGH**
2 **SPEED DATA SERVICES.**

3 (a) IN GENERAL.—Part I of title II of the Commu-
4 nications Act of 1934 (47 U.S.C. 201 et seq.) is amended
5 by adding at the end the following new section:

6 **“SEC. 232. PROVISION OF HIGH SPEED DATA SERVICES.**

7 “(a) FREEDOM FROM REGULATION.—Except to the
8 extent that high speed data service, Internet backbone
9 service, and Internet access service are expressly referred
10 to in this Act, neither the Commission, nor any State,
11 shall have authority to regulate the rates, charges, terms,
12 or conditions for, or entry into the provision of, any high
13 speed data service, Internet backbone service, or Internet
14 access service, or to regulate any network element to the
15 extent it is used in the provision of any such service; nor
16 shall the Commission impose or require the collection of
17 any fees, taxes, charges, or tariffs upon such service.

18 “(b) SAVINGS PROVISION.—Nothing in this section
19 shall be construed to limit or affect the authority of any
20 State to regulate circuit-switched telephone exchange serv-
21 ices, nor affect the rights of cable franchise authorities
22 to establish requirements that are otherwise consistent
23 with this Act.

24 “(c) CONTINUED ENFORCEMENT OF ESP EXEMP-
25 TION, UNIVERSAL SERVICE RULES PERMITTED.—Noth-



1 ing in this section shall affect the ability of the Commis-
2 sion to retain or modify—

3 “(1) the exemption from interstate access
4 charges for enhanced service providers under Part
5 69 of the Commission’s regulations, and the require-
6 ments of the MTS/WATS Market Structure Order
7 (97 FCC 2d 682, 715 (1983)); or

8 “(2) rules issued pursuant to section 254.”.

9 (b) CONFORMING AMENDMENT.—Section 251 of the
10 Communications Act of 1934 (47 U.S.C. 251) is amended
11 by adding at the end thereof the following new subsection:

12 “(j) EXEMPTION.—

13 “(1) ACCESS TO NETWORK ELEMENTS FOR
14 HIGH SPEED DATA SERVICE.—

15 “(A) LIMITATION.—Subject to subpara-
16 graphs (B), (C), and (D) of this paragraph, nei-
17 ther the Commission nor any State shall require
18 an incumbent local exchange carrier to provide
19 unbundled access to any network element for
20 the provision of any high speed data service.

21 “(B) PRESERVATION OF REGULATIONS
22 AND LINE SHARING ORDER.—Notwithstanding
23 subparagraph (A), the Commission shall, to the
24 extent consistent with subsections (c)(3) and
25 (d)(2), require the provision of unbundled ac-



1 cess to those network elements described in sec-
2 tion 51.319 of the Commission's regulations
3 (47 C.F.R. 51.319), as—

4 “(i) in effect on January 1, 1999; and

5 “(ii) subject to subparagraphs (C)
6 and (D), as modified by the Commission's
7 Line Sharing Order.

8 “(C) EXCEPTIONS TO PRESERVATION OF
9 LINE SHARING ORDER.—

10 “(i) UNBUNDLED ACCESS TO REMOTE
11 TERMINAL NOT REQUIRED.—An incumbent
12 local exchange carrier shall not be required
13 to provide unbundled access to the high
14 frequency portion of the loop at a remote
15 terminal.

16 “(ii) CHARGES FOR ACCESS TO HIGH
17 FREQUENCY PORTION.—The Commission
18 and the States shall permit an incumbent
19 local exchange carrier to charge requesting
20 carriers for the high frequency portion of
21 a loop an amount equal to which such in-
22 cumbent local exchange carrier imputes to
23 its own high speed data service.

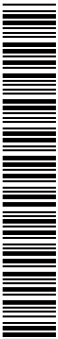
24 “(D) LIMITATIONS ON REINTERPRETATION
25 OF LINE SHARING ORDER.—Neither the Com-



1 mission nor any State Commission shall con-
2 strue, interpret, or reinterpret the Commission's
3 Line Sharing Order in such manner as would
4 expand an incumbent local exchange carrier's
5 obligation to provide access to any network ele-
6 ment for the purpose of line sharing.

7 “(E) AUTHORITY TO REDUCE ELEMENTS
8 SUBJECT TO REQUIREMENT.—This paragraph
9 shall not prohibit the Commission from modi-
10 fying the regulation referred to in subparagraph
11 (B) to reduce the number of network elements
12 subject to the unbundling requirement, or to
13 forbear from enforcing any portion of that reg-
14 ulation in accordance with the Commission's
15 authority under section 706 of the Tele-
16 communications Act of 1996, notwithstanding
17 any limitation on that authority in section 10 of
18 this Act.

19 “(F) PROHIBITION ON DISCRIMINATORY
20 SUBSIDIES.—Any network element used in the
21 provision of high speed data service that is not
22 subject to the requirements of subsection (c)
23 shall not be entitled to any subsidy, including
24 any subsidy pursuant to section 254, that is not
25 provided on a nondiscriminatory basis to all

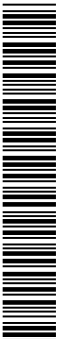


1 providers of high speed data service and Inter-
2 net access service. This prohibition on discrimi-
3 natory subsidies shall not be interpreted to au-
4 thorize or require the extension of any subsidy
5 to any provider of high speed data service or
6 Internet access service.

7 “(2) RESALE.—For a period of three years
8 after the enactment of this subsection, an incumbent
9 local exchange carrier that provides high speed data
10 service shall have a duty to offer for resale any such
11 service at wholesale rates in accordance with sub-
12 section (c)(4). After such three-year period, such
13 carrier shall offer such services for resale pursuant
14 to subsection (b)(1).

15 “(3) DEFINITIONS.—For purposes of this
16 subsection—

17 “(A) the ‘Commission’s Line Sharing
18 Order’ means the Third Report and Order in
19 CC Docket No. 98-147 and the Fourth Report
20 and Order in CC Docket 96-98 (FCC 99-355),
21 as adopted November 18, 1999, and without re-
22 gard to any clarification or interpretation in the
23 further notice of proposed rulemaking in such
24 Dockets adopted January 19, 2001 (FCC 01-
25 26); and



1 “(B) the term ‘remote terminal’ means an
2 accessible terminal located outside of the cen-
3 tral office to which analog signals are carried
4 from customer premises, in which such signals
5 are converted to digital, and from which such
6 signals are carried, generally over fiber, to the
7 central office.”.

8 **SEC. 5. INTERNET CONSUMERS FREEDOM OF CHOICE.**

9 Part I of title II of the Communications Act of 1934,
10 as amended by section 4, is amended by adding at the
11 end the following new section:

12 **“SEC. 233. INTERNET CONSUMERS FREEDOM OF CHOICE.**

13 “(a) PURPOSE.—It is the purpose of this section to
14 ensure that Internet users have freedom of choice of Inter-
15 net service provider.

16 “(b) OBLIGATIONS OF INCUMBENT LOCAL EX-
17 CHANGE CARRIERS.—Each incumbent local exchange car-
18 rier has the duty to provide—

19 “(1) Internet users with the ability to subscribe
20 to and have access to any Internet service provider
21 that interconnects with such carrier’s high speed
22 data service;

23 “(2) any Internet service provider with the
24 right to acquire the facilities and services necessary
25 to interconnect with such carrier’s high speed data



1 service for the provision of Internet access service;
2 and

3 “(3) any Internet service provider with the abil-
4 ity to collocate equipment in accordance with the
5 provisions of section 251, to the extent necessary to
6 achieve the objectives of paragraphs (1) and (2) of
7 this subsection.

8 “(c) DEFINITIONS.—As used in this section—

9 “(1) INTERNET SERVICE PROVIDER.—The term
10 ‘Internet service provider’ means any provider of
11 Internet access service.

12 “(2) INCUMBENT LOCAL EXCHANGE CAR-
13 RIER.—The term ‘incumbent local exchange carrier’
14 has the same meaning as provided in section
15 251(h).”.

16 **SEC. 6. INCIDENTAL INTERLATA PROVISION OF HIGH**
17 **SPEED DATA AND INTERNET ACCESS SERV-**
18 **ICES.**

19 (a) INCIDENTAL INTERLATA SERVICE
20 PERMITTED.—Section 271(g) of the Communications Act
21 of 1934 (47 U.S.C. 271(g)) is amended—

22 (1) by striking “or” at the end of paragraph
23 (5);

24 (2) by striking the period at the end of para-
25 graph (6) and inserting “; or”; and



1 (3) by adding at the end thereof the following
2 new paragraph:

3 “(7) of high speed data service or Internet
4 backbone service.”.

5 (b) PROHIBITION ON PROVISION OF VOICE SERV-
6 ICES.—Section 271 of such Act is amended by adding at
7 the end thereof the following new subsection:

8 “(k) PROHIBITION ON PROVISION OF VOICE TELE-
9 PHONE SERVICES.—Until the date on which a Bell oper-
10 ating company is authorized to offer interLATA services
11 originating in an in-region State in accordance with the
12 provisions of this section, such Bell operating company of-
13 fering any high speed data service or Internet backbone
14 service pursuant to the provisions of paragraph (7) of sub-
15 section (g) may not, in such in-region State provide
16 interLATA voice telecommunications service, regardless of
17 whether there is a charge for such service, by means of
18 the high speed data service or Internet backbone service
19 provided by such company.”.

20 (c) CONFORMING AMENDMENTS.—

21 (1) Section 272(a)(2)(B)(i) of such Act is
22 amended to read as follows:

23 “(i) incidental interLATA services de-
24 scribed in paragraphs (1), (2), (3), (5),
25 (6), and (7) of section 271(g).”.



1 (2) Section 272(a)(2)(C) of such Act is re-
2 pealed.

3 **SEC. 7. COMMISSION AUTHORIZED TO PRESCRIBE JUST**
4 **AND REASONABLE CHARGES.**

5 The Federal Communications Commission may im-
6 pose penalties under section 503 of the Communications
7 Act of 1934 not to exceed \$1,000,000 for any violation
8 of provisions contained in, or amended by, section 5 or
9 6 (or both) of this Act. Each distinct violation shall be
10 a separate offense, and in the case of a continuing viola-
11 tion, each day shall be deemed a separate offense, except
12 that the amount assessed for any continuing violation shall
13 not exceed a total of \$10,000,000 for any single act or
14 failure to act described in section 5 or 6 (or both) of this
15 Act.

