

Bill no.:	H.R. 1542
Amendment no.:	1
Date offered:	5/9/01
Disposition:	Approved by V.V.

AMENDMENT IN THE NATURE OF A SUBSTITUTE

TO H.R. 1542

OFFERED BY MR. TAUZIN OR MR. DINGELL

(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

1 and the need to increase competition in the provision
2 of interLATA voice telecommunications services.

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

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

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

22 (7) Internet users should have choice among
23 competing Internet service providers.

1 (8) Internet service providers should have the
2 right to interconnect with high speed data networks
3 in order to provide service to Internet users.

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

7 (1) by deregulating high speed data services,
8 Internet backbone services, and Internet access serv-
9 ices;

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

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

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

20 **SEC. 3. DEFINITIONS**

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

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

1 (2) by redesignating paragraphs (21) through
2 (52) as paragraphs (26) through (54), respectively;
3 (3) by inserting after paragraph (19) the fol-
4 lowing new paragraph:

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

15 (4) by inserting after paragraph (21) the fol-
16 lowing new paragraphs:

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

1 “(23) INTERNET ACCESS SERVICE.—The term
2 ‘Internet access service’ means a service that com-
3 bines computer processing, information storage, pro-
4 tocol conversion, and routing with transmission to
5 enable users to access Internet content and services.

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

11 “(25) INTERNET BACKBONE SERVICE.—The
12 term ‘Internet backbone service’ means any
13 interLATA service that consists of or includes the
14 transmission by means of an Internet backbone of
15 any packets, and shall include related local
16 connectivity.”.

17 (b) CONFORMING AMENDMENTS.—

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

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

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

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

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

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

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

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

21 “(b) SAVINGS PROVISION.—Nothing in this section
22 shall be construed to limit or affect the authority of any
23 State to regulate circuit-switched telephone exchange serv-
24 ices, nor affect the rights of cable franchise authorities

1 to establish requirements that are otherwise consistent
2 with this Act.

3 “(c) CONTINUED ENFORCEMENT OF ESP EXEMP-
4 TION, UNIVERSAL SERVICE RULES PERMITTED.—Noth-
5 ing in this section shall affect the ability of the Commis-
6 sion to retain or modify—

7 “(1) the exemption from interstate access
8 charges for enhanced service providers under Part
9 69 of the Commission’s regulations, and the require-
10 ments of the MTS/WATS Market Structure Order
11 (97 FCC 2d 682, 715 (1983)); or

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

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

16 “(j) EXEMPTION.—

17 “(1) ACCESS TO NETWORK ELEMENTS FOR
18 HIGH SPEED DATA SERVICE.—

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

1 “(B) PRESERVATION OF REGULATIONS
2 AND LINE SHARING ORDER.—Notwithstanding
3 subparagraph (A), the Commission shall, to the
4 extent consistent with subsections (c)(3) and
5 (d)(2), require the provision of unbundled ac-
6 cess to those network elements described in sec-
7 tion 51.319 of the Commission’s regulations
8 (47 C.F.R. 51.319), as—

9 “(i) in effect on January 1, 1999; and
10 “(ii) subject to subparagraphs (C)
11 and (D), as modified by the Commission’s
12 Line Sharing Order.

13 “(C) EXCEPTIONS TO PRESERVATION OF
14 LINE SHARING ORDER.—

15 “(i) UNBUNDLED ACCESS TO REMOTE
16 TERMINAL NOT REQUIRED.—An incumbent
17 local exchange carrier shall not be required
18 to provide unbundled access to the high
19 frequency portion of the loop at a remote
20 terminal.

21 “(ii) CHARGES FOR ACCESS TO HIGH
22 FREQUENCY PORTION.—The Commission
23 and the States shall permit an incumbent
24 local exchange carrier to charge requesting
25 carriers for the high frequency portion of

1 a loop an amount equal to which such in-
2 cumbent local exchange carrier imputes to
3 its own high speed data service.

4 “(D) LIMITATIONS ON REINTERPRETATION
5 OF LINE SHARING ORDER.—Neither the Com-
6 mission nor any State Commission shall con-
7 strue, interpret, or reinterpret the Commission’s
8 Line Sharing Order in such manner as would
9 expand an incumbent local exchange carrier’s
10 obligation to provide access to any network ele-
11 ment for the purpose of line sharing.

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

24 “(F) PROHIBITION ON DISCRIMINATORY
25 SUBSIDIES.—Any network element used in the

1 provision of high speed data service that is not
2 subject to the requirements of subsection (c)
3 shall not be entitled to any subsidy, including
4 any subsidy pursuant to section 254, that is not
5 provided on a nondiscriminatory basis to all
6 providers of high speed data service and Inter-
7 net access service. This prohibition on discrimi-
8 natory subsidies shall not be interpreted to au-
9 thorize or require the extension of any subsidy
10 to any provider of high speed data service or
11 Internet access service.

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

20 “(3) DEFINITIONS.—For purposes of this
21 subsection—

22 “(A) the ‘Commission’s Line Sharing
23 Order’ means the Third Report and Order in
24 CC Docket No. 98-147 and the Fourth Report
25 and Order in CC Docket 96-98 (FCC 99-355),

1 as adopted November 18, 1999, and without re-
2 gard to any clarification or interpretation in the
3 further notice of proposed rulemaking in such
4 Dockets adopted January 19, 2001 (FCC 01-
5 26); and

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

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

14 Part I of title II of the Communications Act of 1934,
15 as amended by section 4, is amended by adding at the
16 end the following new section:

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

18 “(a) **PURPOSE.**—It is the purpose of this section to
19 ensure that Internet users have freedom of choice of Inter-
20 net service provider.

21 “(b) **OBLIGATIONS OF INCUMBENT LOCAL EX-**
22 **CHANGE CARRIERS.**—Each incumbent local exchange car-
23 rier has the duty to provide—

24 “(1) Internet users with the ability to subscribe
25 to and have access to any Internet service provider

1 that interconnects with such carrier's high speed
2 data service;

3 "(2) any Internet service provider with the
4 right to acquire the facilities and services necessary
5 to interconnect with such carrier's high speed data
6 service for the provision of Internet access service;
7 and

8 "(3) any Internet service provider with the abil-
9 ity to collocate equipment in accordance with the
10 provisions of section 251, to the extent necessary to
11 achieve the objectives of paragraphs (1) and (2) of
12 this subsection.

13 "(c) DEFINITIONS.—As used in this section—

14 "(1) INTERNET SERVICE PROVIDER.—The term
15 'Internet service provider' means any provider of
16 Internet access service.

17 "(2) INCUMBENT LOCAL EXCHANGE CAR-
18 RIER.—The term 'incumbent local exchange carrier'
19 has the same meaning as provided in section
20 251(h).".

1 **SEC. 6. INCIDENTAL INTERLATA PROVISION OF HIGH**
2 **SPEED DATA AND INTERNET ACCESS SERV-**
3 **ICES.**

4 (a) **INCIDENTAL INTERLATA SERVICE**
5 **PREMITTED.**—Section 271(g) of the Communications Act
6 of 1934 (47 U.S.C. 271(g)) is amended—

7 (1) by striking “or” at the end of paragraph

8 (5);

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

11 (3) by adding at the end thereof the following
12 new paragraph:

13 “(7) of high speed data service or Internet
14 backbone service.”.

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

18 “(k) **PROHIBITION ON PROVISION OF VOICE TELE-**
19 **PHONE SERVICES.**—Until the date on which a Bell oper-
20 ating company is authorized to offer interLATA services
21 originating in an in-region State in accordance with the
22 provisions of this section, such Bell operating company of-
23 fering any high speed data service or Internet backbone
24 service pursuant to the provisions of paragraph (7) of sub-
25 section (g) may not, in such in-region State provide
26 interLATA voice telecommunications service, regardless of

1 whether there is a charge for such service, by means of
2 the high speed data service or Internet backbone service
3 provided by such company.”.

4 (c) CONFORMING AMENDMENTS.—

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

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

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

12 **SEC. 7. COMMISSION AUTHORIZED TO PRESCRIBE JUST**
13 **AND REASONABLE CHARGES.**

14 The Federal Communications Commission may im-
15 pose penalties under section 503 of the Communications
16 Act of 1934 not to exceed \$1,000,000 for any violation
17 of provisions contained in, or amended by, section 5 or
18 6 (or both) of this Act. Each distinct violation shall be
19 a separate offense, and in the case of a continuing viola-
20 tion, each day shall be deemed a separate offense, except
21 that the amount assessed for any continuing violation shall
22 not exceed a total of \$10,000,000 for any single act or
23 failure to act described in section 5 or 6 (or both) of this
24 Act.