

**AMENDMENT IN THE NATURE OF A SUBSTITUTE
TO H.R. 1542, AS REPORTED**

Strike out 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.

20 (4) In enacting the prohibition on Bell oper-
21 ating company provision of interLATA services,



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

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

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

18 (7) Internet users should have choice among
19 competing Internet service providers.

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

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



1 (1) by deregulating high speed data services,
2 Internet backbone services, and Internet access serv-
3 ices;

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

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

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

14 **SEC. 3. DEFINITIONS**

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

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

19 (2) by redesignating paragraphs (21) through
20 (52) as paragraphs (26) through (57), respectively;

21 (3) by inserting after paragraph (19) the fol-
22 lowing new paragraph:

23 “(20) HIGH SPEED DATA SERVICE.—The term
24 ‘high speed data service’ means any service that con-
25 sists of or includes the offering of a capability to



1 transmit, using a packet-switched or successor tech-
2 nology, information at a rate that is generally not
3 less than 384 kilobits per second in at least one di-
4 rection. Such term does not include special access
5 service offered through dedicated transport links be-
6 tween a customer's premises and an interexchange
7 carrier's switch or point of presence.”;

8 (4) by inserting after paragraph (21) the fol-
9 lowing new paragraphs:

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

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

24 “(24) INTERNET BACKBONE.—The term ‘Inter-
25 net backbone’ means a network that carries Internet



1 traffic over high-capacity long-haul transmission fa-
2 cilities and that is interconnected with other such
3 networks via private peering relationships.

4 “(25) INTERNET BACKBONE SERVICE.—The
5 term ‘Internet backbone service’ means any
6 interLATA service that consists of or includes the
7 transmission by means of an Internet backbone of
8 any packets, and shall include related local
9 connectivity.”.

10 (b) CONFORMING AMENDMENTS.—

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

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

14 (B) by redesignating paragraphs (2)
15 through (4) as paragraphs (1) through (3), re-
16 spectively.

17 (2) Section 223(h)(2) of such Act (47 U.S.C.
18 223(h)(2)) is amended by striking “230(f)(2)” and
19 inserting “230(f)(1)”.

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

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



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

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

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

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

23 “(1) the exemption from interstate access
24 charges for enhanced service providers under Part
25 69 of the Commission’s regulations, and the require-



1 ments of the MTS/WATS Market Structure Order
2 (97 FCC 2d 682, 715 (1983)); or

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

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

7 “(j) EXEMPTION.—

8 “(1) ACCESS TO NETWORK ELEMENTS FOR
9 HIGH SPEED DATA SERVICE.—

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

16 “(B) PRESERVATION OF REGULATIONS
17 AND LINE SHARING ORDER.—Notwithstanding
18 subparagraph (A), the Commission shall, to the
19 extent consistent with subsections (c)(3) and
20 (d)(2), require the provision of unbundled ac-
21 cess to those network elements described in sec-
22 tion 51.319 of the Commission’s regulations
23 (47 C.F.R. 51.319), as—

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



1 “(ii) subject to subparagraphs (C)
2 and (D), as modified by the Commission’s
3 Line Sharing Order.

4 “(C) EXCEPTIONS TO PRESERVATION OF
5 LINE SHARING ORDER.—

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

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

20 “(D) LIMITATIONS ON REINTERPRETATION
21 OF LINE SHARING ORDER.—Neither the Com-
22 mission nor any State Commission shall con-
23 strue, interpret, or reinterpret the Commission’s
24 Line Sharing Order in such manner as would
25 expand an incumbent local exchange carrier’s



1 obligation to provide access to any network ele-
2 ment for the purpose of line sharing.

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

15 “(F) PROHIBITION ON DISCRIMINATORY
16 SUBSIDIES.—Any network element used in the
17 provision of high speed data service that is not
18 subject to the requirements of subsection (c)
19 shall not be entitled to any subsidy, including
20 any subsidy pursuant to section 254, that is not
21 provided on a nondiscriminatory basis to all
22 providers of high speed data service and Inter-
23 net access service. This prohibition on discrimi-
24 natory subsidies shall not be interpreted to au-
25 thorize or require the extension of any subsidy



1 to any provider of high speed data service or
2 Internet access service.

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

11 “(3) DEFINITIONS.—For purposes of this
12 subsection—

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

22 “(B) the term ‘remote terminal’ means an
23 accessible terminal located outside of the cen-
24 tral office to which analog signals are carried
25 from customer premises, in which such signals



1 are converted to digital, and from which such
2 signals are carried, generally over fiber, to the
3 central office.”.

4 (c) PRESERVATION OF EXISTING INTERCONNECTION
5 AGREEMENTS.—Nothing in the amendments made by this
6 section—

7 (1) shall be construed to permit or require the
8 abrogation or modification of any interconnection
9 agreement in effect on the date of enactment of this
10 section during the term of such agreement, except
11 that this paragraph shall not apply to any inter-
12 connection agreement beyond the expiration date of
13 the existing current term contained in such agree-
14 ment on the date of enactment of this section, with-
15 out regard to any extension or renewal of such
16 agreement; or

17 (2) affects the implementation of any change of
18 law provision in any such agreement.

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

20 Part I of title II of the Communications Act of 1934,
21 as amended by section 4, is amended by adding at the
22 end the following new section:



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

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

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

8 “(1) Internet users with the ability to subscribe
9 to and have access to any Internet service provider
10 that interconnects with such carrier’s high speed
11 data service;

12 “(2) any Internet service provider with the
13 right to acquire the facilities and services necessary
14 to interconnect with such carrier’s high speed data
15 service for the provision of Internet access service;

16 “(3) any Internet service provider with the abil-
17 ity to collocate equipment in accordance with the
18 provisions of section 251, to the extent necessary to
19 achieve the objectives of paragraphs (1) and (2) of
20 this subsection; and

21 “(4) any provider of high speed data services,
22 Internet backbone service, or Internet access service
23 with special access for the provision of Internet ac-
24 cess service within a period no longer than the pe-
25 riod in which such incumbent local exchange carrier



1 provides special access to itself or any affiliate for
2 the provision of such service.

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

4 “(1) INTERNET SERVICE PROVIDER.—The term
5 ‘Internet service provider’ means any provider of
6 Internet access service.

7 “(2) INCUMBENT LOCAL EXCHANGE CAR-
8 RIER.—The term ‘incumbent local exchange carrier’
9 has the same meaning as provided in section 251(h).

10 “(3) SPECIAL ACCESS SERVICE.—The term
11 ‘special access service’ means the provision of dedi-
12 cated transport links between a customer’s premises
13 and the switch or point of presence of a high speed
14 data service provider, Internet backbone service pro-
15 vider, or Internet service provider.”.

16 **SEC. 6. INCIDENTAL INTERLATA PROVISION OF HIGH**
17 **SPEED DATA AND INTERNET BACKBONE**
18 **SERVICES.**

19 (a) INCIDENTAL INTERLATA SERVICE PER-
20 MITTED.—Section 271(g) of the Communications Act of
21 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 TELE-
6 PHONE SERVICES.—Section 271 of such Act is amended
7 by adding at 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) NOTICE TO ATTORNEY GENERAL.—Section 271
21 of such Act is further amended by adding at the end the
22 following new subsection:

23 “(l) NOTICE TO ATTORNEY GENERAL.—

24 “(1) STATEMENT REQUIRED.—Not less than 30
25 days before commencing to offer any interLATA



1 high speed data service or Internet backbone service
2 originating in an in-region State pursuant to para-
3 graph (7) of subsection (g), a Bell operating com-
4 pany shall submit to the Attorney General a state-
5 ment that

6 “(A) expresses the intention to commence
7 providing such service in such State;

8 “(B) provides a description of the service
9 to be offered; and

10 “(C) identifies the geographic region with-
11 in the State in which the service will be offered,
12 if the service is not going to be offered State-
13 wide.

14 “(2) ADDITIONAL CONTENTS PROHIBITED.—
15 The Attorney General may not require a statement
16 under this subsection to contain any additional in-
17 formation other than that specified in subparagraph
18 (A), (B), and (C) of paragraph (1).

19 “(3) CONFIDENTIAL TREATMENT OF STATE-
20 MENTS.—A statement submitted to the Attorney
21 General under this subsection shall be exempt from
22 disclosure under section 552 of title 5, United States
23 Code, and no such statement may be made public,
24 except as may be relevant to any administrative or
25 judicial action or proceeding.”



1 (d) CONFORMING AMENDMENTS.—

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

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

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

9 **SEC. 7. DEPLOYMENT OF BROADBAND SERVICES.**

10 Part III of title II of the Communications Act of
11 1934 is amended by inserting after section 276 (47 U.S.C.
12 276) the following new section:

13 **“SEC. 277. DEPLOYMENT OF BROADBAND SERVICES.**

14 “(a) DEPLOYMENT REQUIRED.—Each Bell operating
15 company and its affiliates shall deploy high speed data
16 services in each State in which such company or affiliate
17 is an incumbent local exchange carrier (as such term is
18 defined in section 251(h)) in accordance with the require-
19 ments of this section.

20 “(b) DEPLOYMENT REQUIREMENTS.—

21 “(1) MILEPOSTS FOR DEPLOYMENT.—A Bell
22 operating company or its affiliate shall deploy high
23 speed data services by attaining high speed data ca-
24 pability in its central offices in each State to which
25 subsection (a) applies. Such company or affiliate



1 shall attain such capability in accordance with the
2 following schedule:

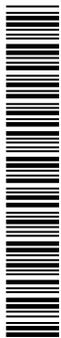
3 “(A) Within one year after the date of en-
4 actment of this section, such company or affil-
5 iate shall attain high speed data capability in
6 not less than 20 percent of such central offices
7 in such State.

8 “(B) Within 2 years after the date of en-
9 actment of this section, such company or affil-
10 iate shall attain high speed data capability in
11 not less than 40 percent of such central offices
12 in such State.

13 “(C) Within 3 years after the date of en-
14 actment of this section, such company or affil-
15 iate shall attain high speed data capability in
16 not less than 70 percent of such central offices
17 in such State.

18 “(D) Within 5 years after the date of en-
19 actment of this section, such company or affil-
20 iate shall attain high speed data capability in
21 not less than 100 percent of such central offices
22 in such State.

23 “(2) HIGH SPEED DATA CAPABILITY.—For pur-
24 poses of paragraph (1), a central office shall be con-
25 sidered to have attained high speed capability if—



1 “(A)(i) such central office is equipped with
2 high speed data multiplexing capability; and

3 “(ii) each upgradeable customer loop that
4 originates or terminates in such central office is
5 upgraded promptly upon receipt of a customer
6 request for such upgrading, as necessary to per-
7 mit transmission of high speed data service (in-
8 cluding any conditioning of the loop);

9 “(B) each customer served by such central
10 office (without regard to the upgradeability or
11 length of the customer’s loop) is able to obtain
12 the provision of high speed data service from
13 such Bell operating company or its affiliate by
14 means of an alternative technology that does
15 not involve the use of the customer’s loop; or

16 “(C) each such customer is able to obtain
17 the provision of high speed data service by one
18 or the other of the means described in subpara-
19 graphs (A) and (B).

20 “(3) UPGRADEABLE LOOPS.—For purposes of
21 paragraph (2), a customer loop is upgradeable if—

22 “(A) such loop is less than 15,000 feet in
23 length (from the central office to the customer’s
24 premises along the line); and



1 “(B) such loop can, with or without condi-
2 tioning, transmit high speed data services with-
3 out such transmission on such loop causing sig-
4 nificant degradation of voice service.

5 “(c) AVAILABILITY OF REMEDIES.—

6 “(1) FORFEITURE PENALTIES.—A Bell oper-
7 ating company or its affiliate that fails to comply
8 with this section shall be subject to the penalties
9 provided in section 503(b)(2). In determining wheth-
10 er to impose a forfeiture penalty, and in determining
11 the amount of any forfeiture penalty under section
12 503(b)(2)(D), the Commission shall take into con-
13 sideration the extent to which the requirements of
14 this section are technically infeasible.

15 “(2) JURISDICTION.—The Commission shall
16 have exclusive jurisdiction to enforce the require-
17 ments of this section, except that any State commis-
18 sion may file a complaint with the Commission seek-
19 ing the imposition of penalties as provided in para-
20 graph (1).

21 “(d) ANNUAL REPORT ON DEPLOYMENT.—

22 “(1) ANALYSIS REQUIRED.—The Commission
23 shall include in each of its annual reports submitted
24 no more than 18 months after the date of enactment
25 of this section an analysis of the deployment of high



1 speed data service to underserved areas. Such report
2 shall include—

3 “(A) a statistical analysis of the extent to
4 which high speed data service has been de-
5 ployed to central offices and customer loops, or
6 is available using different technologies, as com-
7 pared with the extent of such deployment and
8 availability prior to such date and in prior re-
9 ports under this subsection;

10 “(B) a breakdown of the delivery of high
11 speed data service by type of technology and
12 class or category of provider;

13 “(C) an identification of impediments to
14 such deployment and availability, and develop-
15 ments in overcoming such impediments during
16 the intervening period between such reports;
17 and

18 “(D) recommendations of the Commission,
19 after consultation with the National Tele-
20 communications and Information Administra-
21 tion, for further extending such deployment and
22 availability and overcoming such impediments.

23 “(2) DEFINITION OF UNDERSERVED AREA.—
24 For purposes of paragraph (1), the term ‘under-
25 served areas’ means areas that—



1 “(A) are high cost areas that are eligible
2 for services under subpart D of part 54 of the
3 Commission’s regulations (47 C.F.R. 54.301 et
4 seq.); or

5 “(B) are within or comprised of any census
6 tract—

7 “(i) the poverty level of which is at
8 least 30 percent (based on the most recent
9 census data); or

10 “(ii) the median family income of
11 which does not exceed—

12 “(I) in the case of a census tract
13 located in a metropolitan statistical
14 area, 70 percent of the greater of the
15 metropolitan area median family in-
16 come or the statewide median family
17 income; and

18 “(II) in the case of a census tract
19 located in a nonmetropolitan statis-
20 tical area, 70 percent of the non-
21 metropolitan statewide median family
22 income.

23 “(3) DESIGNATION OF CENSUS TRACTS.—The
24 Commission shall, not later than 90 days after the
25 date of the enactment of this section, designate and



1 publish those census tracts meeting the criteria de-
2 scribed in paragraph (2)(B).”.

3 **SEC. 8. 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, 6,
9 or 7 (or any combination thereof) of this Act. Each dis-
10 tinct violation shall be a separate offense, and in the case
11 of a continuing violation, each day shall be deemed a sepa-
12 rate offense, except that the amount assessed for any con-
13 tinuing violation shall not exceed a total of \$10,000,000
14 for any single act or failure to act described in section
15 5, 6, or 7 (or any combination thereof) of this Act.

16 **SEC. 9. CLARIFICATION OF CONTINUING OPERATION OF**
17 **ANTITRUST LAWS.**

18 Section 601(b) of the Telecommunications Act of
19 1996 (Public Law 104-104; 110 Stat. 143) is amended
20 by adding at the end the following new paragraph:

21 “(4) CONTINUING OPERATION OF THE ANTI-
22 TRUST LAWS.—Paragraph (1) shall be interpreted to
23 mean that the antitrust laws are—

24 “(A) not repealed by,

25 “(B) not precluded by,



1 “(C) not diminished by, and
2 “(D) not incompatible with,
3 the Communications Act of 1934, this Act, or any
4 law amended by either such Act.”.

