

105TH CONGRESS
2D SESSION

H. R. 4801

To ensure the restoration and preservation of State authority over intrastate telecommunications.

IN THE HOUSE OF REPRESENTATIVES

OCTOBER 10, 1998

Mr. TAUZIN (for himself, Mr. DINGELL, Mr. OXLEY, Mr. BOUCHER, Mr. ROGAN, Mr. BONIOR, Mr. GOODLATTE, Mr. KLINK, Mr. HASTERT, Mr. WYNN, and Mr. BURR of North Carolina) introduced the following bill; which was referred to the Committee on Commerce

A BILL

To ensure the restoration and preservation of State authority over intrastate telecommunications.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “InterLATA Commu-
5 nication Improvements Act of 1998”.

6 **SEC. 2. STATE INTERSTATE COMMUNICATIONS AUTHORITY.**

7 (a) DIVISION OF AUTHORITY FOR INTERSTATE AND
8 INTRASTATE SERVICES.—Section 271(b)(1) of the Com-
9 munications Act of 1934 (47 U.S.C. 271(b)) is amended

1 by striking “if the Commission approves” and inserting
2 “if the Commission, with respect to interstate interLATA
3 services, or the State, with respect to intrastate
4 interLATA services, approves”.

5 (b) ADMINISTRATIVE PROVISIONS.—Section 271(d)
6 of the Communications Act of 1934 (47 U.S.C. 271(d))
7 is amended—

8 (1) in paragraph (1)—

9 (A) in the heading of paragraph (1), by
10 striking “TO COMMISSION”;

11 (B) by striking “apply to the Commission
12 for authorization” and inserting “apply to the
13 Commission, with respect to interstate
14 interLATA services, or to the State, with re-
15 spect to intrastate interLATA services, for au-
16 thorization”; and

17 (C) by striking the last sentence and in-
18 serting the following: “With respect to inter-
19 state interLATA services, the application shall
20 identify the originating State for which author-
21 ization is sought.”;

22 (2) in the first sentence of paragraph (2)(A), by
23 inserting “ with respect to interstate interLATA
24 services” after “under paragraph (1)”;

25 (3) in paragraph (2)(B)—

1 (A) by inserting “on an application with
2 respect to interstate interLATA services” after
3 “determination under this subsection”; and

4 (B) by adding at the end the following:
5 “The Commission shall affirm the evaluation of
6 the State concerning such compliance, unless
7 the Commission determines by clear and con-
8 vincing evidence that the State evaluation was
9 clearly erroneous in any material respect.”; and

10 (4) by striking paragraphs (3) through (6) and
11 inserting the following:

12 “(3) DETERMINATION.—

13 “(A) IN GENERAL.—Not later than 90
14 days after receiving an application under para-
15 graph (1), the Commission, with respect to
16 interstate interLATA service, and the State,
17 with respect to intrastate interLATA service,
18 shall issue a written determination approving or
19 denying the authorization requested in the ap-
20 plication. The Commission, with respect to
21 interstate interLATA service, and a State, with
22 respect to intrastate interLATA service, shall
23 approve the authorization requested in an appli-
24 cation submitted under paragraph (1) if it finds
25 that—

1 “(i)(I) with respect to interstate
 2 interLATA service, the Bell operating com-
 3 pany’s compliance with subsection (c) has
 4 been verified pursuant to subsection
 5 (d)(2)(B); or

6 “(II) with respect to intrastate
 7 interLATA service, the State has deter-
 8 mined that the company is in compliance
 9 with subsection (c); and

10 “(ii) the requested authorization is
 11 consistent with the public interest, conven-
 12 ience, and necessity.

13 “(B) RULE FOR DETERMINING PUBLIC IN-
 14 TEREST.—On or after February 8, 1999, a de-
 15 termination—

16 “(i) by the Commission, with respect
 17 to interstate interLATA service, that a
 18 Bell operating company is in compliance
 19 with subparagraph (A)(i)(I); or

20 “(ii) a State, with respect to intra-
 21 state interLATA service, that a Bell oper-
 22 ating company is in compliance with sub-
 23 paragraph (A)(i)(I);

24 shall be deemed to be in full satisfaction of the
 25 public interest, convenience, and necessity re-

1 quirements of subparagraph (A)(ii) and section
2 214 of the Act.

3 “(C) STATEMENT OF BASIS AND WRITTEN
4 DETERMINATION.—The Commission, with re-
5 spect to interstate interLATA service, or a
6 State, with respect to intrastate interLATA
7 service, shall state the basis for its approval or
8 denial of the application. Each such approval or
9 denial shall include a written determination by
10 the Commission or State indicating whether the
11 Bell operating company has complied with each
12 item of the competitive checklist and whether
13 such Bell operating company application has
14 been determined to be in the public interest,
15 convenience, and necessity.

16 “(4) SEPARATE AFFILIATE; SAFEGUARDS COM-
17 PLIANCE.—The Commission, with respect to inter-
18 state interLATA service, shall not approve the re-
19 quested authorization unless it determines that such
20 requested authorization will be carried out in accord-
21 ance with section 272. In its written determination
22 approving or denying the requested authorization,
23 the Commission shall indicate whether it has deter-
24 mined the Bell operating company to be in compli-
25 ance with section 272.

1 “(5) APPROVAL.—If a State fails to approve or
2 disapprove an application within the 90-day period
3 specified in paragraph (3), such application shall be
4 deemed approved.

5 “(6) JUDICIAL REVIEW.—Not later than 30
6 days after an approval pursuant to paragraph (5),
7 any aggrieved party may bring an action in an ap-
8 propriate Federal district court. The court shall
9 enter a judgment either affirming or reversing any
10 paragraph (5) approval. The court shall affirm such
11 approval unless such aggrieved party has dem-
12 onstrated by clear and convincing evidence that such
13 Bell operating company has not met the require-
14 ments of subsection (c)(2) with respect to the sub-
15 ject application.

16 “(7) LIMITATION ON COMMISSION AND
17 STATE.—Neither the Commission nor any State
18 may, by rule or otherwise, limit or extend the terms
19 used in the competitive checklist set forth in sub-
20 section (c)(2)(B).

21 “(8) PUBLICATION.—Not later than 10 days
22 after issuing a determination under paragraph (3)—

23 “(A) the Commission, with respect to
24 interstate interLATA service, shall publish in

1 the Federal Register a brief description of its
2 determination; and

3 “(B) the State, with respect to intrastate
4 interLATA service, shall make public, in a
5 manner consistent with applicable State law, its
6 determination accompanied by a brief descrip-
7 tion of such determination.

8 “(9) ENFORCEMENT OF CONDITIONS.—

9 “(A) COMMISSION AND STATE AUTHOR-
10 ITY.—If, at any time after the approval of an
11 application under paragraph (3), the Commis-
12 sion, with respect to interstate interLATA serv-
13 ice, or a State, with respect to intrastate
14 interLATA service, determines that a Bell oper-
15 ating company has ceased to meet any of the
16 conditions required for such approval, after no-
17 tice and opportunity for a hearing—

18 “(i) the Commission or State, as the
19 case may be, may issue an order to such
20 company to correct the deficiency;

21 “(ii)(I) the Commission may impose a
22 penalty on such company pursuant to title
23 V;

24 “(II) the State may impose any pen-
25 alty permitted by State law; or

1 “(iii) the Commission or State, as the
 2 case may be, may suspend or revoke such
 3 approval.

4 “(B) RECEIPT AND REVIEW OF COM-
 5 PLAINTS.—The Commission with respect to
 6 interstate interLATA service, and the State,
 7 with respect to intrastate interLATA service,
 8 shall establish procedures for the review of com-
 9 plaints concerning the failure by a Bell operat-
 10 ing company to meet conditions required for ap-
 11 proval under paragraph (3). Unless the parties
 12 otherwise agree, the Commission shall act on
 13 each such complaint within 90 days.

14 **SEC. 3. PRESENCE OF COMPETITOR.**

15 (a) SIMPLIFICATION OF COMPETITOR PRESENCE
 16 TEST.—Paragraph (1) of section 271(c) of the Commu-
 17 nications Act of 1934 (47 U.S.C. 271(c)(1)) is amended
 18 to read as follows:

19 “(1) ACCESS OR STATEMENT.—A Bell operat-
 20 ing company shall be deemed to have met the re-
 21 quirements of this paragraph on and after February
 22 8, 1999. Prior to that date, a Bell operating com-
 23 pany meets the requirements of this paragraph if—

24 “(A) the Bell operating company is provid-
 25 ing access and interconnection to its network

1 facilities for the network facilities of one or
 2 more unaffiliated competing providers of tele-
 3 phone exchange service (as defined in section
 4 3(47)(A), but excluding exchange access) to
 5 residential and business subscribers; or

6 “(B) a statement of the terms and condi-
 7 tions that the company generally offers to pro-
 8 vide such access and interconnection has been
 9 approved or permitted to take effect by the
 10 State commission under section 252(f).”.

11 (b) CONFORMING AMENDMENTS.—Section 271(c)(2)
 12 is amended—

13 (1) by striking the heading of subparagraph (A)
 14 and inserting “ACCESS OR STATEMENT REQUIRED”;
 15 and

16 (2) in subparagraph (A)(i)(I), by striking “pur-
 17 suant to one or more agreements” and inserting
 18 “as”.

19 **SEC. 4. RESALE.**

20 Section 271(b) of the Communications Act of 1934
 21 (47 U.S.C. 271(b)) is amended by adding at the end the
 22 following:

23 “(5) RESALE.—On or after February 8, 1999,
 24 a Bell operating company may provide interstate
 25 and intrastate interLATA services originating in any

1 State through the purchase and resale of tele-
2 communications services obtained from a person who
3 is not affiliated with such Bell operating company.”

4 **SEC. 5. INCIDENTAL INTERLATA SERVICES.**

5 (a) DATA COMMUNICATIONS AND INTERNATIONAL
6 SERVICES.—Section 271(g) of the Communications Act of
7 1934 (47 U.S.C. 271(g)) is amended—

8 (1) by striking “or” at the end of paragraph
9 (5);

10 (2) by striking the period at the end of para-
11 graph (6) and inserting a semicolon; and

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

13 “(7) of data communication; and

14 “(8) of any international telecommunications or
15 information service.”.

16 (b) DEFINITION OF DATA SERVICES.—Section 271(i)
17 of the Communications Act of 1934 is amended by adding
18 at the end the following:

19 “(4) DATA COMMUNICATION.—The term ‘data
20 communication’ means the transmission of writing,
21 signs, signals, pictures, and sounds of all kinds by
22 aid of wire, cable, radio, or other like connection be-
23 tween the points of origin and reception of such
24 transmission, including the instrumentalities, facili-
25 ties, apparatus, and services (among other things,

1 the receipt, forwarding, and delivery of communica-
2 tions) incidental to such transmission, except for 2-
3 way voice conversations.”.

4 (c) CONFORMING AMENDMENT.—Section
5 272(a)(2)(B)(i) of the Communications Act of 1934 (47
6 U.S.C. 272(a)(2)(B)(i)) is amended by striking “(1), (2),
7 (3), (5), and (6)” and inserting “(1) through (8)”.

8 **SEC. 6. REVISION OF COMMISSION REGULATIONS.**

9 The Federal Communications Commission shall re-
10 vise its regulations to clarify that Internet traffic carried
11 by local exchange carriers is interstate in nature for pur-
12 poses of the reciprocal compensation provisions of section
13 251(b)(5) of the Communications Act of 1934 (47 U.S.C.
14 251(b)(5)).

○