

107TH CONGRESS
1ST SESSION

H. R. 1697

To amend the Clayton Act to ensure the application of the antitrust laws to local telephone monopolies; and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

MAY 3, 2001

Mr. CONYERS (for himself, Mr. CANNON, Mr. NADLER, and Mr. ISSA) introduced the following bill; which was referred to the Committee on the Judiciary, and in addition to the Committee on Energy and Commerce, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

A BILL

To amend the Clayton Act to ensure the application of the antitrust laws to local telephone monopolies; and for other purposes.

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 “Broadband Competi-
5 tion and Incentives Act of 2001”.

1 **TITLE I—PROTECTION OF**
2 **BROADBAND SERVICES FROM**
3 **CONTINUING MONOPOLIZA-**
4 **TION**

5 **SEC. 101. AMENDMENT TO THE CLAYTON ACT TO INCLUDE**
6 **MARKET POWER ENTRY TEST.**

7 The Clayton Act (15 U.S.C. 15 et seq.) is amended
8 by adding at the end the following:

9 **“SEC. 28. BROADBAND TELECOMMUNICATIONS SERVICES.**

10 “(a) DETERMINATION BY ATTORNEY GENERAL.—A
11 Bell operating company or an affiliate of a Bell operating
12 company may not provide interLATA services in any of
13 its in-region States under the authority of any amend-
14 ments to section 271 of the Communications Act of 1934
15 (47 U.S.C. 271) enacted after April 24, 2001, unless the
16 Attorney General of the United States determines that
17 such company or such affiliate does not have market
18 power in the provision of wireline telephone exchange serv-
19 ice in the State involved.

20 “(b) MARKET POWER.—For purposes of this section,
21 a Bell operating company or an affiliate of a Bell oper-
22 ating company shall be deemed to have market power in
23 the provision of wireline telephone exchange service in the
24 State involved if such company or such affiliate provides
25 service to more than 85 percent of the business sub-

1 sscribers, or more than 85 percent of the residential sub-
 2 sscribers, in such State at the time such company or such
 3 affiliate requests that the Attorney General make a deter-
 4 mination under subsection (a).

5 “(c) DEFINITIONS.—For purposes of this section:

6 “(1) AFFILIATE.—The term ‘affiliate’ means a
 7 person that (directly or indirectly) owns or controls,
 8 is owned or controlled by, or is under common own-
 9 ership or control with, another person. For purposes
 10 of this paragraph, the term ‘own’ means to own an
 11 equity interest (or equivalent thereof) of more than
 12 10 percent.

13 “(2) BELL OPERATING COMPANY.—The term
 14 ‘Bell operating company’ has the meaning given
 15 such term in section 3 of the Communications Act
 16 of 1934 (47 U.S.C. 153).”.

17 **TITLE II—BROADBAND DEPLOY-**
 18 **MENT INCENTIVES FOR SERV-**
 19 **ICES TO ELIGIBLE RURAL**
 20 **COMMUNITIES AND UNDER-**
 21 **SERVED AREAS**

22 **SEC. 201. ELIMINATION OF DISCRIMINATORY TAXES ON**
 23 **BROADBAND SERVICE PROVIDERS.**

24 (a) PROHIBITION.—No State or political subdivision
 25 of a State may impose—

1 (1) discriminatory taxes on broadband services;

2 or

3 (2) a tax or fee imposed on telecommunications
4 carriers or affiliates thereof, other than incumbent
5 local exchange carriers and affiliates thereof, for the
6 use of public rights-of-way that is greater than the
7 tax or fee imposed on incumbent local exchange car-
8 riers or affiliates thereof for their use of public
9 rights-of-way.

10 (b) LIABILITIES AND PENDING CASES.—Subsection
11 (a) shall not affect liability for taxes or fees accrued and
12 enforced before the date of the enactment of this Act or
13 to ongoing litigation relating to such taxes or such fees.

14 **SEC. 202. LOAN PROGRAM FOR ELIGIBLE RURAL COMMU-**
15 **NITIES AND FOR UNDERSERVED COMMU-**
16 **NITIES.**

17 (a) AUTHORITY TO MAKE DIRECT LOANS AND LOAN
18 GUARANTEES.—The Attorney General of the United
19 States may make direct loans or loan guarantees to eligi-
20 ble broadband service providers in accordance with this
21 section to finance the deployment of broadband services
22 to eligible rural communities and to underserved areas.

23 (b) ELIGIBILITY REQUIREMENTS.—To be eligible to
24 receive a loan or loan guarantee under this section, a
25 broadband service provider shall submit to the Attorney

1 General an application containing such information and
2 assurances as the Attorney General may require by rule,
3 including—

4 (1) information demonstrating that such pro-
5 vider is capable of delivering broadband service;

6 (2) a description of the proposed project to de-
7 ploy broadband service to an eligible rural commu-
8 nity or to an underserved area where broadband
9 service is not otherwise generally available through-
10 out such community or such area; and

11 (3) an assurance that such provider will meet
12 the standards for service and area wide coverage es-
13 tablished by the Attorney General.

14 (c) TERMS AND CONDITIONS.—Direct loans and loan
15 guarantees made under this section—

16 (1) shall be made available in accordance with
17 the requirements of the Federal Credit Reform Act
18 of 1990 (2 U.S.C. 661 et seq.);

19 (2) in the case of direct loans and loans guar-
20 anteed, shall bear interest at an annual rate of not
21 more than 2 percent per annum; and

22 (3) shall be made for the longer of—

23 (A) a term of 30 years; or

24 (B) the useful life of the assets con-
25 structed, reconstructed, or acquired with any

1 part of the proceeds of such loan or of the loan
2 guaranteed.

3 (d) LIMITATIONS.—

4 (1) TECHNOLOGY NEUTRALITY.—In making di-
5 rect loans and loan guarantees under this section,
6 the Attorney General may not take into consider-
7 ation the technology proposed to be employed by the
8 applicants for such loans or such guarantees.

9 (2) SECURITY INTEREST.—The Attorney Gen-
10 eral may take a security interest in assets or revenue
11 streams, in connection with a direct loan or loan
12 guarantee made under this section, of not more than
13 the amount sufficient to cover the assets financed by
14 such loan or such guarantee.

15 (e) AUTHORIZATION OF APPROPRIATIONS.—There is
16 authorized to be appropriated to the Attorney General to
17 carry out this section \$3,000,000,000 for fiscal years
18 2002, 2003, 2004, 2005, and 2006.

19 **SEC. 203. DEFINITIONS.**

20 (a) IN GENERAL.—In this title:

21 (1) AFFILIATE.—Term “affiliate” means a per-
22 son that (directly or indirectly) owns or controls, is
23 owned or controlled by, or is under common owner-
24 ship or control with, another person. For purposes
25 of this paragraph, the term “own” means to own an

1 equity interest (or equivalent thereof) of more than
2 10 percent.

3 (2) ASSESSMENT.—The term “assessment”
4 means valuation for a property tax levied by a taxing
5 State or political subdivision thereof.

6 (3) ASSESSMENT JURISDICTION.—The term
7 “assessment jurisdiction” means a geographical area
8 in a State used in determining the assessed value of
9 property for ad valorem taxation.

10 (4) BROADBAND SERVICE.—The term
11 “broadband service” includes, without regard to any
12 particular transmission medium or technology, high-
13 speed, switched, broadband telecommunications ca-
14 pable of delivering not less than 1.5 megabits of
15 data per second to the user and 128,000 bits of data
16 per second from the user that enables users to origi-
17 nate and receive high-quality voice, data, graphics,
18 and video telecommunications.

19 (5) COMMERCIAL BUSINESS.—The term “com-
20 mercial business” means a business, other than a
21 broadband service provider, devoted to a commercial
22 use.

23 (6) COMMERCIAL PROPERTY.—The term “com-
24 mercial property” means property, other than prop-

erty owned by a broadband service provider, devoted to a commercial use.

(7) DISCRIMINATORY TAX.—The term “discriminatory tax” means any tax imposed by a State or political subdivision of a State on a broadband service provider that—

(A) uses an assessment of property owned by broadband service providers at a value that has a higher ratio to the true market value of the broadband service provider’s property than the ratio that the assessed value of other commercial property in the same assessment jurisdiction has to the true market value of the other commercial property value;

(B) uses an assessment of property owned by broadband service providers at a value that encompasses factors other than tangible assets, such as intangible assets and a going concern component, and bases the assessed value of other commercial property on a local assessment process of only tangible assets;

(C) is not generally imposed and legally collectible by such State or such political subdivision on commercial businesses; or

1 (D) is imposed without 180 days advance
2 notification of the imposition of such tax.

3 (8) ELIGIBLE RURAL COMMUNITY.—The term
4 “eligible rural community” means any census tract
5 which—

6 (A) is not within 10 miles of any incor-
7 porated or unincorporated place containing
8 more than 25,000 people, and

9 (B) is not within a county or county equiv-
10 alent which has an overall population density of
11 more than 500 people per square mile of land.

12 (9) INCUMBENT LOCAL EXCHANGE CARRIER.—
13 The term “incumbent local exchange carrier” means,
14 with respect to an area, the local exchange carrier
15 that—

16 (A) on the date of enactment of this Act,
17 is providing telephone exchange service in such
18 area; and

19 (B)(i) is deemed to be a member of the ex-
20 change carrier association pursuant to section
21 69.601(b) of title 47 of the Code of Federal
22 Regulations, as in effect on such date; or

23 (ii) on or after such date, is a successor or
24 assign of a member described in clause (i).

1 (10) TAX.—The term “tax” has the meaning
2 given such term in section 1104 of the Internet Tax
3 Freedom Act (47 U.S.C. 151 note).

4 (11) TELECOMMUNICATIONS CARRIER.—The
5 term “telecommunications carrier” has the meaning
6 given such term by section 3(44) of the Communica-
7 tions Act of 1934 (47 U.S.C. 153 (44)), but—

8 (A) includes all members of an affiliated
9 group of which a telecommunications carrier is
10 a member, and

11 (B) does not include a commercial mobile
12 service carrier.

13 (12) UNDERSERVED AREA.—The term “under-
14 served area” means any census tract which is lo-
15 cated in—

16 (A) an empowerment zone or enterprise
17 community designated under section 1391 of
18 the Internal Revenue Code of 1986;

19 (B) the District of Columbia Enterprise
20 Zone established under section 1400 of such
21 Code;

22 (C) a renewal community designated under
23 section 1400E of such Code; or

24 (D) a low-income community designated
25 under section 45D of such Code.

1 (b) DESIGNATION OF CENSUS TRACTS.—The Sec-
2 retary of the Treasury shall, not later than 90 days after
3 the date of the enactment of this Act, designate and pub-
4 lish those census tracts meeting the criteria described in
5 paragraphs (8) and (12) of subsection (a).

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