

108TH CONGRESS  
1ST SESSION

# H. R. 267

To amend the Internal Revenue Code of 1986 to provide an incentive to ensure that all Americans gain timely and equitable access to the Internet over current and future generations of broadband capability.

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## IN THE HOUSE OF REPRESENTATIVES

JANUARY 8, 2003

Mr. ENGLISH introduced the following bill; which was referred to the Committee on Ways and Means

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## A BILL

To amend the Internal Revenue Code of 1986 to provide an incentive to ensure that all Americans gain timely and equitable access to the Internet over current and future generations of broadband capability.

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 Internet  
5       Access Act of 2003”.

6       **SEC. 2. FINDINGS AND PURPOSE.**

7       (a) FINDINGS.—The Congress finds the following:

1           (1) The Internet has been the single greatest  
2 contributor to the unprecedented economic expansion  
3 experienced by the United States over the last 8  
4 years.

5           (2) Increasing the speed that Americans can ac-  
6 cess the Internet is necessary to ensure the contin-  
7 ued expansion.

8           (3) Today, most residential Internet users, es-  
9 pecially those located in low income and rural areas,  
10 are extremely limited in the type of information they  
11 can send and receive over the Internet because their  
12 means of access is limited to “narrowband” commu-  
13 nications media, typically conventional phone lines at  
14 a maximum speed of 56,000 bits per second.

15           (4) Similarly, small businesses in low income  
16 and rural areas are also deprived of full information  
17 access because of their dependence on narrowband  
18 facilities.

19           (5) By contrast, many residential users located  
20 in higher income urban and suburban areas and  
21 urban business users can access the Internet from a  
22 variety of carriers at current generation broadband  
23 speeds in excess of 1,500,000 bits per second, giving  
24 them a choice among carriers and high-speed access  
25 to a wide array of audio and data applications.

1           (6) The result is a growing disparity in the  
2           speed of access to the Internet and the opportunities  
3           it creates between subscribers located in low income  
4           and rural areas and subscribers located in higher in-  
5           come urban and suburban areas.

6           (7) At the same time, experts project that,  
7           under current financial and regulatory conditions,  
8           the facilities needed to transmit next generation  
9           broadband services over the Internet to residential  
10          users at speeds in excess of 10,000,000 bits per sec-  
11          ond will not be as ubiquitously available as is tele-  
12          phone service until sometime between the years 2030  
13          and 2040.

14          (8) Experts also believe that, under current fi-  
15          nancial and regulatory conditions, the disparity in  
16          access will be exacerbated with the deployment of  
17          next generation broadband capability.

18          (9) The disparity in current broadband access  
19          to the Internet, the slow pace of deployment of next  
20          generation broadband capability, and the projected  
21          disparity in access to such capability will likely prove  
22          detrimental to economic expansion.

23          (10) It is, therefore, appropriate for Congress  
24          to take action to narrow the current and future dis-  
25          parity in the level of broadband access to the Inter-

1 net, and to accelerate deployment of next generation  
2 broadband capability.

3 (b) PURPOSE.—The purpose of this Act is to accel-  
4 erate deployment of current generation broadband access  
5 to the Internet for users located in certain low income and  
6 rural areas and to accelerate deployment of next genera-  
7 tion broadband access for all Americans.

8 **SEC. 3. BROADBAND CREDIT.**

9 (a) IN GENERAL.—Subpart E of part IV of chapter  
10 1 of the Internal Revenue Code of 1986 (relating to rules  
11 for computing investment credit) is amended by inserting  
12 after section 48 the following new section:

13 **“SEC. 48A. BROADBAND CREDIT.**

14 “(a) GENERAL RULE.—For purposes of section 46,  
15 the broadband credit for any taxable year is the sum of—

16 “(1) the current generation broadband credit,  
17 plus

18 “(2) the next generation broadband credit.

19 “(b) CURRENT GENERATION BROADBAND CREDIT;  
20 NEXT GENERATION BROADBAND CREDIT.—For purposes  
21 of this section—

22 “(1) CURRENT GENERATION BROADBAND  
23 CREDIT.—The current generation broadband credit  
24 for any taxable year is equal to 10 percent of the  
25 qualified expenditures incurred with respect to quali-

1       fied equipment delivering current generation  
2       broadband services to rural subscribers or under-  
3       served subscribers and taken into account with re-  
4       spect to such taxable year.

5           “(2) NEXT GENERATION BROADBAND CRED-  
6       IT.—The next generation broadband credit for any  
7       taxable year is equal to 20 percent of the qualified  
8       expenditures incurred with respect to qualified  
9       equipment delivering next generation broadband  
10      services to all rural subscribers, all underserved sub-  
11      scribers, or any other residential subscribers and  
12      taken into account with respect to such taxable year.

13          “(c) WHEN EXPENDITURES TAKEN INTO AC-  
14      COUNT.—For purposes of this section—

15           “(1) IN GENERAL.—Qualified expenditures with  
16      respect to qualified equipment shall be taken into ac-  
17      count with respect to the first taxable year in  
18      which—

19           “(A) current generation broadband services  
20      are delivered through such equipment to rural  
21      subscribers or underserved subscribers, or

22           “(B) next generation broadband services  
23      are delivered through such equipment to rural  
24      subscribers, underserved subscribers, or any  
25      other residential subscribers.

1           “(2) DELIVERY OF SERVICES.—For purposes of  
2       paragraph (1), the delivery of current generation  
3       broadband services or next generation broadband  
4       services through qualified equipment occurs when  
5       such class of service is purchased by and provided  
6       to at least 10 percent of the subscribers described in  
7       subsection (b) which such equipment is capable of  
8       serving through the legal or contractual area access  
9       rights or obligations of the provider.

10       “(d) SPECIAL ALLOCATION RULES.—

11           “(1) CURRENT GENERATION BROADBAND SERV-  
12       ICES.—For purposes of determining the current gen-  
13       eration broadband credit under subsection (a)(1)  
14       with respect to qualified equipment through which  
15       current generation broadband services are delivered,  
16       if the qualified equipment is capable of serving both  
17       the subscribers described under subsection (b)(1)  
18       and other subscribers, the qualified expenditures  
19       shall be multiplied by a fraction—

20           “(A) the numerator of which is the sum of  
21       the total potential subscriber populations within  
22       the rural areas and the underserved areas  
23       which the equipment is capable of serving with  
24       current generation broadband services, and

1           “(B) the denominator of which is the total  
2           potential subscriber population of the area  
3           which the equipment is capable of serving with  
4           current generation broadband services.

5           “(2) NEXT GENERATION BROADBAND SERV-  
6           ICES.—For purposes of determining the next genera-  
7           tion broadband credit under subsection (a)(2) with  
8           respect to qualified equipment through which next  
9           generation broadband services are delivered, if the  
10          qualified equipment is capable of serving both the  
11          subscribers described under subsection (b)(2) and  
12          other subscribers, the qualified expenditures shall be  
13          multiplied by a fraction—

14               “(A) the numerator of which is the sum  
15               of—

16                       “(i) the total potential subscriber pop-  
17                       ulations within the rural areas and under-  
18                       served areas, plus

19                       “(ii) the total potential subscriber  
20                       population of the area consisting only of  
21                       residential subscribers not described in  
22                       clause (i),

23               which the equipment is capable of serving with  
24               next generation broadband services, and

1           “(B) the denominator of which is the total  
2           potential subscriber population of the area  
3           which the equipment is capable of serving with  
4           next generation broadband services.

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

6           “(1) ANTENNA.—The term ‘antenna’ means  
7           any device used to transmit or receive signals  
8           through the electromagnetic spectrum, including sat-  
9           ellite equipment.

10          “(2) CABLE OPERATOR.—The term ‘cable oper-  
11          ator’ has the meaning given such term by section  
12          602(5) of the Communications Act of 1934 (47  
13          U.S.C. 522(5)).

14          “(3) COMMERCIAL MOBILE SERVICE CAR-  
15          RIER.—The term ‘commercial mobile service carrier’  
16          means any person authorized to provide commercial  
17          mobile radio service as defined in section 20.3 of  
18          title 47, Code of Federal Regulations.

19          “(4) CURRENT GENERATION BROADBAND SERV-  
20          ICE.—The term ‘current generation broadband serv-  
21          ice’ means the transmission of signals at a rate of  
22          at least 1,500,000 bits per second to the subscriber  
23          and at least 200,000 bits per second from the sub-  
24          scriber.



1           “(5) MULTIPLEXING OR DEMULTIPLEXING.—

2           The term ‘multiplexing’ means the transmission of 2  
3           or more signals over a single channel, and the term  
4           ‘demultiplexing’ means the separation of 2 or more  
5           signals previously combined by compatible multi-  
6           plexing equipment.

7           “(6) NEXT GENERATION BROADBAND SERV-

8           ICE.—The term ‘next generation broadband service’  
9           means the transmission of signals at a rate of at  
10          least 22,000,000 bits per second to the subscriber  
11          and at least 5,000,000 bits per second from the sub-  
12          scriber.

13          “(7) NONRESIDENTIAL SUBSCRIBER.—The

14          term ‘nonresidential subscriber’ means a person who  
15          purchases broadband services which are delivered to  
16          the permanent place of business of such person.

17          “(8) OPEN VIDEO SYSTEM OPERATOR.—The

18          term ‘open video system operator’ means any person  
19          authorized to provide service under section 653 of  
20          the Communications Act of 1934 (47 U.S.C. 573).

21          “(9) OTHER WIRELESS CARRIER.—The term

22          ‘other wireless carrier’ means any person (other than  
23          a telecommunications carrier, commercial mobile  
24          service carrier, cable operator, open video system op-  
25          erator, or satellite carrier) providing current genera-

1       tion broadband services or next generation  
2       broadband service to subscribers through the radio  
3       transmission of energy.

4           “(10) PACKET SWITCHING.—The term ‘packet  
5       switching’ means controlling or routing the path of  
6       a digitized transmission signal which is assembled  
7       into packets or cells.

8           “(11) PROVIDER.—The term ‘provider’ means,  
9       with respect to any qualified equipment—

10               “(A) a cable operator,

11               “(B) a commercial mobile service carrier,

12               “(C) an open video system operator, or

13               “(D) a satellite carrier, telecommunications  
14       carrier, or other wireless carrier,

15       providing current generation broadband services or  
16       next generation broadband services to subscribers  
17       through such qualified equipment.

18           “(12) QUALIFIED EQUIPMENT.—

19               “(A) IN GENERAL.—The term ‘qualified  
20       equipment’ means equipment capable of pro-  
21       viding current generation broadband services or  
22       next generation broadband services at any time  
23       to each subscriber who is utilizing such services.

24               “(B) ONLY CERTAIN INVESTMENT TAKEN  
25       INTO ACCOUNT.—Except as provided in sub-

1 paragraph (C) or (D), equipment shall be taken  
2 into account under subparagraph (A) only to  
3 the extent it—

4 “(i) extends from the last point of  
5 switching to the outside of the unit, build-  
6 ing, dwelling, or office owned or leased by  
7 a subscriber in the case of a telecommuni-  
8 cations carrier,

9 “(ii) extends from the customer side  
10 of the mobile telephone switching office to  
11 a transmission/receive antenna (including  
12 such antenna) owned or leased by a sub-  
13 scriber in the case of a commercial mobile  
14 service carrier,

15 “(iii) extends from the customer side  
16 of the headend to the outside of the unit,  
17 building, dwelling, or office owned or  
18 leased by a subscriber in the case of a  
19 cable operator or open video system oper-  
20 ator, or

21 “(iv) extends from a transmission/re-  
22 ceive antenna (including such antenna)  
23 which transmits and receives signals to or  
24 from multiple subscribers to a trans-  
25 mission/receive antenna (including such

1 antenna) on the outside of the unit, build-  
2 ing, dwelling, or office owned or leased by  
3 a subscriber in the case of a satellite car-  
4 rier or other wireless carrier, unless such  
5 other wireless carrier is also a tele-  
6 communications carrier.

7 “(C) PACKET SWITCHING EQUIPMENT.—  
8 Packet switching equipment, regardless of loca-  
9 tion, shall be taken into account under subpara-  
10 graph (A) only if it is deployed in connection  
11 with equipment described in subparagraph (B)  
12 and is uniquely designed to perform the func-  
13 tion of packet switching for current generation  
14 broadband services or next generation  
15 broadband services, but only if such packet  
16 switching is the last in a series of such func-  
17 tions performed in the transmission of a signal  
18 to a subscriber or the first in a series of such  
19 functions performed in the transmission of a  
20 signal from a subscriber.

21 “(D) MULTIPLEXING AND  
22 DEMULTIPLEXING EQUIPMENT.—Multiplexing  
23 and demultiplexing equipment shall be taken  
24 into account under subparagraph (A) only to  
25 the extent it is deployed in connection with

1 equipment described in subparagraph (B) and  
2 is uniquely designed to perform the function of  
3 multiplexing and demultiplexing packets or cells  
4 of data and making associated application  
5 adaptations, but only if such multiplexing or  
6 demultiplexing equipment is located between  
7 packet switching equipment described in sub-  
8 paragraph (C) and the subscriber's premises.

9 “(13) QUALIFIED EXPENDITURE.—

10 “(A) IN GENERAL.—The term ‘qualified  
11 expenditure’ means any amount—

12 “(i) chargeable to capital account with  
13 respect to the purchase and installation of  
14 qualified equipment (including any up-  
15 grades thereto) for which depreciation is  
16 allowable under section 168, and

17 “(ii) incurred after December 31,  
18 2003, and before January 1, 2009.

19 “(B) CERTAIN SATELLITE EXPENDITURES  
20 EXCLUDED.—Such term shall not include any  
21 expenditure with respect to the launching of  
22 any satellite equipment.

23 “(14) RESIDENTIAL SUBSCRIBER.—The term  
24 ‘residential subscriber’ means an individual who pur-

1 chases broadband services which are delivered to  
2 such individual's dwelling.

3 “(15) RURAL AREA.—The term ‘rural area’  
4 means any census tract which—

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

8 “(B) is not within a county or county  
9 equivalent which has an overall population den-  
10 sity of more than 500 people per square mile of  
11 land.

12 “(16) RURAL SUBSCRIBER.—The term ‘rural  
13 subscriber’ means a residential subscriber residing in  
14 a dwelling located in a rural area or nonresidential  
15 subscriber maintaining a permanent place of busi-  
16 ness located in a rural area.

17 “(17) SATELLITE CARRIER.—The term ‘sat-  
18 ellite carrier’ means any person using the facilities  
19 of a satellite or satellite service licensed by the Fed-  
20 eral Communications Commission and operating in  
21 the Fixed-Satellite Service under part 25 of title 47  
22 of the Code of Federal Regulations or the Direct  
23 Broadcast Satellite Service under part 100 of title  
24 47 of such Code to establish and operate a channel  
25 of communications for point-to-multipoint distribu-

1       tion of signals, and owning or leasing a capacity or  
2       service on a satellite in order to provide such point-  
3       to-multipoint distribution.

4           “(18) SUBSCRIBER.—The term ‘subscriber’  
5       means a person who purchases current generation  
6       broadband services or next generation broadband  
7       services.

8           “(19) TELECOMMUNICATIONS CARRIER.—The  
9       term ‘telecommunications carrier’ has the meaning  
10      given such term by section 3(44) of the Communica-  
11      tions Act of 1934 (47 U.S.C. 153 (44)), but—

12           “(A) includes all members of an affiliated  
13      group of which a telecommunications carrier is  
14      a member, and

15           “(B) does not include a commercial mobile  
16      service carrier.

17           “(20) TOTAL POTENTIAL SUBSCRIBER POPU-  
18      LATION.—The term ‘total potential subscriber popu-  
19      lation’ means, with respect to any area and based on  
20      the most recent census data, the total number of po-  
21      tential residential subscribers residing in dwellings  
22      located in such area and potential nonresidential  
23      subscribers maintaining permanent places of busi-  
24      ness located in such area.

1           “(21) UNDERSERVED AREA.—The term ‘under-  
 2       served area’ means any census tract which is located  
 3       in—

4                   “(A) an empowerment zone or enterprise  
 5       community designated under section 1391,

6                   “(B) the District of Columbia Enterprise  
 7       Zone established under section 1400,

8                   “(C) a renewal community designated  
 9       under section 1400E, or

10                  “(D) a low-income community designated  
 11       under section 45D.

12           “(22) UNDERSERVED SUBSCRIBER.—The term  
 13       ‘underserved subscriber’ means a residential sub-  
 14       scriber residing in a dwelling located in an under-  
 15       served area or nonresidential subscriber maintaining  
 16       a permanent place of business located in an under-  
 17       served area.

18       “(f) DESIGNATION OF CENSUS TRACTS.—The Sec-  
 19       retary shall, not later than 90 days after the date of the  
 20       enactment of this section, designate and publish those cen-  
 21       sus tracts meeting the criteria described in paragraphs  
 22       (15) and (21) of subsection (e).”.

23       (b) CREDIT TO BE PART OF INVESTMENT CREDIT.—  
 24       Section 46 of the Internal Revenue Code of 1986 (relating  
 25       to the amount of investment credit) is amended by striking



1 “and” at the end of paragraph (2), by striking the period  
 2 at the end of paragraph (3) and inserting “, and”, and  
 3 by adding at the end the following new paragraph:

4 “(4) the broadband credit.”

5 (c) SPECIAL RULE FOR MUTUAL OR COOPERATIVE  
 6 TELEPHONE COMPANIES.—Section 501(c)(12)(B) of the  
 7 Internal Revenue Code of 1986 (relating to list of exempt  
 8 organizations) is amended by striking “or” at the end of  
 9 clause (iii), by striking the period at the end of clause (iv)  
 10 and inserting “, or”, and by adding at the end the fol-  
 11 lowing new clause:

12 “(v) from sources not described in  
 13 subparagraph (A), but only to the extent  
 14 such income does not in any year exceed  
 15 an amount equal to the credit for qualified  
 16 expenditures which would be determined  
 17 under section 48A for such year if the mu-  
 18 tual or cooperative telephone company was  
 19 not exempt from taxation.”

20 (d) CONFORMING AMENDMENT.—The table of sec-  
 21 tions for subpart E of part IV of subchapter A of chapter  
 22 1 of the Internal Revenue Code of 1986 is amended by  
 23 inserting after the item relating to section 48 the following  
 24 new item:

“Sec. 48A. Broadband credit.”

25 (e) REGULATORY MATTERS.—

1           (1) PROHIBITION.—No Federal or State agency  
2           or instrumentality shall adopt regulations or rate-  
3           making procedures that would have the effect of  
4           confiscating any credit or portion thereof allowed  
5           under section 48A of the Internal Revenue Code of  
6           1986 (as added by this section) or otherwise sub-  
7           verting the purpose of this section.

8           (2) TREASURY REGULATORY AUTHORITY.—It is  
9           the intent of Congress in providing the broadband  
10          credit under section 48A of the Internal Revenue  
11          Code of 1986 (as added by this section) to provide  
12          incentives for the purchase, installation, and connec-  
13          tion of equipment and facilities offering expanded  
14          broadband access to the Internet for users in certain  
15          low income and rural areas of the United States, as  
16          well as to residential users nationwide, in a manner  
17          that maintains competitive neutrality among the var-  
18          ious classes of providers of broadband services. Ac-  
19          cordingly, the Secretary of the Treasury shall pre-  
20          scribe such regulations as may be necessary or ap-  
21          propriate to carry out the purposes of section 48A  
22          of such Code, including—

23                 (A) regulations to determine how and when  
24                 a taxpayer that incurs qualified expenditures

1 satisfies the requirements of section 48A of  
2 such Code to provide broadband services, and

3 (B) regulations describing the information,  
4 records, and data taxpayers are required to pro-  
5 vide the Secretary to substantiate compliance  
6 with the requirements of section 48A of such  
7 Code.

8 Until the Secretary prescribes such regulations, tax-  
9 payers may base such determinations on any reason-  
10 able method that is consistent with the purposes of  
11 section 48A of such Code.

12 (f) EFFECTIVE DATES.—

13 (1) IN GENERAL.—Except as provided in para-  
14 graph (2), the amendments made by this section  
15 shall apply to expenditures incurred after December  
16 31, 2003.

17 (2) SPECIAL RULE.—The amendments made by  
18 subsection (c) shall apply to amounts received after  
19 December 31, 2003.

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