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1ST SESSION

S. 905

To amend the Internal Revenue Code of 1986 to provide a broadband Internet access tax credit.

IN THE SENATE OF THE UNITED STATES

APRIL 11, 2003

Mr. ROCKEFELLER (for himself, Ms. SNOWE, Mr. BAUCUS, Mr. HATCH, Mr. CONRAD, Mr. KENNEDY, Ms. STABENOW, Mr. BREAUX, Mrs. MURRAY, Mr. DAYTON, Mr. LEAHY, Mr. SCHUMER, and Mr. BURNS) introduced the following bill; which was read twice and referred to the Committee on Finance

A BILL

To amend the Internal Revenue Code of 1986 to provide a broadband Internet access tax credit.

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. BROADBAND INTERNET ACCESS TAX CREDIT.**

4 (a) IN GENERAL.—Subpart E of part IV of chapter
5 1 of the Internal Revenue Code of 1986 (relating to rules
6 for computing investment credit) is amended by inserting
7 after section 48 the following new section:

1 **“SEC. 48A. BROADBAND INTERNET ACCESS CREDIT.**

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

4 “(1) the current generation broadband credit,
5 plus

6 “(2) the next generation broadband credit.

7 “(b) CURRENT GENERATION BROADBAND CREDIT;
8 NEXT GENERATION BROADBAND CREDIT.—For purposes
9 of this section—

10 “(1) CURRENT GENERATION BROADBAND
11 CREDIT.—The current generation broadband credit
12 for any taxable year is equal to 10 percent of the
13 qualified expenditures incurred with respect to quali-
14 fied equipment providing current generation
15 broadband services to qualified subscribers and
16 taken into account with respect to such taxable year.

17 “(2) NEXT GENERATION BROADBAND CRED-
18 IT.—The next generation broadband credit for any
19 taxable year is equal to 20 percent of the qualified
20 expenditures incurred with respect to qualified
21 equipment providing next generation broadband
22 services to qualified subscribers and taken into ac-
23 count with respect to such taxable year.

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

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

5 “(A) current generation broadband services
6 are provided through such equipment to quali-
7 fied subscribers, or

8 “(B) next generation broadband services
9 are provided through such equipment to quali-
10 fied subscribers.

11 “(2) LIMITATION.—

12 “(A) IN GENERAL.—Qualified expenditures
13 shall be taken into account under paragraph (1)
14 only with respect to qualified equipment—

15 “(i) the original use of which com-
16 mences with the taxpayer, and

17 “(ii) which is placed in service,
18 after December 31, 2002.

19 “(B) SALE-LEASEBACKS.—For purposes of
20 subparagraph (A), if property—

21 “(i) is originally placed in service
22 after December 31, 2002, by any person,
23 and

1 “(ii) sold and leased back by such per-
 2 son within 3 months after the date such
 3 property was originally placed in service,
 4 such property shall be treated as originally
 5 placed in service not earlier than the date on
 6 which such property is used under the leaseback
 7 referred to in clause (ii).

8 “(d) SPECIAL ALLOCATION RULES.—

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

18 “(A) the numerator of which is the sum of
 19 the number of potential qualified subscribers
 20 within the rural areas and the underserved
 21 areas which the equipment is capable of serving
 22 with current generation broadband services, and

23 “(B) the denominator of which is the total
 24 potential subscriber population of the area

1 which the equipment is capable of serving with
2 current generation broadband services.

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

11 “(A) the numerator of which is the sum
12 of—

13 “(i) the number of potential qualified
14 subscribers within the rural areas and un-
15 derserved areas, plus

16 “(ii) the number of potential qualified
17 subscribers within the area consisting only
18 of residential subscribers not described in
19 clause (i),

20 which the equipment is capable of serving with
21 next generation broadband services, and

22 “(B) the denominator of which is the total
23 potential subscriber population of the area
24 which the equipment is capable of serving with
25 next generation broadband services.

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

2 “(1) ANTENNA.—The term ‘antenna’ means
3 any device used to transmit or receive signals
4 through the electromagnetic spectrum, including sat-
5 ellite equipment.

6 “(2) CABLE OPERATOR.—The term ‘cable oper-
7 ator’ has the meaning given such term by section
8 602(5) of the Communications Act of 1934 (47
9 U.S.C. 522(5)).

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

15 “(4) CURRENT GENERATION BROADBAND SERV-
16 ICE.—The term ‘current generation broadband serv-
17 ice’ means the transmission of signals at a rate of
18 at least 1,000,000 bits per second to the subscriber
19 and at least 128,000 bits per second from the sub-
20 scriber.

21 “(5) MULTIPLEXING OR DEMULTIPLEXING.—
22 The term ‘multiplexing’ means the transmission of 2
23 or more signals over a single channel, and the term
24 ‘demultiplexing’ means the separation of 2 or more

1 signals previously combined by compatible multi-
2 plexing equipment.

3 “(6) NEXT GENERATION BROADBAND SERV-
4 ICE.—The term ‘next generation broadband service’
5 means the transmission of signals at a rate of at
6 least 22,000,000 bits per second to the subscriber
7 (or its equivalent when the data rate is measured be-
8 fore being compressed for transmission) and at least
9 5,000,000 bits per second from the subscriber (or its
10 equivalent as so measured).

11 “(7) NONRESIDENTIAL SUBSCRIBER.—The
12 term ‘nonresidential subscriber’ means any person
13 who purchases broadband services which are deliv-
14 ered to the permanent place of business of such per-
15 son.

16 “(8) OPEN VIDEO SYSTEM OPERATOR.—The
17 term ‘open video system operator’ means any person
18 authorized to provide service under section 653 of
19 the Communications Act of 1934 (47 U.S.C. 573).

20 “(9) OTHER WIRELESS CARRIER.—The term
21 ‘other wireless carrier’ means any person (other than
22 a telecommunications carrier, commercial mobile
23 service carrier, cable operator, open video system op-
24 erator, or satellite carrier) providing current genera-
25 tion broadband services or next generation

1 broadband service to subscribers through the wire-
2 less transmission of energy through radio or light
3 waves.

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 any—

10 “(A) cable operator,

11 “(B) commercial mobile service carrier,

12 “(C) open video system operator,

13 “(D) satellite carrier,

14 “(E) telecommunications carrier, or

15 “(F) other wireless carrier,

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

19 “(12) PROVISION OF SERVICES.—A provider
20 shall be treated as providing services to 1 or more
21 subscribers if—

22 “(A) such a subscriber has been passed by
23 the provider’s equipment and can be connected
24 to such equipment for a standard connection
25 fee,

1 “(B) the provider is physically able to de-
2 liver current generation broadband services or
3 next generation broadband services, as applica-
4 ble, to such a subscriber without making more
5 than an insignificant investment with respect to
6 such subscriber,

7 “(C) the provider has made reasonable ef-
8 forts to make such subscribers aware of the
9 availability of such services,

10 “(D) such services have been purchased by
11 1 or more such subscribers, and

12 “(E) such services are made available to
13 such subscribers at average prices comparable
14 to those at which the provider makes available
15 similar services in any areas in which the pro-
16 vider makes available such services.

17 “(13) QUALIFIED EQUIPMENT.—

18 “(A) IN GENERAL.—The term ‘qualified
19 equipment’ means equipment which provides
20 current generation broadband services or next
21 generation broadband services—

22 “(i) at least a majority of the time
23 during periods of maximum demand to
24 each subscriber who is utilizing such serv-
25 ices, and

1 “(ii) in a manner substantially the
2 same as such services are provided by the
3 provider to subscribers through equipment
4 with respect to which no credit is allowed
5 under subsection (a)(1).

6 “(B) ONLY CERTAIN INVESTMENT TAKEN
7 INTO ACCOUNT.—Except as provided in sub-
8 paragraph (C) or (D), equipment shall be taken
9 into account under subparagraph (A) only to
10 the extent it—

11 “(i) extends from the last point of
12 switching to the outside of the unit, build-
13 ing, dwelling, or office owned or leased by
14 a subscriber in the case of a telecommuni-
15 cations carrier,

16 “(ii) extends from the customer side
17 of the mobile telephone switching office to
18 a transmission/receive antenna (including
19 such antenna) owned or leased by a sub-
20 scriber in the case of a commercial mobile
21 service carrier,

22 “(iii) extends from the customer side
23 of the headend to the outside of the unit,
24 building, dwelling, or office owned or
25 leased by a subscriber in the case of a

1 cable operator or open video system oper-
2 ator, or

3 “(iv) extends from a transmission/re-
4 ceive antenna (including such antenna)
5 which transmits and receives signals to or
6 from multiple subscribers, to a trans-
7 mission/receive antenna (including such
8 antenna) on the outside of the unit, build-
9 ing, dwelling, or office owned or leased by
10 a subscriber in the case of a satellite car-
11 rier or other wireless carrier, unless such
12 other wireless carrier is also a tele-
13 communications carrier.

14 “(C) PACKET SWITCHING EQUIPMENT.—

15 Packet switching equipment, regardless of loca-
16 tion, shall be taken into account under subpara-
17 graph (A) only if it is deployed in connection
18 with equipment described in subparagraph (B)
19 and is uniquely designed to perform the func-
20 tion of packet switching for current generation
21 broadband services or next generation
22 broadband services, but only if such packet
23 switching is the last in a series of such func-
24 tions performed in the transmission of a signal
25 to a subscriber or the first in a series of such

functions performed in the transmission of a signal from a subscriber.

“(D) MULTIPLEXING AND DEMULTIPLEXING EQUIPMENT.—Multiplexing and demultiplexing equipment shall be taken into account under subparagraph (A) only to the extent it is deployed in connection with equipment described in subparagraph (B) and is uniquely designed to perform the function of multiplexing and demultiplexing packets or cells of data and making associated application adaptations, but only if such multiplexing or demultiplexing equipment is located between packet switching equipment described in subparagraph (C) and the subscriber’s premises.

“(14) QUALIFIED EXPENDITURE.—

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

“(i) chargeable to capital account with respect to the purchase and installation of qualified equipment (including any upgrades thereto) for which depreciation is allowable under section 168, and

“(ii) incurred after December 31, 2002, and before January 1, 2008.

1 “(B) CERTAIN SATELLITE EXPENDITURES
2 EXCLUDED.—Such term shall not include any
3 expenditure with respect to the launching of
4 any satellite equipment.

5 “(C) LEASED EQUIPMENT.—Such term
6 shall include so much of the purchase price paid
7 by the lessor of equipment subject to a lease de-
8 scribed in subsection (c)(2)(B) as is attrib-
9 utable to expenditures incurred by the lessee
10 which would otherwise be described in subpara-
11 graph (A).

12 “(15) QUALIFIED SUBSCRIBER.—The term
13 ‘qualified subscriber’ means—

14 “(A) with respect to the provision of cur-
15 rent generation broadband services—

16 “(i) any nonresidential subscriber
17 maintaining a permanent place of business
18 in a rural area or underserved area, or

19 “(ii) any residential subscriber resid-
20 ing in a dwelling located in a rural area or
21 underserved area which is not a saturated
22 market, and

23 “(B) with respect to the provision of next
24 generation broadband services—

1 “(i) any nonresidential subscriber
2 maintaining a permanent place of business
3 in a rural area or underserved area, or

4 “(ii) any residential subscriber.

5 “(16) RESIDENTIAL SUBSCRIBER.—The term
6 ‘residential subscriber’ means any individual who
7 purchases broadband services which are delivered to
8 such individual’s dwelling.

9 “(17) RURAL AREA.—The term ‘rural area’
10 means any census tract which—

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

14 “(B) is not within a county or county
15 equivalent which has an overall population den-
16 sity of more than 500 people per square mile of
17 land.

18 “(18) RURAL SUBSCRIBER.—The term ‘rural
19 subscriber’ means any residential subscriber residing
20 in a dwelling located in a rural area or nonresiden-
21 tial subscriber maintaining a permanent place of
22 business located in a rural area.

23 “(19) SATELLITE CARRIER.—The term ‘sat-
24 ellite carrier’ means any person using the facilities
25 of a satellite or satellite service licensed by the Fed-

1 eral Communications Commission and operating in
2 the Fixed-Satellite Service under part 25 of title 47
3 of the Code of Federal Regulations or the Direct
4 Broadcast Satellite Service under part 100 of title
5 47 of such Code to establish and operate a channel
6 of communications for distribution of signals, and
7 owning or leasing a capacity or service on a satellite
8 in order to provide such distribution.

9 “(20) SATURATED MARKET.—The term ‘satu-
10 rated market’ means any census tract in which, as
11 of the date of the enactment of this section—

12 “(A) current generation broadband services
13 have been provided by a single provider to 85
14 percent or more of the total number of potential
15 residential subscribers residing in dwellings lo-
16 cated within such census tract, and

17 “(B) such services can be utilized—

18 “(i) at least a majority of the time
19 during periods of maximum demand by
20 each such subscriber who is utilizing such
21 services, and

22 “(ii) in a manner substantially the
23 same as such services are provided by the
24 provider to subscribers through equipment

1 with respect to which no credit is allowed
2 under subsection (a)(1).

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

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

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

14 “(B) does not include any commercial mo-
15 bile service carrier.

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

1 “(24) 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 “(25) UNDERSERVED SUBSCRIBER.—The term
 13 ‘underserved subscriber’ means any 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 (b) CREDIT TO BE PART OF INVESTMENT CREDIT.—
 19 Section 46 of the Internal Revenue Code of 1986 (relating
 20 to the amount of investment credit) is amended by striking
 21 “and” at the end of paragraph (2), by striking the period
 22 at the end of paragraph (3) and inserting “, and”, and
 23 by adding at the end the following:

24 “(4) the broadband Internet access credit.”

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

8 “(v) from the sale of property subject
 9 to a lease described in section
 10 48A(c)(2)(B), but only to the extent such
 11 income does not in any year exceed an
 12 amount equal to the credit for qualified ex-
 13 penditures which would be determined
 14 under section 48A for such year if the mu-
 15 tual or cooperative telephone company was
 16 not exempt from taxation and was treated
 17 as the owner of the property subject to
 18 such lease.”.

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

“Sec. 48A. Broadband internet access credit.”.

24 (e) DESIGNATION OF CENSUS TRACTS.—

1 (1) IN GENERAL.—The Secretary of the Treas-
2 ury shall, not later than 90 days after the date of
3 the enactment of this Act, designate and publish
4 those census tracts meeting the criteria described in
5 paragraphs (17) and (24) of section 48A(e) of the
6 Internal Revenue Code of 1986 (as added by this
7 section). In making such designations, the Secretary
8 of the Treasury shall consult with such other depart-
9 ments and agencies as the Secretary determines ap-
10 propriate.

11 (2) SATURATED MARKET.—

12 (A) IN GENERAL.—For purposes of design-
13 nating and publishing those census tracts meet-
14 ing the criteria described in subsection (e)(20)
15 of such section 48A—

16 (i) the Secretary of the Treasury shall
17 prescribe not later than 30 days after the
18 date of the enactment of this Act the form
19 upon which any provider which takes the
20 position that it meets such criteria with re-
21 spect to any census tract shall submit a
22 list of such census tracts (and any other
23 information required by the Secretary) not
24 later than 60 days after the date of the
25 publication of such form, and

1 (ii) the Secretary of the Treasury
 2 shall publish an aggregate list of such cen-
 3 sus tracts submitted and the applicable
 4 providers not later than 30 days after the
 5 last date such submissions are allowed
 6 under clause (i).

7 (B) NO SUBSEQUENT LISTS REQUIRED.—
 8 The Secretary of the Treasury shall not be re-
 9 quired to publish any list of census tracts meet-
 10 ing such criteria subsequent to the list de-
 11 scribed in subparagraph (A)(ii).

12 (C) AUTHORITY TO DISREGARD FALSE
 13 SUBMISSIONS.—In addition to imposing any
 14 other applicable penalties, the Secretary of the
 15 Treasury shall have the discretion to disregard
 16 any form described in subparagraph (A)(i) on
 17 which a provider knowingly submitted false in-
 18 formation.

19 (f) OTHER REGULATORY MATTERS.—

20 (1) PROHIBITION.—No Federal or State agency
 21 or instrumentality shall adopt regulations or rate-
 22 making procedures that would have the effect of
 23 confiscating any credit or portion thereof allowed
 24 under section 48A of the Internal Revenue Code of

1 1986 (as added by this section) or otherwise sub-
2 verting the purpose of this section.

3 (2) TREASURY REGULATORY AUTHORITY.—It is
4 the intent of Congress in providing the broadband
5 Internet access credit under section 48A of the In-
6 ternal Revenue Code of 1986 (as added by this sec-
7 tion) to provide incentives for the purchase, installa-
8 tion, and connection of equipment and facilities of-
9 fering expanded broadband access to the Internet for
10 users in certain low income and rural areas of the
11 United States, as well as to residential users nation-
12 wide, in a manner that maintains competitive neu-
13 trality among the various classes of providers of
14 broadband services. Accordingly, the Secretary of
15 the Treasury shall prescribe such regulations as may
16 be necessary or appropriate to carry out the pur-
17 poses of section 48A of such Code, including—

18 (A) regulations to determine how and when
19 a taxpayer that incurs qualified expenditures
20 satisfies the requirements of section 48A of
21 such Code to provide broadband services, and

22 (B) regulations describing the information,
23 records, and data taxpayers are required to pro-
24 vide the Secretary to substantiate compliance

1 with the requirements of section 48A of such
2 Code.

3 (g) EFFECTIVE DATE.—The amendments made by
4 this section shall apply to expenditures incurred after De-
5 cember 31, 2002.

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