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2D SESSION

S. 3446

To amend the Internal Revenue Code of 1986 to defer the tax on the gain on the sale of certain telecommunications and media businesses, and for other purposes.

IN THE SENATE OF THE UNITED STATES

AUGUST 1, 2008

Mr. MENENDEZ (for himself, Mr. SALAZAR, Mr. SMITH, Mr. LAUTENBERG, Mr. STEVENS, and Ms. STABENOW) 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 defer the tax on the gain on the sale of certain telecommunications and media businesses, 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. FINDINGS AND PURPOSE.**

4 (a) FINDINGS.—Congress finds that:

5 (1) Localism, competition, and diversity of
6 voices have long been the stated goals of United
7 States telecommunications and media policy.

8 (2) In support of these goals, it has been long-
9 standing United States telecommunications and

1 media policy to facilitate diversity of ownership in
2 the telecommunications and media industry, to fos-
3 ter ownership of telecommunications and media by
4 socially disadvantaged businesses, and to dissemi-
5 nate spectrum licenses among a wide variety of ap-
6 plicants, including small businesses and businesses
7 owned by members of minority groups and women.

8 (3) Diversification of ownership of tele-
9 communications and media properties remains a pre-
10 eminent public interest concern that should be re-
11 flected in United States telecommunications, media,
12 and tax policy.

13 (4) In the years between 1995 and 2008, as
14 broadcast media ownership rules have been relaxed,
15 ownership opportunities of broadcast properties for
16 socially disadvantaged individuals have decreased
17 significantly. Businesses owned or controlled by so-
18 cially disadvantaged individuals, including, but not
19 limited to, members of minority groups and women,
20 have continued to be underrepresented as owners of
21 telecommunications and media properties. As a re-
22 sult of the convergence and consolidation taking
23 place in telecommunications and media markets, as
24 of 2008 a smaller number of firms provide the gate-

1 way to news, information, and entertainment pro-
2 gramming.

3 (5) Fostered by the relaxation of the broadcast
4 media ownership rules, local broadcast markets are
5 increasingly characterized by consolidated ownership,
6 with individual entities owning multiple broadcast
7 stations within a single market that allow them to
8 exploit economies of scale in the advertising market
9 not available to smaller or individual operators. This
10 results in individual operators frequently being shut
11 out of large amounts of advertising revenues.

12 (6) The cable television industry is increasingly
13 characterized by firms that cluster their ownership
14 of cable systems in a small number of markets, with
15 the result that many local markets are dominated by
16 a single cable company that serves most or all of the
17 jurisdictions in that market and enjoys a favorable
18 competitive and negotiating position in that market.

19 (7) Tax policy has fostered telecommunications
20 and media convergence and consolidation by pro-
21 viding a favorable tax consequence to telecommuni-
22 cations and media firms selling their properties to
23 large entities that can purchase the properties using
24 tax-free like-kind exchanges. This puts socially dis-
25 advantaged businesses at a greater disadvantage be-

1 cause often they are not able to purchase the prop-
2 erties through an exchange of stock.

3 (8) Socially disadvantaged businesses and other
4 small businesses are less likely to be able to pur-
5 chase telecommunications and media properties
6 through a tax-free like-kind exchange than are es-
7 tablished businesses.

8 (9) Prior to 1995, the tax treatment of the sale
9 of appreciated telecommunications and media prop-
10 erties for transactions not involving like-kind ex-
11 changes was partially offset by the Federal Commu-
12 nications Commission tax certificate policy, a pro-
13 gram that allowed firms that sold telecommuni-
14 cations and media properties to minority or women-
15 owned firms to defer some of the taxes imposed on
16 their sale of appreciated properties. This program
17 was eliminated in 1995.

18 (10) As a result of the elimination of the tax
19 certificate program, the changes in telecommuni-
20 cations and media ownership rules, and the market
21 forces toward convergence and consolidation, oppor-
22 tunities for socially disadvantaged businesses to par-
23 ticipate and grow in telecommunications and media
24 markets have decreased substantially despite the fact

1 that this has been an active period for the sale of
2 telecommunications and media properties.

3 (11) These recent trends exacerbate the pattern
4 of businesses owned or controlled by socially dis-
5 advantaged individuals, who have historically been
6 economically disadvantaged within the telecommuni-
7 cations industry, having greater difficulty obtaining
8 access to capital and facing higher costs of capital
9 than do other businesses. It is consistent with the
10 public interest to provide incentives that will in-
11 crease diversity in telecommunications and media
12 ownership by facilitating socially disadvantaged busi-
13 ness investment in, and acquisition of, telecommuni-
14 cations and media properties, and to eliminate ob-
15 stacles to such ownership.

16 (12) Facilitating voluntary, pro-competitive
17 transactions that will promote ownership of tele-
18 communications and media properties by socially
19 disadvantaged businesses by reducing distortions in
20 tax policy will aid in providing the investment and
21 capital that are crucial to the development of diver-
22 sity of ownership in this sector.

23 (b) PURPOSE.—The purpose of this Act is to facili-
24 tate voluntary, pro-competitive transactions that will pro-
25 mote socially disadvantaged business ownership of tele-

1 communications and media properties in order to diversify
 2 telecommunications and media ownership.

3 **SEC. 2. TREATMENT OF GAIN ON QUALIFIED SALES OF**
 4 **TELECOMMUNICATIONS BUSINESSES.**

5 (a) IN GENERAL.—Subchapter O of chapter 1 of the
 6 Internal Revenue Code of 1986 (relating to gain or loss
 7 on disposition of property) is amended by inserting after
 8 part IV the following new part:

9 **“PART V—CERTAIN SALES OF**
 10 **TELECOMMUNICATIONS BUSINESSES**

“Sec. 1071. Treatment of gain on certain sales of telecommunications busi-
 nesses.

11 **“SEC. 1071. TREATMENT OF GAIN ON CERTAIN SALES OF**
 12 **TELECOMMUNICATIONS BUSINESSES.**

13 “(a) IN GENERAL.—In the case of an eligible tax-
 14 payer, at the election of the taxpayer—

15 “(1) the tax imposed by this subtitle on the
 16 qualifying gain from a qualified telecommunications
 17 sale may be paid on or before the date that is 3
 18 years after the date prescribed by section 6151(a)
 19 for payment of such tax, or

20 “(2) the recognition of such qualifying gain
 21 shall be deferred by reducing the basis of depreciable
 22 property (as defined in section 1017(b)(3)) held by
 23 the taxpayer immediately after such sale or acquired

1 within 1 year after such sale by the amount of such
2 qualifying gain.

3 “(b) ELIGIBLE TAXPAYER.—For purposes of this
4 section, the term ‘eligible taxpayer’ means the seller in a
5 qualified telecommunications sale if such seller has re-
6 ceived a qualifying gain certificate from the purchaser in
7 such sale.

8 “(c) QUALIFYING GAIN.—For purposes of this sec-
9 tion, the term ‘qualifying gain’ means the amount that
10 is so much of the gain on any qualified telecommuni-
11 cations sale as does not exceed the amount of the quali-
12 fying gain certificate received by the seller in such sale
13 from the purchaser.

14 “(d) QUALIFIED TELECOMMUNICATIONS SALE.—

15 “(1) IN GENERAL.—For purposes of this sec-
16 tion, the term ‘qualified telecommunications sale’
17 means any sale to a qualified business of—

18 “(A) the assets of a telecommunications
19 business,

20 “(B) stock in a corporation if, immediately
21 after such sale—

22 “(i) the qualified business owns stock
23 possessing at least the applicable percent-
24 age of the total combined voting power of
25 all classes of stock entitled to vote and at

1 least the applicable percentage of the total
2 number of shares of all other classes of
3 stock of such corporation, and

4 “(ii) substantially all of the assets of
5 such corporation are assets of one or more
6 telecommunications businesses, or

7 “(C) an interest in a partnership if, imme-
8 diately after such sale—

9 “(i) the qualified business owns a
10 partnership interest possessing—

11 “(I) a percentage that is at least
12 equal to the applicable percentage of
13 the total combined voting power of all
14 classes of partnership interests enti-
15 tled to vote,

16 “(II) control over the manage-
17 ment of the partnership,

18 “(III) a percentage that is at
19 least equal to the applicable percent-
20 age of the capital interests of the
21 partnership, and

22 “(IV) a distributive share that is
23 at least equal to the applicable per-
24 centage of each item of the partner-

1 ship's income, gain, loss, deduction or
2 credit, and

3 “(ii) substantially all of the assets of
4 such partnership are assets of one or more
5 telecommunications businesses.

6 “(2) QUALIFIED BUSINESS.—For purposes of
7 this section—

8 “(A) IN GENERAL.—The term ‘qualified
9 business’ means any entity in which a socially
10 disadvantaged individual or a member of a so-
11 cially disadvantaged group has a qualified inter-
12 est.

13 “(B) CERTIFICATION.—

14 “(i) IN GENERAL.—A business shall
15 not be a qualified business under this sec-
16 tion unless such business has been certified
17 by the Federal Communications Commis-
18 sion as meeting the requirements of sub-
19 paragraph (A).

20 “(ii) REPORTING REQUIREMENT.—

21 “(I) IN GENERAL.—Any business
22 certified by the Federal Communica-
23 tions Commission under this subpara-
24 graph shall report to such Commis-
25 sion any event that would lead to a

1 change in the eligibility of the busi-
2 ness for such certification.

3 “(II) REVISION OF STRUCTURE
4 OR REVOCATION OF CERTIFICATION.—

5 If the Federal Communications Com-
6 mission determines that such business
7 no longer meets the requirements of
8 subparagraph (A) as a result of a re-
9 reportable event under subclause (I),
10 such business may revise its owner-
11 ship structure in order to meet such
12 requirements. If such business fails to
13 revise its ownership structure in a
14 manner sufficient to meet such re-
15 quirements, the certification of such
16 business under this subparagraph
17 shall be revoked.

18 “(iii) QUALIFYING GAIN CERTIFI-
19 CATES.—

20 “(I) IN GENERAL.—Upon certifi-
21 cation of any business under this sub-
22 paragraph, the Federal Communica-
23 tions Commission shall issue quali-
24 fying gain certificates to such business
25 for use in the purchase of tele-

1 communications businesses through
2 qualified telecommunications sales.

3 “(II) LIMITATION.—The aggre-
4 gate amount of the qualifying gain
5 certificates issued to a business under
6 this clause for any calendar year shall
7 not exceed \$350,000,000 reduced by
8 the aggregate amount of qualifying
9 gain certificates issued to such busi-
10 ness during the preceding 5 calendar
11 years.

12 “(iv) REGULATIONS.—The Federal
13 Communications Commission shall issue
14 regulations to establish a process for
15 granting certification to qualified busi-
16 nesses and for requiring reporting and re-
17 view under this subparagraph.

18 “(v) FCC REPORTING.—The Federal
19 Communications Commission shall submit
20 to the Secretary on or before January 31
21 of each year a list of all businesses cer-
22 tified as qualified businesses in the pre-
23 vious calendar year.

24 “(C) QUALIFIED INTEREST.—An interest
25 in an entity shall be treated as qualified if such

1 interest represents a percentage that is at least
 2 equal to the applicable percentage of—

3 “(i) the total assets of the entity, and

4 “(ii) the total combined voting power
 5 in such entity of all classes of interests en-
 6 titled to vote.

7 “(D) SOCIALLY DISADVANTAGED INDIVIDUAL.—The term ‘socially disadvantaged in-
 8 dividual’ means an individual that is—

9 “(i) a United States citizen, and

10 “(ii) socially and economically dis-
 11 advantaged, as determined by the Federal
 12 Communications Commission using the fol-
 13 lowing criteria:

14 “(I) SOCIALLY DISADVAN-

15 TAGED.—An individual may be con-
 16 sidered socially disadvantaged if such
 17 individual has been subjected to racial
 18 or ethnic prejudice or cultural bias
 19 within United States society because
 20 of the individual’s identity as a mem-
 21 ber of a group and without regard to
 22 individual qualities. The social dis-
 23 advantage must stem from cir-
 24

1 cumstances beyond the individual's
2 control.

3 “(II) MEMBERS OF DESIGNATED
4 GROUPS.—

5 “(aa) There shall be a re-
6 buttable presumption that—

7 “(AA) those individuals
8 asserting membership in a
9 group previously designated
10 as socially disadvantaged by
11 the Small Business Adminis-
12 tration according to proce-
13 dures set forth under section
14 124.103 of title 13, Code of
15 Federal Regulations (or a
16 successor regulation), in-
17 cluding Black Americans,
18 Hispanic Americans, Native
19 Americans, Asian Pacific
20 Americans, and members of
21 other groups that have been
22 so designated, and

23 “(BB) those entities
24 that are deemed socially dis-
25 advantaged under section

1 124.109 of title 13, Code of
2 Federal Regulations (or a
3 successor regulation),
4 shall be considered socially dis-
5 advantaged for purposes of this
6 section.

7 “(bb) In order to be consid-
8 ered a member of a socially dis-
9 advantaged group, the Federal
10 Communications Commission
11 may require that an individual
12 has held himself or herself out,
13 and has been identified by others,
14 as a member of such group.

15 “(cc) The presumption of
16 membership in a socially dis-
17 advantaged group may be over-
18 come with the presentation of
19 credible evidence to the contrary.
20 Individuals in possession or
21 knowledge of such evidence shall
22 submit such information in writ-
23 ing to the Federal Communica-
24 tions Commission at such time

1 and in such manner as such
2 Commission shall require.

3 “(III) INDIVIDUALS NOT MEM-
4 BERS OF A DESIGNATED GROUP.—An
5 individual who is not a member of a
6 group described in subclause (II)(aa)
7 must establish individual social dis-
8 advantage by a preponderance of the
9 evidence, which must include the fol-
10 lowing elements:

11 “(aa) At least one objective
12 distinguishing feature that has
13 contributed to the social dis-
14 advantage of the individual, such
15 as race, ethnic origin, gender,
16 physical handicap, long-term resi-
17 dence in an environment isolated
18 from the mainstream of United
19 States society, or other similar
20 features not common to individ-
21 uals who are not socially dis-
22 advantaged.

23 “(bb) Personal experiences
24 of substantial and chronic social

1 disadvantage in United States so-
2 ciety.

3 “(cc) Negative impact of so-
4 cial disadvantage on entry into or
5 advancement in the business
6 world. This impact may be prov-
7 en by any relevant evidence show-
8 ing that the totality of cir-
9 cumstances reflects disadvantage
10 in entering into or advancing in
11 the business world, but such evi-
12 dence must include information
13 concerning the education, em-
14 ployment, and business history of
15 the individual as follows:

16 “(AA) Evidence relat-
17 ing to education may include
18 such factors as denial of
19 equal access to institutions
20 of higher education, exclu-
21 sion from social and profes-
22 sional association with stu-
23 dents or teachers, denial of
24 educational honors rightfully
25 earned, and social patterns

1 or pressures which discour-
2 aged the individual from
3 pursuing a professional or
4 business education.

5 “(BB) Evidence relat-
6 ing to employment may in-
7 clude such factors as un-
8 equal treatment in hiring,
9 promotions, or other aspects
10 of professional advancement,
11 pay and fringe benefits, and
12 other terms and conditions
13 of employment, retaliatory
14 or discriminatory behavior
15 by an employer, and social
16 patterns or pressures which
17 have channeled the indi-
18 vidual into nonprofessional
19 or nonbusiness fields.

20 “(CC) Evidence relat-
21 ing to business history may
22 include such factors as un-
23 equal access to credit or
24 capital, acquisition of credit
25 or capital under commer-

cially unfavorable circumstances, unequal treatment in opportunities for government contracts or other work, unequal treatment by potential customers and business associates, and exclusion from business or professional organizations.

“(IV) ECONOMICALLY DISADVANTAGED.—

“(aa) IN GENERAL.—An individual may be considered economically disadvantaged if such individual is socially disadvantaged, as determined under subclauses (I) through (III), and if the individual’s ability to compete in the free enterprise system has been impaired due to diminished capital and credit opportunities as compared to others in the same or similar line of business who are not socially disadvantaged.

1 “(bb) DIMINISHED OPPOR-
2 TUNITIES.—In considering
3 whether an individual has been
4 impaired by diminished capital
5 and credit opportunities, the
6 Federal Communications Com-
7 mission shall examine factors re-
8 lating to the financial conditions
9 of any persons claiming dis-
10 advantaged status, including the
11 personal financial condition of
12 the individual and the fair mar-
13 ket value of the stock and assets,
14 whether encumbered or not, of
15 any business under the control of
16 the individual, and the financial
17 condition of the individual com-
18 pared to the financial profiles of
19 other businesses in the same or
20 similar line of business which are
21 not owned and controlled by so-
22 cially and economically disadvan-
23 taged individuals. The financial
24 profiles so compared shall include
25 total assets, net sales, pre-tax

profit, and sales to working capital ratio.

“(cc) INCLUSION.—There shall be a rebuttable presumption that entities that are deemed economically disadvantaged under section 124.109 of title 13, Code of Federal Regulations (or a successor regulation) shall be considered economically disadvantaged for purposes of this section.

“(E) SOCIALLY DISADVANTAGED GROUP.—

“(i) IN GENERAL.—The term ‘socially disadvantaged group’ means a group that—

“(I) is described in subparagraph (D)(ii)(II)(aa), or has been subjected to racial or ethnic prejudice or cultural bias within United States society because of circumstances or qualities beyond the individual control of the members of such group, and

“(II) is economically disadvantaged, as determined under subparagraph (D)(ii)(IV) by applying the

1 rules of such subparagraph to the
2 group as a whole.

3 “(ii) REBUTTABLE PRESUMPTION OF
4 DISADVANTAGE; EVIDENCE; ETC.—For
5 purposes of this subparagraph, rules simi-
6 lar to the rules of subclauses (II) and (III)
7 of subparagraph (D)(ii) shall apply by ap-
8 plying such rules to the group as a whole.

9 “(F) AGGREGATION RULES.—For purposes
10 of this subsection, all persons treated as a sin-
11 gle employer under subsection (a) or (b) of sec-
12 tion 52 or subsection (m) or (o) of section 414
13 shall be treated as one person.

14 “(3) APPLICABLE PERCENTAGE.—For purposes
15 of this subsection—

16 “(A) IN GENERAL.—Except as provided in
17 subparagraph (B), the term ‘applicable percent-
18 age’ means the percentage prescribed by the
19 Federal Communications Commission in regula-
20 tions implementing this section. Such percent-
21 age shall not be less than—

22 “(i) in the case of interest in the total
23 assets of an entity, 20 percent, and

24 “(ii) in the case of interest in the
25 total combined voting power in an entity of

1 all classes of interests entitled to vote, 51
 2 percent.

3 “(B) PUBLICLY TRADED CORPORATIONS.—

4 In the case of a corporation the shares of which
 5 are regularly traded on an established securities
 6 market, the applicable percentage is 51 percent.

7 “(C) RESTRICTION ON AGREEMENTS CON-
 8 CERNING VOTING OF STOCK OR PARTNERSHIP
 9 INTERESTS.—Any interest relied upon to meet
 10 the applicable percentage shall not be subject to
 11 any agreement, arrangement, or understanding
 12 which provides for, or relates to—

13 “(i) the voting of such interest in any
 14 manner by, or at the direction of, any per-
 15 son other than a socially disadvantaged in-
 16 dividual or a member of a socially dis-
 17 advantaged group, or

18 “(ii) the right of any person other
 19 than a socially disadvantaged individual or
 20 a member of a socially disadvantaged
 21 group to acquire such interest through
 22 purchase of shares, partnership interests,
 23 or otherwise.

24 “(e) QUALIFYING GAIN CERTIFICATE.—For purposes
 25 of this section, the term ‘qualifying gain certificate’ means

1 a certificate that is issued to a qualified business by the
 2 Federal Communications Commission under subsection
 3 (d)(2)(B)(iii).

4 “(f) TELECOMMUNICATIONS BUSINESS.—The term
 5 ‘telecommunications business’ means any business pro-
 6 viding communication services by wire, cable, radio, sat-
 7 ellite, or other technology if the providing of such services
 8 is governed by the Communications Act of 1934 or the
 9 Telecommunications Act of 1996.

10 “(g) RECAPTURE OF TAX BENEFIT IF TELE-
 11 COMMUNICATIONS BUSINESS RESOLD WITHIN 3 YEARS,
 12 ETC.—

13 “(1) IN GENERAL.—If, within 3 years after the
 14 date of any qualified telecommunications sale, there
 15 is a recapture event with respect to the property in-
 16 volved in such sale, then the qualified business’s tax
 17 imposed by this chapter for the taxable year in
 18 which such event occurs shall be increased by 20
 19 percent of the consideration furnished by such busi-
 20 ness in such sale.

21 “(2) EXCEPTION FOR REINVESTED AMOUNTS.—
 22 Paragraph (1) shall not apply to any recapture event
 23 which is a sale if—

24 “(A) the sale is a qualified telecommuni-
 25 cations sale, or

1 “(B) during the 60-day period beginning
2 on the date of such sale, the qualified business
3 is the purchaser in another qualified tele-
4 communications sale in which the consideration
5 furnished by such business is not less than the
6 amount realized on the recapture event sale.

7 “(3) RECAPTURE EVENT.—For purposes of this
8 subsection, the term ‘recapture event’ means, with
9 respect to any qualified telecommunications sale—

10 “(A) any sale or other disposition of the
11 assets, stock, or interest referred to in sub-
12 section (d)(1) which were acquired by the quali-
13 fied business in such sale,

14 “(B) in the case of a qualified tele-
15 communications sale described in subsection
16 (d)(1)(B)—

17 “(i) any sale or other disposition of a
18 telecommunications business by the cor-
19 poration referred to in such subsection, or

20 “(ii) any other transaction which re-
21 sults in the qualified business not having
22 control (as defined in subsection
23 (d)(1)(B)(i)) of such corporation, and

1 “(C) in the case of a qualified tele-
 2 communications sale described in subsection
 3 (d)(1)(C)—

4 “(i) any sale or other disposition of a
 5 telecommunications business by the part-
 6 nership referred to in such subsection, or

7 “(ii) any other transaction which re-
 8 sults in the qualified business not having
 9 control (as defined in subsection
 10 (d)(1)(C)(i)) of such partnership.

11 Such term shall not include any sale or other dis-
 12 position resulting from the default, or imminent de-
 13 fault, of any indebtedness of the taxpayer.

14 “(h) CROSS-REFERENCES.—

15 “(1) SECURITY.—For authority of the Sec-
 16 retary to require security in the case of an extension
 17 under subsection (a)(1), see section 6165.

18 “(2) PERIOD OF LIMITATION.—For extension of
 19 the period of limitation in the case of an extension
 20 under subsection (a)(1), see section 6503(k).”.

21 (b) CLERICAL AMENDMENT.—The table of parts for
 22 subchapter O of chapter 1 of the Internal Revenue Code
 23 of 1986 is amended by inserting after the item relating
 24 to part IV the following new item:

“PART V. CERTAIN SALES OF TELECOMMUNICATIONS BUSINESSES.”.

25 (c) CONFORMING AMENDMENTS.—

1 (1) EXTENSION OF PERIOD OF LIMITATION.—

2 Section 6503 of the Internal Revenue Code of 1986
3 (relating to suspension of running of period of limi-
4 tation) is amended—

5 (A) by redesignating subsection (k) as sub-
6 section (l), and

7 (B) by inserting after subsection (j) the
8 following new subsection:

9 “(k) EXTENSION OF TIME FOR PAYMENT OF CER-
10 TAIN TELECOMMUNICATIONS GAIN TAX LIABILITY.—The
11 running of any period of limitations for collection of any
12 amount of tax liability on gain from qualified tele-
13 communications sales (as defined in section 1071(d)(1))
14 shall be suspended for the period of any extension of time
15 under section 1071(a)(1) for payment of such amount.”.

16 (2) REDUCTION IN BASIS.—Subsection (a) of
17 section 1016 of such Code (relating to general rule)
18 is amended—

19 (A) by striking “and” at the end of para-
20 graph (36),

21 (B) by striking the period at the end of
22 paragraph (37) and inserting “, and”, and

23 (C) by adding at the end the following new
24 paragraph:

1 “(38) to the extent provided in section
2 1071(a)(2).”.

3 (d) EFFECTIVE DATE.—The amendments made by
4 this section shall apply to sales in taxable years beginning
5 after the date of the enactment of this Act.

6 **SEC. 3. LOAN GUARANTEE PROGRAM TO ENCOURAGE DI-**
7 **VERSITY OF OWNERSHIP OF TELECOMMUNI-**
8 **CATIONS BUSINESSES.**

9 (a) IN GENERAL.—The Administrator of the Small
10 Business Administration may guarantee any loan made to
11 a qualified business for the purchase of assets, stock, or
12 interests described in section 1071(d)(1) of the Internal
13 Revenue Code of 1986 (relating to qualified telecommuni-
14 cations sale), as added by this Act.

15 (b) LIMITATIONS.—

16 (1) SECURITY.—The Administrator shall not
17 guarantee any loan under subsection (a) unless the
18 guaranteed portion of such loan is secured by a first
19 lien position or first mortgage on the stock, assets,
20 or interests financed by the loan.

21 (2) GUARANTEE PERCENTAGE; CAP.—The
22 amount of any loan guaranteed by the Administrator
23 under subsection (a)—

1 (A) shall not exceed 95 percent of the bal-
 2 ance of the financing outstanding at the time of
 3 disbursement of the loan, and

4 (B) shall not exceed \$8,000,000.

5 (3) FEES.—With respect to each loan guaran-
 6 teed under subsection (a) (other than a loan that is
 7 repayable in 1 year or less), the Administrator may
 8 collect a guarantee fee, which shall be payable by the
 9 participating lender, and may be charged to the bor-
 10 rower.

11 (c) GENERAL AUTHORITY.—For purposes of carrying
 12 out this section, the Administrator may—

13 (1) enter into contracts with private and Fed-
 14 eral entities for professional and other services;

15 (2) enter into memorandums of understanding
 16 with other Federal agencies; and

17 (3) issue regulations, including regulations re-
 18 garding—

19 (A) notice of and opportunity to cure a de-
 20 fault;

21 (B) procedures related to foreclosure; and

22 (C) such other matters as the Adminis-
 23 trator considers appropriate.

24 (d) DEFINITIONS.—For purposes of this section:

1 (1) ADMINISTRATOR.—The term “Adminis-
2 trator” means the Administrator of the Small Busi-
3 ness Administration.

4 (2) QUALIFIED BUSINESS.—The term “quali-
5 fied business” has the meaning given such term in
6 section 1071(d)(2) of the Internal Revenue Code of
7 1986, as added by this Act.

8 (e) AUTHORIZATION OF APPROPRIATIONS.—There
9 are authorized to be appropriated such sums as may be
10 necessary to carry out the purposes of this section.

11 **SEC. 4. PROGRAM AUDITS BY GAO.**

12 (a) TREATMENT OF GAIN ON QUALIFYING TELE-
13 COMMUNICATIONS SALES.—Not later than 5 years after
14 the date of the enactment of this Act, and every 5 years
15 thereafter, the Comptroller General of the United States
16 shall audit the administration of section 1071 of the Inter-
17 nal Revenue Code of 1986, as added by this Act, and issue
18 a report on the results of that audit. The Comptroller Gen-
19 eral shall include in the report, notwithstanding any provi-
20 sion of section 6103 of the Internal Revenue Code of 1986
21 to the contrary—

22 (1) a list of qualified businesses (as defined in
23 section 1071(d)(2) of such Code) and any other tax-
24 payer receiving a benefit from the operation of sec-
25 tion 1071 as such section was added by this Act,

1 (2) an assessment of the effect the amendments
 2 made by this Act have on increasing new entry and
 3 growth in the telecommunications industry by quali-
 4 fied businesses, and

5 (3) an assessment of whether the \$350,000,000
 6 limitation amount under section
 7 1071(d)(2)(B)(iii)(II) of such Code should be ad-
 8 justed for inflation in order to respond to the tele-
 9 communications market, and in what year such ad-
 10 justment should begin.

11 (b) ASSESSMENT OF LOAN GUARANTEE PROGRAM.—
 12 The report required under subsection (a) shall include an
 13 assessment of the loan guarantee program under section
 14 3 of this Act, including an assessment of whether the
 15 \$8,000,000 limitation amount under section 3(b)(2)(B) of
 16 this Act should be adjusted for inflation in order to re-
 17 spond to the telecommunications market, and in what year
 18 such adjustment should begin.

19 **SEC. 5. SEVERABILITY.**

20 If any provision of this Act or any amendment made
 21 by this Act, or the application of a provision or amend-
 22 ment to any person or circumstance, is held to be uncon-
 23 stitutional, the remainder of this Act and the amendments
 24 made by this Act, and the application of the provisions

1 and amendments of this Act to any person or cir-
2 cumstance, shall not be affected thereby.

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