



Legislative Bulletin.....February 27, 2002

Contents:

1. **H.R. 1542**—Internet Freedom and Broadband Deployment Act

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(Tauzin-Dingell)**

Order of Business: The bill is scheduled to be considered under a modified-closed rule on February 27.

Major Changes to the 1996 Telecommunications Act:

Current Law: The Telecommunications Act of 1996 prohibits Bell operating companies from offering interLATA (telecommunications traffic that crosses between one or more local access and transport areas -- the local divisions within each regional Bell operating company area) services (including broadband services) within their service regions until certain conditions are met, including compliance with a 14-point competitive checklist of market-opening requirements.

Tauzin-Dingell: Would permit Bell operating companies to offer broadband services interLATA without first meeting the market-opening requirements of the 1996 Act.

Current Law: The Telecommunications Act of 1996 requires all ILECs (incumbent local exchange company) to open up their networks (including high-speed internet) to enable competitors to lease out parts of the incumbent's network at below retail prices.

Tauzin-Dingell: With certain exceptions, would permit ILECs to establish broadband services without opening up the network to competitors.

Summary of Major Provisions:

Section 4:

- Generally prohibits the Federal Communications Commission (FCC) and each State from regulating the rates, charges, terms or conditions for, or entry into the provision of, any high-speed data service, Internet backbone service, or Internet access service, or to regulate any network element to the extent it is used in the provision of any such service.
- Prohibits the FCC from imposing or requiring the collection of any fee, tax, charge, or tariff upon such service.

- Prohibits the FCC or any State from requiring an incumbent (established) local exchange carrier to provide unbundled access to any network elements used in the provision of any high speed data service that is not prescribed in regulations in effect as of January 1, 1999, or as modified by a specified FCC line-sharing order.
- Requires the FCC to provide unbundled access to those network elements prescribed in regulations in effect as of January 1, 1999, or as modified by a specified FCC line-sharing order.
- Provides that an incumbent local exchange carrier shall not be required to provide unbundled access to the high frequency portion of the loop at a remote terminal.
- Directs the FCC and States to permit an incumbent local exchange carrier to charge requesting carriers for access to the high frequency portion of the loop an amount equal to which such incumbent local exchange carrier imputes to its own high speed data service.
- Prohibits either the FCC or a State from interpreting the line-sharing order to expand a local exchange carrier's obligation to provide access to any network element for line-sharing.
- Prohibits any network element used in the provision of high-speed service from being entitled to any subsidy that is not provided on a nondiscriminatory basis to all providers of high-speed data service and Internet access service.
- Requires all local exchange carriers that provide high speed data service, for three years after the enactment of this Act, to offer for resale any such service at wholesale rates.
- Preserves existing interconnection agreements.

Section 5:

Requires each incumbent local exchange carrier to provide:

- (1) Internet users with the ability to subscribe to and have access to any Internet service provider that interconnects with such carrier's high speed data service;
- (2) any Internet service provider with the right to acquire necessary facilities and services to facilitate such interconnection;
- (3) any Internet service provider with the ability to collocate equipment in order to achieve such interconnection; and
- (4) any provider of high speed service, Internet backbone service, or Internet access service with special access for the provision of Internet access service within a period that is no longer than the period in which such local incumbent exchange carrier provides special access to itself or any affiliate for the provision of such service.

Section 6:

Prohibits a Bell operating company from providing interLATA (local access and transport area) voice telecommunication service by means of the high-speed data service or Internet backbone service provided by such company until it is authorized to provide interLATA services originating in an in-region State.

Section 7:

- Requires Bell operating companies and their affiliates to deploy high speed data services in each State in which such a company or affiliate is an incumbent local exchange carrier, in accordance with a specified deployment schedule.
- Provides forfeiture penalties for companies and affiliates failing to so comply.
- Requires the FCC to include in certain required annual reports an analysis of the deployment of high-speed data service to underserved areas.

Section 8:

Authorizes the FCC to impose penalties for violations of amendments made by this Act.

Cost to Taxpayers: CBO estimates that implementing H.R. 1542 would have a negligible net impact on spending.

Constitutional Authority: The House Commerce Committee finds authority in Article I, Section 8, Clause 3, which grants Congress the power to regulate commerce with foreign nations, among the several States, and with the Indian tribes.

Does the Bill Create New Federal Programs or Rules: The bill modifies existing federal rules.

Amendments:

Upton and Green (TX):

- Gives the FCC clear, statutory "cease and desist" authority to use against phone companies which violate any of the telecommunications laws
- Increases the FCC's forfeiture penalties for phone companies that violate the telecommunications law by elevating the current cap from \$1 million to \$10 million and increasing the current \$100,000 fine per violation or each day of a continuing violation to \$1 million.
- For willful repeat offenders or violators of cease and desist orders, the amendment doubles the increased forfeiture penalties to \$2 million per violation or each day of a continuing violation, capped at \$20 million.
- Doubles from 1 year to 2 years the statute of limitations for the FCC to bring enforcement actions against phone companies
- Directs the FCC to study the impact of the enhanced penalties under the bill and report back to Congress within one year after enactment.

Cannon, Conyers, Markey, Flake, Luther, and Nadler:

- Deletes the provision of the bill denying states the authority to regulate the rates, charges, terms, or conditions for, or entry into the provision of any high-speed data service (the amendment retains the prohibition on FCC regulation).
- Provides that notwithstanding any other provision of the bill, no provision of the bill may restrict or affect in anyway the application and enforcement of the Federal and states rules in effect on the date of enactment relating to the rates, charges, terms, and conditions for the purchasing or leasing of telecommunications services and network elements by competitive telecommunications carriers.

- Provides that notwithstanding any other provision of the bill, no provision of the bill may restrict or affect in any way the authority of the FCC:
 - to adopt regulations to prohibit unsolicited commercial e-mails
 - to regulate changes in subscriber carrier selections or the imposition of charges on telephone bills for unauthorized services
 - with respect to customer proprietary network information
 - with respect to restrictions of the provision of pornography to minors and unconsenting adults
 - with respect to access by persons with disabilities
- Deletes the provision denying states the authority to require an incumbent local exchange carrier to provide unbundled access to any network element for the provision of any high speed data services

Buyer and Towns Substitute Amendment to the Cannon, Conyers, et al. Amendment:

- Requires that if an incumbent exchange carrier provides high-speed data services that the carrier must enable a requesting competitive carrier to transmit information over the incumbent's facilities, but only between the incumbent's central office and
 - a customer's premises served by that central office,
 - a remote terminal supplied by the requesting carrier, or
 - a high frequency portion of the copper subloop.
 Rates, terms, and conditions for such access are set in accordance with existing provisions of law.
- Provides that incumbent carriers are not relieved of their obligations under existing regulations to provide space adjacent to its remote terminal to a requesting carrier so that the requesting carrier may construct its own remote terminal
- Provides that incumbent carriers have the duty to afford access to poles, conduits, and rights-of-way for the provision of high speed data service
- Prohibits either the FCC or a state from requiring an incumbent carrier to
 - provide access to packet switching network element
 - provide access to any fiber local loop or fiber subloop for the provision of high speed data service
 - provide space within its remote terminal for a requesting carrier
- Provides that the provisions of subsection(a) shall not restrict or affect in any way the authority of the FCC:
 - to adopt regulations to prohibit unsolicited commercial e-mails
 - to regulate changes in subscriber carrier selections or the imposition of charges on telephone bills for unauthorized services
 - with respect to customer proprietary network information
 - with respect to restrictions of the provision of pornography to minors and unconsenting adults
 - with respect to access by persons with disabilities

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