

[STAFF WORKING DRAFT]

JULY 18, 2000

106TH CONGRESS
2D SESSION

S. _____

To revise the definition of advanced service, and for other purposes.

IN THE SENATE OF THE UNITED STATES

JULY —, 2000

Mr. BROWNBACK (for himself, Mr. _____, and Mr. _____
) introduced the following bill; which was read twice and referred to the
Committee on _____

A BILL

To revise the definition of advanced service, 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 Internet
5 Regulatory Relief Act of 2000”.

1 **SEC. 2. REGULATION OF ADVANCED SERVICE**

2 (a) IN GENERAL.—Part II of title II of the Commu-
3 nications Act of 1934 (47 U.S.C. 251 et seq.) is amended
4 by adding at the end thereof the following:

5 **“SEC. 262. PROVISION OF ADVANCED SERVICE BY INCUM-
6 BENT LOCAL EXCHANGE CARRIERS.**

7 “(a) IN GENERAL.—Notwithstanding section 2(b) of
8 this Act, or any other provision of law, an incumbent local
9 exchange carrier shall not be subject to the requirements
10 of—

11 “(1) section 251(c)(1), (c)(2), or (c)(5) with re-
12 spect to the duty to provide, for the facilities and
13 equipment of any requesting telecommunications
14 carrier, interconnection with or notice of changes re-
15 garding any packet-based functionality of the local
16 exchange carrier’s network;

17 “(2) section 251(c)(1) or (c)(3) with respect to
18 any network element that consists of or is created by
19 a packet-switched or successor technology;

20 “(3) section 251(c)(1) or (c)(4) with respect to
21 the provision of any advanced service;

22 “(4) section 251(c)(1) or (c)(6) with respect to
23 any premises or structure used solely for network
24 elements described in paragraph (2) of this sub-
25 section; or

1 “(5) section 251(c)(1), (c)(2)(3), or (c)(5) with
2 respect to any optical fiber in the incumbent’s dis-
3 tribution network that is used exclusively to provide
4 telecommunications service to residential subscribers;
5 and

6 “(i) that is or was either—

7 “(I) deployed where previously no out-
8 side telephone distribution plant existed;

9 “(II) deployed as a replacement for
10 any outside telephone distribution plant; or

11 “(III) deployed from a remote ter-
12 minal to a customer premises; and

13 “(ii) where the facilities are capable of pro-
14 viding telephone exchange service, 10 Base T
15 Data (or its equivalent), and VHS-quality
16 video, or are capable of providing all of these
17 services through the upgrade of electronics.

18 Nothing in this subsection shall preclude the Commission
19 or a State from requiring that an incumbent local ex-
20 change carrier provide an existing copper loop to a local
21 exchange carrier upon request.

22 “(b) BUILDOUT REQUIREMENTS.—

23 “(1) An incumbent local exchange carrier or af-
24 filiate shall—

1 “(A) make available advanced service to 80
2 percent of its telephone exchange service cus-
3 tomers in a State within 3 years of the date of
4 enactment of the Broadband Internet Regu-
5 latory Relief Act of 2000 where such services
6 can be provided using an industry-approved
7 standard and existing loop facilities; and

8 “(B) make available advanced service to
9 100 percent of its telephone exchange service
10 customers in a State within 5 years of that date
11 within 30 days of a bona fide request by any
12 such customer where such services can be pro-
13 vided using an industry-approved standard and
14 existing loop facilities.

15 “(2) An incumbent local exchange carrier that
16 satisfies the requirements of paragraph (1), within
17 the time frames set forth therein, shall continue to
18 receive all regulatory relief provided by subsections
19 (a) and (c) for any service or combination of services
20 that consists of, or includes, the offering of a capa-
21 bility to transmit information using a packet-
22 switched or successor technology downstream from a
23 provider to a consumer and upstream from a con-
24 sumer to a provider at a rated speed of 128 kilobits
25 per second or more where advanced service cannot

1 be provided using an industry-approved standard
2 and existing loop facilities.

3 “(3) If an incumbent local exchange carrier
4 fails to comply with paragraph (1) within the time
5 frames set forth there, the regulatory relief provided
6 by those subsections shall not apply to it.

7 “(c) PRICING FLEXIBILITY.—

8 “(1) COMPETITION FOR ADVANCED SERVICE.—

9 Except as provided in this section, section 251, sec-
10 tion 254, section 271, and section 272, no advanced
11 service offered by an incumbent local exchange car-
12 rier nor the facilities used to provide such service
13 shall be subject to common carrier regulation by the
14 Commission or any State in any exchange where ad-
15 vanced service is being provided by an unaffiliated
16 advanced service provider.

17 “(2) PETITION.—An incumbent local exchange
18 carrier seeking pricing flexibility under paragraph
19 (1) may file a petition with the Commission seeking
20 such relief. A petition under this paragraph is
21 deemed to have been approved if the Commission
22 does not act on it within 30 days after it is filed.

23 “(3) UNCONDITIONAL RELIEF.—If the Commis-
24 sion determines under paragraph (1) that advanced
25 service is being offered by an unaffiliated provider in

1 the manner described in that paragraph, the Com-
2 mission shall approve the petition of the incumbent
3 local exchange carrier unconditionally.

4 “(4) ADVANCED SERVICE OUTSIDE AN INCUM-
5 BENT’S TERRITORY.—The rates, terms, and condi-
6 tions of advanced service offered by an incumbent
7 local exchange carrier or its affiliate are not subject
8 to Federal or State regulation in any geographic
9 area in which that carrier, its successor, or assigns
10 was not the local incumbent exchange carrier on
11 February 8, 1996.

12 “(5) SCHEDULE OF CHARGES.—For any ad-
13 vanced service that has not been determined by the
14 Commission to be subject to competition under para-
15 graph (1), the incumbent local exchange carrier fur-
16 nishing such advanced service shall file with the
17 Commission a schedule of charges and practices for
18 such advanced service in a manner prescribed by the
19 Commission under section 203. Any such schedule of
20 charges and practices shall be deemed lawful and
21 shall be effective 2 days after the date on which it
22 was filed with the Commission unless the Commis-
23 sion takes action under section 204(a)(1) before the
24 end of that 2-day period.

1 “(d) NONCOMPLIANCE WITH LOOP PROVISIONING
2 AND COLLOCATION RULES.—

3 “(1) STATE DETERMINATION.—Except as pro-
4 vided in paragraph (2), subsections (a) and (c) shall
5 cease to apply to an incumbent local exchange car-
6 rier after the date on which a State makes a final
7 determination based on clear and convincing evi-
8 dence, in response to a complaint filed by another
9 local exchange carrier, that the incumbent local ex-
10 change carrier has materially failed to comply with
11 the rules of the Commission with respect to colloca-
12 tion or the rules of the Commission or the State
13 with respect to loop provisioning. The burden of
14 proof shall be on the complainant.

15 “(2) REINSTATEMENT.—

16 “(A) IN GENERAL.—An incumbent local
17 exchange carrier to which subsections (a) and
18 (c) have ceased to apply because of a deter-
19 mination by a State under paragraph (1) may
20 petition the State for a reinstatement of the ap-
21 plication of those subsections.

22 “(B) DETERMINATION REQUIRED.—If the
23 State that made the determination described in
24 paragraph (1) subsequently makes a final deter-
25 mination that the carrier has complied fully

1 with the rule with which the carrier was found,
2 under paragraph (1), not to have complied,
3 then the application of subsections (a) and (c)
4 to that incumbent local exchange carrier shall
5 be reinstated as of the date of that subsequent
6 final determination.

7 “(C) DETERMINATION DEEMED AFFIRMA-
8 TIVE IF STATE FAILS TO ACT WITHIN 90
9 DAYS.—For purposes of subparagraph (B), a
10 State that fails to make a determination on a
11 petition filed under subparagraph (A) within 90
12 days shall be deemed to have made a deter-
13 mination that the carrier is in full compliance
14 with the rules of the Commission with respect
15 to collocation and the rules of the Commission
16 and the State with respect to loop provisioning.

17 “(e) REMOTE TERMINALS.—

18 “(1) An incumbent local exchange carrier using
19 equipment located in a remote terminal to provide
20 advanced services shall have the duty to provide to
21 any requesting telecommunications carrier—

22 “(A) access to subloop elements at such re-
23 mote terminal for the provision of advanced
24 services; and

1 “(B) access to rights of way consistent
2 with section 251(b)(4).

3 “(2) COLLOCATION NOT REQUIRED.—Nothing
4 in paragraph (1), any other provision of this Act,
5 nor any other provision of law shall require an in-
6 cumbent local exchange carrier to provide collocation
7 at a remote terminal to any person.

8 “(f) DEFINITIONS.—For purposes of this section—

9 “(1) the term ‘incumbent local exchange car-
10 rier’ has the meaning given to that term by section
11 251(h);

12 “(2) the term ‘customer premises’ means the
13 customer’s physical property or adjacent easement;
14 and

15 “(3) the term ‘remote terminal’ means the
16 point in the incumbent local exchange carrier’s net-
17 work where the electronic capability to provide ad-
18 vanced service is deployed and where such carrier
19 provides subloop unbundling.”.

20 **SEC. 3. AMENDMENTS.**

21 (a) Section 251(b) of the Communications Act of
22 1934 (47 U.S.C. 251(b)) is amended by adding at the end
23 thereof the following:

24 “Notwithstanding paragraph (5), after the date of enact-
25 ment of the Broadband Internet Regulatory Relief Act of

1 2000, no local exchange carrier shall be required to make
2 any payment for the transport, delivery, or termination
3 of telecommunications to, or telecommunications that con-
4 nects to, the Internet or any Internet service provider. The
5 transport, delivery, or termination of telecommunications
6 to, or telecommunications that connects to, the Internet
7 or any Internet service provider is hereby deemed to be
8 an interstate communication and subject to the exclusive
9 jurisdiction of the Commission. The provisions of this sub-
10 section following paragraph (5) do not alter the terms of
11 any interconnection agreement in effect on May 10, 2000,
12 during the existing term of any such agreement. Neither
13 section 252(i) nor any other legal or regulatory require-
14 ment shall require any local exchange carrier to make
15 available to any other telecommunications carrier an inter-
16 connection arrangement under this subsection that is in
17 an agreement that is in effect on or after May 10, 2000.
18 For the purposes of this subsection, the term ‘existing
19 term’ means the initial period of any interconnection
20 agreement and does not include any period provided for
21 negotiation or any extension of the initial period.”.

22 (b) Section 251(c)(3) of that Act (47 U.S.C.
23 251(c)(3)) is amended by adding at the end thereof the
24 following: “An incumbent local exchange carrier shall not
25 be required to provide network elements on an unbundled

1 basis unless those elements are to be used predominantly
2 to provide telephone exchange service.”.

3 (c) Section 251(f) of that Act (47 U.S.C. 251(f)) is
4 amended by adding at the end thereof the following:

5 “(3) EXEMPTION FOR ADVANCED SERVICES.—
6 Neither section 251(c) nor any other common car-
7 rier regulation shall apply to any local exchange car-
8 rier with fewer than 2 percent of the nation’s sub-
9 scriber lines installed in the aggregate with respect
10 to its provision of advanced services. Any such car-
11 rier may at its option continue to file tariffs for any
12 advanced service and may also continue to partici-
13 pate in any National Exchange Carrier Association
14 pooling arrangement.”.

15 **SEC. 4. DEFINITIONS.**

16 (a) IN GENERAL.—Section 3 of the Communications
17 Act of 1934 (47 U.S.C. 153) is amended by—

18 (1) redesignating paragraphs (1) through (51)
19 as paragraphs (3) through (53), respectively; and

20 (2) inserting before paragraph (3), as redesign-
21 nated, the following:

22 “(1) Advanced service.—The term ‘advanced
23 service’ means any service or combination of services
24 that consists of, or includes, the offering of a capa-
25 bility to transmit information using a packet-

1 switched or successor technology downstream from a
2 provider to a consumer at a rated speed of 200 kilo-
3 bits per second or more and upstream from a con-
4 sumer to a provider at a rated speed of 128 kilobits
5 per second or more for access to other services, to
6 the Internet or other information or data services, or
7 to private network or data facilities.

8 “(2) Advanced service provider.—The term ‘ad-
9 vanced service provider’ means any provider of ad-
10 vanced services.”.

11 (b) CONFORMING AMENDMENT.—Section
12 271(c)(1)(A) of the Communications Act of 1934 (47
13 U.S.C. 271(c)(1)(A)) is amended by striking “3(47)(A),”
14 and inserting “3(50)(A),”.

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