CONGRESSIONAL BUDGET OFFICE
COST ESTIMATE

May 24, 2001

H.R. 1542
Internet Freedom and Broadband Deployment Act of 2001

As ordered reported by the House Committee on Energy and Commerce on May 9, 2001

SUMMARY

H.R. 1542 would prohibit the Federal Communications Commission (FCC) and state governments from regulating the provision of Internet access or high-speed data services, with certain exceptions. H.R. 1542 also would allow the FCC to impose penalties for violations of certain provisions of the bill, including requirements that certain telecommunications carriers give consumers the freedom to choose their Internet service providers. Under the bill, the FCC also could assess penalties against Bell telephone companies that offer voice telecommunication services using telephone lines for data transmission without the agency's permission.

CBO estimates that implementing H.R. 1542 would have a negligible net impact on spending by the FCC. The increase in gross spending would be about $1 million in 2002, subject to the availability of appropriated funds. Any such increase would be offset by fees collected by the FCC.

Pay-as-you-go procedures would apply to this bill, for two reasons. First, the bill would create new penalties, which are accounted for in the budget as governmental receipts (revenues). CBO estimates that the bill's provisions would increase collection of FCC penalties by less than $500,000 a year. Also, enacting H.R. 1542 could affect the cash flows of the Universal Service Fund (USF). The USF seeks to provide universal access to telecommunications services through various charges to some telephone companies (which are accounted for in the budget as revenues) and payments to others (which may be spent without further appropriation). CBO cannot estimate the bill's gross impact on the revenues and spending associated with the USF; however, the net impact would be negligible in each year.

H.R. 1542 contains an intergovernmental mandate as defined in the Unfunded Mandates Reform Act (UMRA) because it would preempt the ability of states to regulate high-speed data services. While data are very limited, CBO estimates that the costs of complying with this mandate would not exceed the threshold established by the Act ($56 million in 2001, adjusted annually for inflation).

The bill would impose private-sector mandates as defined by UMRA on the Bell operating companies and other incumbent local exchange companies providing broadband service. The bill also would benefit the Bell operating companies by relaxing restrictions that currently preclude them from entering long-distance data services and by relaxing some of the obligations placed on them to share their network facilities with their competitors. CBO estimates that a strict interpretation of the mandates would result in a total mandate cost (even with offsets from savings in the bill) that would exceed the annual threshold established in UMRA ($113 million in 2001, adjusted annually for inflation) in at least one of the first five years that the mandates are in effect.

ESTIMATED COST TO THE FEDERAL GOVERNMENT

Based on information from the FCC, CBO estimates that implementing H.R. 1542 would cost $1 million in 2002, assuming the appropriation of the necessary amounts. These funds would pay for additional staff to develop new regulations necessary to implement the bill's provisions. Under current law, the FCC is authorized to collect fees from the telecommunications industry sufficient to offset the cost of its regulatory programs. CBO assumes that the additional costs of implementing H.R. 1542 would be offset by an increase in collections credited to the FCC's annual appropriations. Therefore, H.R. 1542 would not have a significant net impact on the cost of the FCC's operations.

H.R. 1542 would authorize the FCC to impose penalties for violations of certain provisions in H.R. 1542. These provisions include requirements that incumbent telephone carriers give consumers the freedom to choose Internet service providers, and provisions that would prevent the Bell telephone companies from offering voice telecommunication services using telephone data lines unless authorized to do so by the FCC. Violations would be subject to a maximum penalty of $1 million per incident, or $10 million for a continuing violation. H.R. 1542 also would allow the FCC to impose penalties on the Bell telephone companies for failure to provide customer access to high-speed data services on a schedule specified in the bill. Based on information from the FCC and telecommunications firms, CBO estimates that enacting the bill would increase collections of such penalties by less than $500,000 a year.

Finally, H.R. 1542 could affect the size of the USF, which was established by the Telecommunications Act of 1996 to provide universal access to telecommunications service throughout the nation. The fund assesses charges against telecommunications services and distributes the amounts collected to high-cost areas, low-income consumers, schools and libraries, and others to defray some of the costs of telephone and Internet service. Because H.R. 1542 could affect the telecommunications market in non-rural, high-cost areas of the country, enacting the bill may cause the FCC to change the amount of money that would be provided from the USF to companies that serve those areas. USF outlays are mandatory and occur without further appropriation. Any change in the level of payments from the USF would cause a commensurate change in the amount of money collected by the USF, which is considered a revenue in the budget. CBO cannot estimate the magnitude or the direction of these changes in revenues and direct spending; however, their net effect would be negligible.

PAY-AS-YOU-GO CONSIDERATIONS

The Balanced Budget and Emergency Deficit Control Act sets up pay-as-you-go procedures for legislation affecting direct spending or receipts. CBO estimates that enacting H.R. 1542 would affect penalties (receipts) by an insignificant amount each year. The bill could also affect receipts and spending associated with the Universal Service Fund, however, CBO cannot estimate the magnitude or direction of any change. Any change to USF receipts and spending would result in a negligible net impact in each year.

ESTIMATED IMPACT ON STATE, LOCAL, AND TRIBAL GOVERNMENTS

H.R. 1542 contains an intergovernmental mandate as defined in UMRA because it would preempt the ability of states to regulate high-speed data services. While data are very limited, CBO estimates that the costs of complying with this mandate would not exceed the threshold established by the Act ($56 million in 2001, adjusted annually for inflation).

ESTIMATED IMPACT ON THE PRIVATE SECTOR

H.R. 1542 would impose private-sector mandates on local telephone companies, primarily those companies that were part of the pre-1982 telephone service monopoly—the so-called Bell operating companies—but also on other telephone companies that enjoyed a monopoly position in local telephone service—referred to as non-Bell incumbent local exchange carriers. At the same time, the bill would benefit the Bell operating companies by relaxing restrictions that currently preclude them from entering long-distance data services. The bill also would benefit the Bell operating companies by relaxing some of the obligations placed on them under current law to share their network facilities with competing telecommunication companies. CBO estimates that the total direct costs of those mandates (offset by savings from the bill) would exceed the annual threshold established in UMRA ($113 million in 2001, adjusted annually for inflation), assuming a strict interpretation of those mandates. If the FCC and the courts adopt a loser interpretation of the requirements, the total direct costs would not exceed the threshold.

Section 5 of H.R. 1542 would require all incumbent local exchange providers to provide their customers the ability to subscribe to the Internet service provider of their choice. This would be a new requirement for the non-Bell incumbent local exchange carriers, although it is currently a requirement for the Bell operating companies. Current industry practice is such that nearly all of the carriers specified in the bill already comply with this requirement. Consequently, CBO estimates that the incremental cost to the industry to comply with this mandate would be small.

Section 8 would require the Bell operating companies to deploy high-speed data services—or broadband services as they are often called—in each state in which the company or one of its affiliates is an incumbent local exchange carrier. The bill defines high-speed data service as the capability to transmit information (using certain technology) at a rate greater than or equal to 384 kilobits per second in at least one direction. The bill also specifies targets for accomplishing this goal over five years. The bill would require the Bell operating companies to upgrade 20 percent of their central offices to have high-speed data capabilities within one year of enactment, 40 percent within two years, 70 percent within three years, and 100 percent within five years.

Under the bill, a Bell operating company could meet the deployment requirements in either of two ways. First, the Bell operating company could upgrade both the equipment in a central office and the access lines of customers who request such upgrades, provided their access line is less than 15,000 feet long. Based on engineering and industry reports, CBO estimates that the costs of upgrading is between $175,000 and $230,000 per office, and that the bill's mandate would require the Bell operating companies to upgrade between 3,300 and 5,000 central offices that would not be upgraded absent that mandate. Alternatively, the bill provides that a Bell operating company could meet the deployment requirements by providing access to high-speed data services by alternative means, for example through a cable television line, a satellite link, or a terrestrial wireless connection.

The total cost of the mandate to deploy high-speed data services would certainly exceed the UMRA threshold if the Bell operating companies conformed to the mandate by upgrading their central offices. Alternative means could prove less expensive, and by CBO's estimate would fall below the UMRA threshold. But, because none of the alternatives is currently capable of reaching each and every customer, as a strict interpretation of the bill's language requires, it is not clear that meeting the deployment requirements by these means would fulfill the obligation of the Bell operating companies under the mandate—even if those companies were to choose a technical alternative to upgrading their telephone service. Nevertheless, either the courts or the Federal Communications Commission might adopt a less strict interpretation of the mandate that would likely require the private sector to incur costs less than the UMRA threshold.

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