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102D CONGRESS
2D SESSION

H. R. 5096

To supersede the Modification of Final Judgment entered August 24, 1982, in the antitrust action styled U.S. v. Western Electric, Civil Action No. 82-0192, United States District Court for the District of Columbia; and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

MAY 7, 1992

Mr. BROOKS introduced the following bill; which was referred to the Committee on the Judiciary

A BILL

To supersede the Modification of Final Judgment entered August 24, 1982, in the antitrust action styled U.S. v. Western Electric, Civil Action No. 82-0192, United States District Court for the District of Columbia; 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 "Antitrust Reform Act
5 of 1992".

1 **SEC. 2. AUTHORIZATION FOR BELL OPERATING COMPANY**
2 **MONOPOLY TO ENTER COMPETITIVE LINES**
3 **OF BUSINESS.**

4 (a) **APPLICATION.—**

5 (1) **IN GENERAL.—**After the applicable date
6 specified in paragraph (2), a Bell operating company
7 may apply to the Attorney General for authorization,
8 notwithstanding the Modification of Final
9 Judgment—

10 (A) to engage in research and development
11 relating to telecommunications equipment or
12 customer premises equipment,

13 (B) to provide information services,

14 (C) to manufacture or provide tele-
15 communications equipment, or manufacture
16 customer premises equipment, or

17 (D) to provide interexchange telecommuni-
18 cations.

19 The application shall describe with particularity the
20 nature and scope of each activity, and of each prod-
21 uct market, service market, and geographic market,
22 for which authorization is sought.

23 (2) **APPLICABLE DATES.—**For purposes of
24 paragraph (1), the applicable date after which a Bell
25 operating company may apply for authorization shall
26 be—

1 (A) the date of enactment of this Act, with
2 respect to—

3 (i) engaging in research and develop-
4 ment relating to telecommunications equip-
5 ment or customer premises equipment, or

6 (ii) engaging in any activity described
7 in subparagraph (B), (C), or (D), to the
8 extent that such company proves, with re-
9 spect to each product market, service mar-
10 ket, and geographic market to which the
11 activity relates, that—

12 (I) there exists no actual or po-
13 tential competition, and

14 (II) there exists a compelling
15 competitive need, such as a compelling
16 competitive need regarding services
17 for individuals with disabilities,

18 (B) except as provided in subparagraph
19 (A)(ii), the date that occurs 3 years after the
20 date of enactment of this Act, with respect to
21 providing information services (other than elec-
22 tronic publishing),

23 (C) except as provided in subparagraph
24 (A)(ii), the date that occurs 5 years after the
25 date of enactment of this Act, with respect to

1 manufacturing or providing telecommunications
2 equipment, or manufacturing customer prem-
3 ises equipment, and

4 (D) except as provided in subparagraph
5 (A)(ii), the date that occurs 7 years after the
6 date of enactment of this Act, with respect to
7 providing interexchange telecommunications or
8 electronic publishing.

9 (3) PUBLICATION.—Not later than 10 days
10 after receiving an application made under paragraph
11 (1), the Attorney General shall publish the applica-
12 tion in the Federal Register.

13 (b) DETERMINATION BY THE ATTORNEY GEN-
14 ERAL.—

15 (1) COMMENT PERIOD.—Not later than 60 days
16 after the application is published under subsection
17 (a)(3), interested persons may submit comments to
18 the Attorney General regarding the application.

19 (2) DETERMINATION.—(A) After the time for
20 comment under paragraph (1) has expired, but not
21 later than 120 days after the application is pub-
22 lished under subsection (a)(3), the Attorney General
23 shall issue a written determination with respect to
24 granting the authorization for which the Bell operat-
25 ing company has applied.

1 (B)(i) The Attorney General shall grant such
2 authorization only to the extent that the Attorney
3 General believes that such company would satisfy
4 the proof requirements described in subsection
5 (c)(2)(A)(i).

6 (ii) The Attorney General shall deny the re-
7 mainder of the requested authorization.

8 (C) A determination granting any part of a re-
9 quested authorization shall describe with particular-
10 ity the nature and scope of each activity and of each
11 product market, service market, and geographic
12 market to which the authorization granted applies.

13 (3) PUBLICATION.—Not later than 10 days
14 after issuing a determination under paragraph (2),
15 the Attorney General shall publish the determination
16 in the Federal Register, together with a description
17 of the findings, studies, and analyses relied on for
18 the determination.

19 (4) FINALITY.—The Attorney General's deter-
20 mination regarding an application made under this
21 subsection shall be final unless a civil action with re-
22 spect to such application is timely commenced under
23 subsection (c)(1).

24 (c) DE NOVO JUDICIAL DETERMINATION.—

25 (1) CIVIL ACTION.—Not later than—

1 (A) 60 days after a determination by the
2 Attorney General is published under subsection
3 (b)(3), or

4 (B) 60 days after the expiration of the
5 130-day period beginning on the date the Attor-
6 ney General receives an application made under
7 subsection (a)(1),

8 whichever occurs earlier, the Bell operating company
9 that applied to the Attorney General under sub-
10 section (a), or any person who might be injured in
11 its business or property as a result of any deter-
12 mination regarding such company's engaging in the
13 activity described in such company's application,
14 may commence a civil action against the Attorney
15 General, in any district court of the United States
16 in the district in which such company resides or is
17 found or has an agent, for a de novo determination
18 regarding the application. Such company and any
19 such person shall also have the right to intervene as
20 a party in the civil action.

21 (2) JUDGMENT.—(A)(i) The court shall enter a
22 judgment granting the authorization for which the
23 Bell operating company applied to the Attorney Gen-
24 eral only to the extent that such company—

1 (I) proves that there is no substantial pos-
2 sibility that such company or its affiliates could
3 use monopoly power to impede competition in
4 any relevant market for the activity to which
5 the application relates, and

6 (II) satisfies the proof requirement de-
7 scribed in subsection (a)(2)(A)(ii) if such proof
8 requirement applies.

9 (ii) The court shall enter a judgment denying
10 the remainder of the requested authorization.

11 (B) A judgment granting any part of a re-
12 quested authorization shall describe with particular-
13 ity the nature and scope of each activity and of each
14 product market, service market, and geographic
15 market to which the authorization granted applies.

16 (3) **STAY.**—A judgment entered under para-
17 graph (2) shall be stayed until the time for all ap-
18 peals with respect to such judgment has expired.

19 **SEC. 3. AUTHORIZATION AS PREREQUISITE.**

20 (a) **PREREQUISITE.**—Until a Bell operating company
21 is so authorized in accordance with section 2, it shall be
22 unlawful for such company, directly or through an affili-
23 ated enterprise, to engage in an activity described in sec-
24 tion 2(a)(1).

1 (b) **EXCEPTION FOR PREVIOUSLY AUTHORIZED AC-**
2 **TIVITIES.**—Subsection (a) shall not prohibit a Bell operat-
3 ing company from engaging—

4 (1) in any activity to the extent authorized by
5 an order entered by the United States District Court
6 for the District of Columbia pursuant to section
7 VIII(C) of the Modification of Final Judgment, if—

8 (A) such order was entered on or before
9 May 6, 1992, or

10 (B) a request for such authorization was
11 pending before such court on May 6, 1992, or

12 (2) in research and development in which any
13 such company was lawfully engaged at any time in
14 the period beginning on January 1, 1984, and end-
15 ing on May 6, 1992.

16 **SEC. 4. PROHIBITIONS.**

17 (a) **ANTICOMPETITIVE DISCRIMINATION.**—A Bell op-
18 erating company with monopoly power in any exchange
19 service market that is engaged (directly or through an af-
20 filiated enterprise) in an activity described in section
21 2(a)(1) shall not discriminate, in any relevant market, be-
22 tween itself or an affiliated enterprise and any other per-
23 son, or between any two such other persons, with respect
24 to any product or service related to the provision or use
25 of a telecommunications service.

1 (b) **ANTICOMPETITIVE CROSS-SUBSIDIES.**—A Bell
2 operating company with monopoly power in any exchange
3 service market shall not use (directly or indirectly) pro-
4 ceeds obtained from providing exchange service in such
5 market to subsidize, in any relevant market, an activity
6 described in section 2(a)(1).

7 (c) **ANTICOMPETITIVE CONCENTRATION AMONG**
8 **BELL OPERATING COMPANIES.**—(1) Except as provided
9 in paragraph (2), a Bell operating company with monopoly
10 power in any exchange service market shall not become
11 an affiliated enterprise of, or acquire (directly or indi-
12 rectly) any exchange service assets of, another Bell operat-
13 ing company.

14 (2) Paragraph (1) shall not prohibit any acquisition
15 by a Bell operating company from another Bell operating
16 company if the 2 companies are affiliates of each other
17 on the date of such acquisition and were affiliates of each
18 other on May 6, 1992.

19 (d) **ANTICOMPETITIVE JOINT ACTIVITY AMONG**
20 **BELL OPERATING COMPANIES.**—(1) Except as provided
21 in paragraph (2), it shall be unlawful for a Bell operating
22 company with monopoly power in any exchange service
23 market to engage jointly (directly or through an affiliated
24 enterprise) with another Bell operating company, in any

1 relevant market, in an activity described in section
2 2(a)(1).

3 (2) EXCEPTIONS.—Paragraph (1) shall not prohibit
4 Bell operating companies from jointly engaging in an
5 activity—

6 (A) at Bell Communications Research (com-
7 monly known as “Belleore”) if such companies were
8 lawfully engaging in such activity at Bell Commu-
9 nications Research at any time in the period begin-
10 ning on January 1, 1984, and ending on May 6,
11 1992,

12 (B) if such companies are affiliates of each
13 other while jointly engaging in such activity and
14 were affiliates of each other on May 6, 1992, or

15 (C) if such companies were lawfully engaging
16 jointly in such activity on May 6, 1992.

17 **SEC. 5. COMPLIANCE.**

18 (a) DUTY TO ADVISE CERTAIN MANAGEMENT EM-
19 PLOYEES OF OBLIGATIONS UNDER ACT.—Each Bell oper-
20 ating company shall advise, in writing, each of its officers
21 and other management personnel with significant respon-
22 sibility for matters addressed in this Act, of the require-
23 ments of this Act, and that violations of this Act may re-
24 sult in criminal liability.

1 (b) **CERTIFICATION OF COMPLIANCE.**—Not later
2 than 30 days after the end of each calendar year, the chief
3 executive officer of (or another officer responsible for the
4 operation of) each Bell operating company that is not (di-
5 rectly or indirectly) owned or controlled by another Bell
6 operating company shall certify in writing to the Attorney
7 General whether such company and its affiliates have com-
8 plied throughout such year with sections 3 and 4 and with
9 subsection (a).

10 **SEC. 6. ENFORCEMENT.**

11 (a) **EQUITABLE POWERS OF UNITED STATES ATTOR-**
12 **NEYS.**—It shall be the duty of the several United States
13 attorneys, under the direction of the Attorney General, to
14 institute proceedings in equity in their respective districts
15 to prevent and restrain violations of this Act.

16 (b) **CRIMINAL LIABILITY.**—Whoever knowingly en-
17 gages or knowingly attempts to engage in an activity that
18 is prohibited by section 3, 4, or 5 shall be guilty of a fel-
19 ony, and on conviction thereof, shall be punished to the
20 same extent as a person is punished upon conviction of
21 a violation of section 1 of the Sherman Act
22 (15 U.S.C. 1).

23 (c) **PRIVATE RIGHT OF ACTION.**—Any person who is
24 injured in its business or property by reason of a violation
25 of this Act—

1 (1) may bring a civil action in any district court
2 of the United States in the district in which the de-
3 fendant resides or is found or has an agent, without
4 respect to the amount in controversy, and

5 (2) shall recover threefold the damages sus-
6 tained, and the cost of suit (including a reasonable
7 attorney's fee).

8 The court may award under this section, pursuant to a
9 motion by such person promptly made, simple interest on
10 actual damages for the period beginning on the date of
11 service of such person's pleading setting forth a claim
12 under this Act and ending on the date of judgment, or
13 for any shorter period therein, if the court finds that the
14 award of such interest for such period is just in the cir-
15 cumstances.

16 (d) **PRIVATE INJUNCTIVE RELIEF.**—Any person shall
17 be entitled to sue for and have injunctive relief, in any
18 court of the United States having jurisdiction over the
19 parties, against threatened loss or damage by a violation
20 of this Act, when and under the same conditions and prin-
21 ciples as injunctive relief is available under section 16 of
22 the Clayton Act (15 U.S.C. 26). In any action under this
23 subsection in which the plaintiff substantially prevails, the
24 court shall award the cost of suit, including a reasonable
25 attorney's fee, to such plaintiff.

1 (e) JURISDICTION.—(1) The courts of the United
2 States shall have exclusive jurisdiction to make determina-
3 tions with respect to a duty, claim, or right arising under
4 this Act, other than a determination by the Attorney Gen-
5 eral under section 2(b)(2).

6 (2) No action commenced to assert or enforce a duty,
7 claim, or right arising under this Act shall be stayed pend-
8 ing any such determination by the Attorney General.

9 (f) SUBPOENAS.—In an action commenced under this
10 Act, a subpoena requiring the attendance of a witness at
11 a hearing or a trial may be served at any place within
12 the United States.

13 **SEC. 7. DEFINITIONS.**

14 For purposes of this Act:

15 (1) AFFILIATE.—The term “affiliate” means a
16 person that (directly or indirectly) owns or controls,
17 is owned or controlled by, or is under common own-
18 ership or control with, another person. For purposes
19 of this paragraph, to own refers to owning an equity
20 interest (or the equivalent thereof) of more than 50
21 percent.

22 (2) AFFILIATED ENTERPRISE.—The term “af-
23 filiated enterprise” means, with respect to a Bell op-
24 erating company, a person—

1 (A) that such company or its affiliate (di-
2 rectly or indirectly) owns or controls, is owned
3 or controlled by, or is under common ownership
4 with, to any extent whatsoever, or

5 (B) in whose gross revenues such company
6 or its affiliate has any direct or indirect finan-
7 cial or proprietary interest, through a revenue
8 sharing arrangement, royalty arrangement, or
9 otherwise.

10 (3) ANTITRUST LAWS.—The term “antitrust
11 laws” has the meaning given it in subsection (a) of
12 the first section of the Clayton Act (15 U.S.C.
13 12(a)), except that such term includes the Act of
14 June 19, 1936 (49 Stat. 1526; 15 U.S.C. 13 et
15 seq.), commonly known as the Robinson Patman
16 Act, and section 5 of the Federal Trade Commission
17 Act (15 U.S.C. 45) to the extent that such section
18 5 applies to monopolies, attempts to monopolize, and
19 unlawful restraints of trade.

20 (4) BELL OPERATING COMPANY.—The term
21 “Bell operating company” means—

22 (A) Bell Telephone Company of Nevada,
23 Illinois Bell Telephone Company, Indiana Bell
24 Telephone Company, Incorporated, Michigan
25 Bell Telephone Company, New England Tele-

1 phone and Telegraph Company, New Jersey
2 Bell Telephone Company, New York Telephone
3 Company, US West Communications Company,
4 South Central Bell Telephone Company, South-
5 ern Bell Telephone and Telegraph Company,
6 Southwestern Bell Telephone Company, The
7 Bell Telephone Company of Pennsylvania, The
8 Chesapeake and Potomac Telephone Company,
9 The Chesapeake and Potomac Telephone Com-
10 pany of Maryland, The Chesapeake and Poto-
11 mac Telephone Company of Virginia, The
12 Chesapeake and Potomac Telephone Company
13 of West Virginia, The Diamond State Tele-
14 phone Company, The Ohio Bell Telephone
15 Company, The Pacific Telephone and Telegraph
16 Company, or Wisconsin Telephone Company,

17 (B) any successor or assign of any such
18 company, or

19 (C) any affiliate of any person described in
20 subparagraph (A) or (B).

21 (5) CUSTOMER PREMISES EQUIPMENT.—The
22 term “customer premises equipment” means equip-
23 ment employed on the premises of a person (other
24 than a person engaged in the business of providing
25 a telecommunications service) to originate, route, or

1 terminate telecommunications, and includes software
2 relating to such equipment.

3 (6) **ELECTRONIC PUBLISHING.**—The term
4 “electronic publishing” means the provision via tele-
5 communications, by a Bell operating company or af-
6 filiated enterprise to a person other than an affiliate
7 of such company, of information—

8 (A) which such company or affiliated en-
9 terprise has, or has caused to be, originated,
10 authored, compiled, collected, or edited, or

11 (B) in which such company or affiliated
12 enterprise has a direct or indirect financial or
13 proprietary interest.

14 (7) **EXCHANGE AREA.**—The term “exchange
15 area” means a contiguous geographic area estab-
16 lished by a Bell operating company such that no ex-
17 change area includes points within more than 1
18 standard metropolitan statistical area, consolidated
19 statistical area, or State, except as expressly per-
20 mitted under the Modification of Final Judgment
21 before May 6, 1992.

22 (8) **EXCHANGE ACCESS.**—The term “exchange
23 access” means exchange services provided for the
24 purpose of originating or terminating interexchange
25 telecommunications.

1 (9) EXCHANGE SERVICE.—The term “exchange
2 service” means a telecommunications service pro-
3 vided within an exchange area.

4 (10) INFORMATION.—The term “information”
5 means knowledge or intelligence represented by any
6 form of writing, signs, signals, pictures, sounds, or
7 other symbols.

8 (11) INFORMATION ACCESS.—The term “infor-
9 mation access” means specialized exchange services
10 provided by a Bell operating company for the pur-
11 pose of originating, terminating, transmitting, for-
12 warding, or routing telecommunications to or from a
13 provider of information services.

14 (12) INFORMATION SERVICE.—The term “infor-
15 mation service” means the offering of a capability
16 for generating, acquiring, storing, transforming,
17 processing, retrieving, utilizing, or making available
18 information via telecommunications, and includes
19 electronic publishing, but does not include the use of
20 any such capability to engage in the business of pro-
21 viding an exchange service.

22 (13) INTEREXCHANGE TELECOMMUNI-
23 CATIONS.—The term “interexchange telecommuni-
24 cations” means telecommunications between a point

1 located in an exchange area and a point located out-
2 side such exchange area.

3 (14) MODIFICATION OF FINAL JUDGMENT.—

4 The term “Modification of Final Judgment” means
5 the order entered August 24, 1982, in the antitrust
6 action styled U.S. v. Western Electric, Civil Action
7 No. 82-0192, in the United States District Court
8 for the District of Columbia, and includes any judg-
9 ment or order with respect to such action entered on
10 or after August 24, 1982.

11 (15) PERSON.—The term “person” has the
12 meaning given it in subsection (a) of the first section
13 of the Clayton Act (15 U.S.C. 12(a)).

14 (16) RESEARCH AND DEVELOPMENT.—The
15 term “research and development” means—

16 (A) theoretical analysis, experimentation,
17 or systematic study of phenomena or observable
18 facts,

19 (B) development or testing of basic engi-
20 neering techniques,

21 (C) extension of investigative findings or
22 theory of a scientific or technical nature into
23 practical application for experimental or dem-
24 onstration purposes, but does not include pro-
25 duction or testing of models or prototypes,

1 (D) collection or analysis of research infor-
2 mation,

3 (E) establishment or operation of facilities
4 for conducting any activity included under sub-
5 paragraph (A), (B), (C), or (D), or

6 (F) prosecution of applications for patents,
7 or the granting of licenses, for the results of
8 any such activity.

9 (17) TELECOMMUNICATIONS.—The term “tele-
10 communications” means the transmission of infor-
11 mation between points by electromagnetic means.

12 (18) TELECOMMUNICATIONS EQUIPMENT.—The
13 term “telecommunications equipment” means equip-
14 ment, other than customer premises equipment, used
15 to provide a telecommunications service, and in-
16 cludes software relating to such equipment.

17 (19) TELECOMMUNICATIONS SERVICE.—The
18 term “telecommunications service” means the offer-
19 ing for hire of transmission facilities or of tele-
20 communications by means of such facilities.

21 (20) TRANSMISSION FACILITIES.—The term
22 “transmission facilities” means equipment (including
23 wire, cable, microwave, satellite, and fiber-optics)
24 that transmits information by electromagnetic means

1 or that directly supports such transmission, but does
2 not include customer premises equipment.

3 **SEC. 8. RELATIONSHIP TO OTHER LAWS.**

4 (a) **MODIFICATION OF FINAL JUDGMENT.**—This Act
5 shall supersede the Modification of Final Judgment, ex-
6 cept that this Act shall not affect—

7 (1) section I of the Modification of Final Judg-
8 ment, relating to AT&T reorganization,

9 (2) section II(A) (including Appendix B) and
10 II(B) of the Modification of Final Judgment, relat-
11 ing to equal access and nondiscrimination,

12 (3) section IV(F) and IV(I) of the Modification
13 of Final Judgment, with respect to the requirements
14 included in the definitions of “exchange access” and
15 “information access”,

16 (4) section VIII(B) of the Modification of Final
17 Judgment, relating to printed advertising directories,

18 (5) section VIII(E) of the Modification of Final
19 Judgment, relating to notice to customers of AT&T,

20 (6) section VIII(F) of the Modification of Final
21 Judgment, relating to less than equal exchange ac-
22 cess,

23 (7) section VIII(G) of the Modification of Final
24 Judgment, relating to transfer of AT&T assets, in-

1 cluding all exceptions granted thereunder before
2 May 6, 1992,

3 (8) with respect to the parts of the Modification
4 of Final Judgment described in paragraphs (1)
5 through (7)—

6 (A) section III of the Modification of Final
7 Judgment, relating to applicability,

8 (B) section IV of the Modification of Final
9 Judgment, relating to definitions,

10 (C) section V of the Modification of Final
11 Judgment, relating to compliance,

12 (D) section VI of the Modification of Final
13 Judgment, relating to visitorial provisions,

14 (E) section VII of the Modification of
15 Final Judgment, relating to retention of juris-
16 diction, and

17 (F) section VIII(I) of the Modification of
18 Final Judgment, relating to the court's sua
19 sponte authority.

20 (b) **ANTITRUST LAWS.**—Nothing in this Act shall be
21 construed to modify, impair, or supersede the applicability
22 of any other antitrust law.

23 (c) **FEDERAL, STATE, AND LOCAL LAW.**—(1) Except
24 as provided in paragraph (2), this Act shall not be con-

1 strued to modify, impair, or supersede Federal, State, or
2 local law other than law expressly referred to in this Act.

3 (2) This Act shall supersede State and local law to
4 the extent that such law would impair or prevent the oper-
5 ation of this Act.

6 (d) CUMULATIVE PENALTY.—Any penalty imposed,
7 or relief granted, under this Act shall be in addition to,
8 and not in lieu of, any penalty or relief authorized by any
9 other law to be imposed with respect to conduct described
10 in this Act.

11 **SEC. 9. AMENDMENT TO DEFINITION OF ANTITRUST LAWS**
12 **APPEARING IN THE CLAYTON ACT.**

13 Subsection (a) of the first section of the Clayton Act
14 (15 U.S.C. 12(a)) is amended by inserting “the Antitrust
15 Reform Act of 1992;” after “thirteen;”.

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Document No. 106

