

HEINONLINE

Citation: 5 Bernard D. Reams Jr. & William H. Manz Federal
Law A Legislative History of the Telecommunications
of 1996 Pub. L. No. 104-104 110 Stat. 56 1996
the Communications Decency Act 1 1997

Content downloaded/printed from
HeinOnline (<http://heinonline.org>)
Wed Mar 20 17:46:49 2013

- Your use of this HeinOnline PDF indicates your acceptance
of HeinOnline's Terms and Conditions of the license
agreement available at <http://heinonline.org/HOL/License>
- The search text of this PDF is generated from
uncorrected OCR text.

102d CONGRESS
1ST SESSION

S. 173

To permit the Bell Telephone Companies to conduct research on, design, and manufacture telecommunications equipment, and for other purposes.

IN THE SENATE OF THE UNITED STATES

JANUARY 14 (legislative day, JANUARY 30, 1991)

Mr. HOLLINGS (for himself, Mr. DANFORTH, Mr. BREAUX, Mr. STEVENS, Mr. BURNS, Mr. ADAMS, and Mr. COCHRAN) introduced the following bill; which was read twice and referred to the Committee on Commerce, Science, and Transportation

A BILL

To permit the Bell Telephone Companies to conduct research on, design, and manufacture telecommunications equipment, 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 "Telecommunications
5 Equipment Research and Manufacturing Competition Act of
6 1991".

7 **SEC. 2. FINDINGS.**

8 The Congress finds that the continued economic growth
9 and the international competitiveness of American industry

1 would be assisted by permitting the Bell Telephone Compa-
2 nies, through their affiliates, to manufacture (including
3 design, development, and fabrication) telecommunications
4 equipment and customer premises equipment, and to engage
5 in research with respect to such equipment.

6 **SEC. 3. AMENDMENTS TO THE COMMUNICATIONS ACT OF 1934.**

7 Title II of the Communications Act of 1934 (47 U.S.C.
8 201 et seq.) is amended by adding at the end the following
9 new section:

10 **“REGULATION OF MANUFACTURING BY BELL TELEPHONE**
11 **COMPANIES**

12 **“SEC. 227. (a) Subject to the requirements of this sec-**
13 **tion and the regulations prescribed thereunder, a Bell Tele-**
14 **phone Company, through an affiliate of that Company, not-**
15 **withstanding any restriction or obligation imposed before the**
16 **date of enactment of this section pursuant to the Modification**
17 **of Final Judgment on the lines of business in which a Bell**
18 **Telephone Company may engage, may manufacture and pro-**
19 **vide telecommunications equipment and manufacture custom-**
20 **er premises equipment, except that neither a Bell Telephone**
21 **Company nor any of its affiliates may engage in such manu-**
22 **facturing in conjunction with a Bell Telephone Company not**
23 **so affiliated or any of its affiliates.**

24 **“(b) Any manufacturing or provision authorized under**
25 **subsection (a) shall be conducted only through an affiliate**

1 (hereafter in this section referred to as a 'manufacturing affili-
2 ate') that is separate from any Bell Telephone Company.

3 “(c) The Commission shall prescribe regulations to
4 ensure that—

5 “(1) such manufacturing affiliate shall maintain
6 books, records, and accounts separate from its affiliated
7 Bell Telephone Company which identify all transac-
8 tions between the manufacturing affiliate and its affilia-
9 ted Bell Telephone Company and, even if such manu-
10 facturing affiliate is not a publicly held corporation,
11 prepare financial statements which are in compliance
12 with Federal financial reporting requirements for pub-
13 licly held corporations, file such statements with the
14 Commission, and make such statements available for
15 public inspection;

16 “(2) consistent with the provisions of this section,
17 neither a Bell Telephone Company nor any of its non-
18 manufacturing affiliates shall perform sales, advertising,
19 installation, production, or maintenance operations for
20 a manufacturing affiliate; except that institutional ad-
21 vertising, of a type not related to specific telecommuni-
22 cations equipment, carried out by the Bell Telephone
23 Company or its affiliates shall be permitted if each
24 party pays its pro rata share;

1 “(3)(A) such manufacturing affiliate shall conduct
2 all of its manufacturing within the United States and,
3 except as otherwise provided in this paragraph, all
4 component parts of customer premises equipment man-
5 ufactured by such affiliate, and all component parts of
6 telecommunications equipment manufactured by such
7 affiliate, shall have been manufactured within the
8 United States;

9 “(B) such affiliate may use component parts man-
10 ufactured outside the United States if—

11 “(i) such affiliate first makes a good faith
12 effort to obtain equivalent component parts manu-
13 factured within the United States at reasonable
14 prices, terms, and conditions; and

15 “(ii) for the aggregate of telecommunications
16 equipment and customer premises equipment man-
17 ufactured and sold in the United States by such
18 affiliate in any calendar year, the cost of the com-
19 ponents manufactured outside the United States
20 contained in the equipment does not exceed 40
21 percent of the sales revenue derived from such
22 equipment;

23 “(C) any such affiliate that uses component parts
24 manufactured outside the United States in the manu-

1 facture of telecommunications equipment and customer
2 premises equipment within the United States shall—

3 “(i) certify to the Commission that a good
4 faith effort was made to obtain equivalent parts
5 manufactured within the United States at reason-
6 able prices, terms, and conditions, which certifica-
7 tion shall be filed on a quarterly basis with the
8 Commission and list component parts, by type,
9 manufactured outside the United States; and

10 “(ii) certify to the Commission on an annual
11 basis that for the aggregate of telecommunications
12 equipment and customer premises equipment man-
13 ufactured and sold in the United States by such
14 affiliate in the previous calendar year, the cost of
15 the components manufactured outside the United
16 States contained in such equipment did not exceed
17 the percentage specified in subparagraph (B)(ii) or
18 adjusted in accordance with subparagraph (C);

19 “(D)(i) if the Commission determines, after re-
20 viewing the certification required in subparagraph
21 (C)(i), that such affiliate failed to make the good faith
22 effort required in subparagraph (B)(i) or, after review-
23 ing the certification required in subparagraph (C)(ii),
24 that such affiliate has exceeded the percentage speci-
25 fied in subparagraph (B)(ii), the Commission may

1 impose penalties or forfeitures as provided for in title V
2 of this Act;

3 “(i) any supplier claiming to be damaged because
4 a manufacturing affiliate failed to make the good faith
5 effort required in subparagraph (B)(i) may make com-
6 plaint to the Commission as provided for in section 208
7 of this Act, or may bring suit for the recovery of actual
8 damages for which such supplier claims such affiliate
9 may be liable under the provisions of this Act in any
10 district court of the United States of competent juris-
11 diction;

12 “(E) the Commission, in consultation with the
13 Secretary of Commerce, shall, on an annual basis, de-
14 termine the cost of component parts manufactured out-
15 side the United States contained in all telecommunica-
16 tions equipment and customer premises equipment sold
17 in the United States as a percentage of the revenues
18 from sales of such equipment in the previous calendar
19 year;

20 “(F) a manufacturing affiliate may use intellectual
21 property created outside the United States in the man-
22 ufacture of telecommunications equipment and custom-
23 er premises equipment in the United States;

24 “(G) the Commission may not waive or alter the
25 requirements of this subsection, except that the Com-

1 mission, on an annual basis, shall adjust the percentage
2 specified in subparagraph (B)(ii) to the percentage de-
3 termined by the Commission, in consultation with the
4 Secretary of Commerce, as directed in subparagraph
5 (E);

6 “(4) no more than 90 per centum of the equity of
7 such manufacturing affiliate shall be owned by its affili-
8 ated Bell Telephone Company and any affiliates of that
9 Bell Telephone Company;

10 “(5) any debt incurred by such manufacturing af-
11 filiate may not be issued by its affiliates, and such
12 manufacturing affiliate shall be prohibited from incur-
13 ring debt in a manner that would permit a creditor, on
14 default, to have recourse to the assets of its affiliated
15 Bell Telephone Company’s telecommunications services
16 business;

17 “(6) such manufacturing affiliate shall not be re-
18 quired to operate separately from the other affiliates of
19 its affiliated Bell Telephone Company;

20 “(7) if an affiliate of a Bell Telephone Company
21 becomes affiliated with a manufacturing entity, such af-
22 filiate shall be treated as a manufacturing affiliate of
23 that Bell Telephone Company within the meaning of
24 subsection (b) and shall comply with the requirements
25 of this section; and

1 “(8) such manufacturing affiliate shall make avail-
2 able, without discrimination or self-preference as to
3 price, delivery, terms, or conditions, to all local tele-
4 phone exchange carriers, for use with the public tele-
5 communications network, any telecommunications
6 equipment manufactured by such affiliate so long as
7 each such purchasing carrier—

8 “(A) does not either manufacture telecom-
9 munications equipment, or have a manufacturing
10 affiliate which manufactures telecommunications
11 equipment, or

12 “(B) agrees to make available, to the Bell
13 Telephone Company affiliated with such manufac-
14 turing affiliate or any of the other affiliates of
15 such company, any telecommunications equipment
16 manufactured by such purchasing carrier or by
17 any entity or organization with which such carrier
18 is affiliated.

19 “(d)(1) The Commission shall prescribe regulations to
20 require that each Bell Telephone Company shall maintain
21 and file with the Commission full and complete information
22 with respect to the protocols and technical requirements for
23 connection with and use of its telephone exchange service
24 facilities. Such regulations shall require each such company
25 to report promptly to the Commission any material changes

1 or planned changes to such protocols and requirements, and
2 the schedule for implementation of such changes or planned
3 changes.

4 “(2) A Bell Telephone Company shall not disclose to
5 any of its affiliates any information required to be filed under
6 paragraph (1) unless that information is immediately so filed.

7 “(3) When two or more carriers are providing regulated
8 telephone exchange service in the same area of interest; each
9 such carrier shall provide to other such carriers timely infor-
10 mation on the deployment of telecommunications equipment.

11 “(4) The Commission may prescribe such additional reg-
12 ulations under this subsection as may be necessary to ensure
13 that manufacturers in competition with a Bell Telephone
14 Company’s manufacturing affiliate have ready and equal
15 access to the information required for such competition that
16 such company makes available to its manufacturing affiliate.

17 “(e) The Commission shall prescribe regulations requir-
18 ing that any Bell Telephone Company which has an affiliate
19 that engages in any manufacturing authorized by subsection
20 (a) shall—

21 “(1) provide, to other manufacturers of telecom-
22 munications equipment and customer premises equip-
23 ment, opportunities to sell such equipment to such Bell
24 Telephone Company which are comparable to the op-

1 opportunities which such Company provides to its affi-
2 mates;

3 “(2) not subsidize its manufacturing affiliate with
4 revenues from its regulated telecommunications serv-
5 ices; and

6 “(3) only purchase equipment from its manufac-
7 turing affiliate at the open market price.

8 “(f) A Bell Telephone Company and its affiliates may
9 engage in close collaboration with any manufacturer of cus-
10 tomer premises equipment or telecommunications equipment
11 during the design and development of hardware, software, or
12 combinations thereof relating to such equipment.

13 “(g) The Commission may prescribe such additional
14 rules and regulations as the Commission determines neces-
15 sary to carry out the provisions of this section.

16 “(h) For the purposes of administering and enforcing the
17 provisions of this section and the regulations prescribed
18 thereunder, the Commission shall have the same authority,
19 power, and functions with respect to any Bell Telephone
20 Company as the Commission has in administering and enforce-
21 ing the provisions of this title with respect to any common
22 carrier subject to this Act.

23 “(i) The authority of the Commission to prescribe regu-
24 lations to carry out this section is effective on the date of
25 enactment of this section. The Commission shall prescribe

1 such regulations within one hundred and eighty days after
2 such date of enactment, and the authority to engage in the
3 manufacturing authorized in subsection (a) shall not take
4 effect until regulations prescribed by the Commission under
5 subsections (c), (d), and (e) are in effect.

6 “(j) Nothing in this section shall prohibit any Bell Tele-
7 phone Company from engaging, directly or through any affili-
8 ate, in any manufacturing activity in which any Company or
9 affiliate was authorized to engage on the date of enactment of
10 this section.

11 “(k) As used in this section:

12 “(1) The term ‘affiliate’ means any organization
13 or entity that, directly or indirectly, owns or controls,
14 is owned or controlled by, or is under common owner-
15 ship with a Bell Telephone Company. Such term in-
16 cludes any organization or entity (A) in which a Bell
17 Telephone Company and any of its affiliates have an
18 equity interest of greater than 10 percent, or a man-
19 agement interest of greater than 10 percent, or (B) in
20 which a Bell Telephone Company and any of its affili-
21 ates have any other significant financial interest.

22 “(2) The term ‘Bell Telephone Company’ means
23 those companies listed in appendix A of the Modifica-
24 tion of Final Judgment, and includes any successor or

1 assign of any such company, but does not include any
2 affiliate of any such company.

3 “(3) The term ‘customer premises equipment’
4 means equipment employed on the premises of a
5 person (other than a carrier) to originate, route, or ter-
6 minate telecommunications.

7 “(4) The term ‘manufacturing’ has the same
8 meaning as such term has in the Modification of Final
9 Judgment as interpreted in *United States v. Western*
10 *Electric*, Civil Action No. 82-0192 (United States Dis-
11 trict Court, District of Columbia) (filed December 3,
12 1987).

13 “(5) The term ‘Modification of Final Judgment’
14 means the decree entered August 24, 1982, in *United*
15 *States v. Western Electric*, Civil Action No. 82-0192
16 (United States District Court, District of Columbia).

17 “(6) The term ‘telecommunications’ means the
18 transmission, between or among points specified by the
19 user, of information of the user’s choosing, without
20 change in the form or content of the information as
21 sent and received, by means of an electromagnetic
22 transmission medium, including all instrumentalities,
23 facilities, apparatus, and services (including the collec-
24 tion, storage, forwarding, switching, and delivery of
25 such information) essential to such transmission.

1 “(7) The term ‘telecommunications equipment’
2 means equipment, other than customer premises equip-
3 ment, used by a carrier to provide telecommunications
4 services.

5 “(8) The term ‘telecommunications service’ means
6 the offering for hire of telecommunications facilities, or
7 of telecommunications by means of such facilities.”.



Document No. 105

