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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 i 1997

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FEDERAL TELECOMMUNICATIONS LAW:
A LEGISLATIVE HISTORY OF
THE TELECOMMUNICATIONS ACT
OF 1996
PUB. L. NO. 104-104, 110 STAT. 56 (1996)
INCLUDING
THE COMMUNICATIONS DECENCY ACT

Volume 5
Document Numbers
102 - 115

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William S. Hein & Co., Inc.
Buffalo, N.Y.
1997

Library of Congress Catalog Number 97-70098
ISBN 1-57588-279-5 (SET)

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Printed in the United States of America.

SUMMARY TABLE OF CONTENTS

Master Table of Documents	Vol. 1
Selected Bibliography	Vol. 1
Section I: Law as Enacted	Vol. 1 (Doc. No. 1)
Section II: Reports on the Law	Vol. 1 (Doc. Nos. 2 - 6)
Section III: Hearings on the Law	Vol. 2 (Doc. Nos. 7 - 9)
Section IV: Congressional Record	Vol. 3 (Doc. Nos. 10 - 87)
Section V: Presidential and Vice Presidential Statements	Vol. 3 (Doc. Nos. 88 - 95)
Section VI: Past Bill Versions	Vol. 4 (Doc. Nos. 96 - 101)
Section VII: Related Bills	Vol. 5 (Doc. Nos. 102 - 115)
Vol. 6 (Doc. Nos. 116 - 120)	
Section VIII: Congressional Record - Related Bills	Vol. 6 (Doc. Nos. 121 - 162)
Section IX: Past Reports	Vol. 7 (Doc. Nos. 163 - 170)
Section X: Past Hearings	Vol. 8 (Doc. Nos. 171 - 172)
Vol. 9 (Doc. No. 173)	
Vol. 10 (Doc. No. 174)	
Vol. 11 (Doc. No. 175)	
Vol. 12 (Doc. Nos. 176 - 177)	
Vol. 13 (Doc. Nos. 178 - 179)	
Vol. 14 (Doc. No. 180)	
Vol. 15 (Doc. Nos. 181 - 184)	
Vol. 16 (Doc. No. 185)	
Vol. 17 (Doc. No. 186)	
Vol. 18 (Doc. Nos. 187 - 188(A&B))	
Vol. 19 (Doc. Nos. 188(C) - 189)	
Vol. 20 (Doc. Nos. 190 - 191)	
Vol. 21 (Doc. Nos. 192 - 201)	
Section XI: Final Report	Vol. 21 (Doc. No. 202)

INTRODUCTION

AN OVERVIEW OF THE TELECOMMUNICATIONS ACT OF 1996

The "Telecommunications Act of 1996," signed into law on February 8, 1996, opens up competition between local telephone companies, long-distance providers, and cable companies; expands the reach of advanced telecommunications services to schools, libraries, and hospitals; and requires the use of the new V-chip technology to enable families to exercise greater control over the television programming that comes into their homes. This Act lays the foundation for the investment and development that will ultimately create a national information superhighway to serve both the private sector and the public interest.

President Clinton noted that the Act will continue the efforts of his administration in ensuring that the American public has access to many different sources of news and information in their communities. The Act increases, from 25 to 35 percent, the cap on the national audience that television stations owned by one person or entity can reach. This cap will prevent a single broadcast group owner from dominating the national media market.

Rates for cable programming services and equipment used solely to receive such services will, in general, be deregulated in about three years. Cable rates will be deregulated more quickly in communities where a phone company offers programming to a comparable number of households, providing effective competition to the cable operator. In such circumstances, consumers will be protected from price hikes because the cable system faces real competition.

This Act also makes it possible for the regional Bell companies to offer long-distance service, provided that, in the judgment of the Federal Communications Commission (FCC), they have opened up their local networks to competitors such as long-distance companies, cable operators, and others. In order to protect the public, the FCC must evaluate any application for entry into the long-distance business in light of its public interest test, which gives the FCC discretion to consider a broad range of issues, such as the adequacy of interconnection arrangements to

permit vigorous competition. Furthermore, in deciding whether to grant the application of a regional Bell company to offer long-distance service, the FCC must accord "substantial weight" to the views of the Attorney General. This special legal standard ensures that the FCC and the courts will accord full weight to the special competition expertise of the Justice Department's Antitrust Division--especially its expertise in making predictive judgments about the effect that entry by a bell company into long-distance may have on competition in local and long-distance markets.

Title V of the Act is entitled the "Communications Decency Act of 1996." This section is specifically aimed at curtailing the communication of violent and indecent material. The Act requires new televisions to be outfitted with the V-chip, a measure which President Clinton said, "will empower families to choose the kind of programming suitable for their children." The V-chip provision relies on the broadcast networks to produce a rating system and to implement the system in a manner compatible with V-chip technology. By relying on the television industry to establish and implement the ratings, the Act serves the interest of the families without infringing upon the First Amendment rights of the television programmers and producers.

President Clinton signed this Act into law in an effort to strengthen the economy, society, families, and democracy. It promotes competition as the key to opening new markets and new opportunities. This Act will enable us to ride safely into the twenty-first century on the information superhighway.

We wish to acknowledge the contribution of Loris Zeppieri, a third year law student, who helped in gathering these materials.

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April 1997

TABLE OF DOCUMENTS

VOLUME 5

Section VII: Related Bills

- Doc. No. 102** - S. 1981 - Telecommunications Equipment Research and Manufacturing Competition Act of 1989. Introduced by Sen. Hollings and referred to the Senate Commerce, Science, and Transportation Committee, United States Senate, 101st Congress, 1st Session (November 21, 1989).
- Doc. No. 103** - S. 1981 - Telecommunications Equipment Research and Manufacturing Competition Act of 1990 - Report No. 101-355 with amendment. Introduced by Sen. Hollings, et. al. and referred to the Committee on Commerce, Science, and Transportation, United States Senate, 101st Congress, 2d Session (June 29, 1990).
- Doc. No. 104** - S. 173 - Telecommunications Equipment Research and Manufacturing Competition Act of 1991. Introduced by Sen. Hollings, et. al. and referred to the Senate Commerce, Science, and Transportation Committee, United States Senate, 102d Congress, 1st Session (January 14, 1991).
- Doc. No. 105** - H.R. 5096 - Antitrust Reform Act of 1992. Introduced by Rep. Brooks and referred to the Committee on the Judiciary, House of Representatives, 102d Congress, 2d Session (May 7, 1992).
- Doc. No. 106** - H.R. 5096 - Antitrust Reform Act of 1992 - Report No. 102-850. Introduced by Rep. Brooks and referred to the Committee on the Judiciary, House of Representatives, 102d Congress, 2d Session (August 12, 1992).

For *Master Table of Documents* of this set, please refer to *Volume 1*.

- Doc. No. 107 -** S. 544 - Multistate Utility Company Consumer Protection Act of 1993. Introduced by Sen. Bumpers and referred to the Committee on Energy and Natural Resources, United States Senate, 103d Congress, 1st Session (March 10, 1993).
- Doc. No. 108 -** S. 544 - Multistate Utility Consumer Protection Act of 1994 - Report No. 103-351 with an amendment. Introduced by Sen. Bumpers (for himself and Sen. Metzenbaum) and referred to the Committee on Energy and Natural Resources, United States Senate, 103d Congress, 2d Session (August 22, 1994).
- Doc. No. 109 -** H.R. 3626 - Antitrust Reform Act of 1993. Introduced by Rep. Brooks and Rep. Dingell and referred jointly to the Committees on the Judiciary and Energy and Commerce, House of Representatives, 103d Congress, 1st Session (November 22, 1993).
- Doc. No. 110 -** H. R. 3626 - Antitrust and Communications Reform Act of 1994 - Report No. 103-559 (Parts I and II) with amendments, Introduced by Rep. Brooks (for himself and Rep. Dingell) and referred jointly to the Committees on the Judiciary, Energy, and Commerce, House of Representatives, 103d Congress, 2d Session (June 24, 1994).
- Doc. No. 111 -** H.R. 3626 - Antitrust and Communications Reform Act of 1994. As passed by the House and referred to the Senate Committee on Commerce, Science, and Transportation, House of Representatives, 103d Congress, 2d Session (June 30, 1994).
- Doc. No. 112 -** H.R. 3626 - Antitrust and Communications Reform Act of 1994. As reported by Sen. Hollings without amendment (no written report) and referred to the Committee on Commerce, Science, and Transportation, United States Senate, 103d Congress, 2d Session (September 19, 1994).

For *Master Table of Documents* of this set, please refer to *Volume 1*.

- Doc. No. 113 -** H.R. 3636 - National Communications Competition and Information Infrastructure Act of 1993. Introduced by Rep. Markey, et. al. and referred to the House Committee on Energy and Commerce, House of Representatives, 103d Congress, 1st Session (November 22, 1993).
- Doc. No. 114 -** H.R. 3636 - National Communications Competition and Information Infrastructure Act of 1994 - Report No. 103-560 with an amendment and ordered to be printed House of Representatives, 103d Congress, 2d Session (June 24, 1994).
- Doc. No. 115 -** S. 1822 - Communications Act of 1994 - Introduced by Sen. Hollings, et. al., and referred to the Committee on Commerce, Science, and Transportation, United States Senate, 103d Congress, 2d Session (February 3, 1994).

For *Master Table of Documents* of this set, please refer to *Volume 1*.

Document No. 102

101ST CONGRESS
1ST SESSION

S. 1981

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

NOVEMBER 21 (legislative day, NOVEMBER 6), 1989

Mr. HOLLINGS 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 1989".

7 **SEC. 2. FINDINGS.**

8 The Congress finds that the continued economic growth
9 and the international competitiveness of American industry
10 would be assisted by permitting the Bell Telephone Compa-

1 nies to conduct research on, design, develop, manufacture,
2 and market telecommunications equipment for American resi-
3 dential and business telecommunications users.

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

5 (a) **IN GENERAL.**—Title II of the Communications Act
6 of 1934 (47 U.S.C. 201 et seq.) is amended by adding at the
7 end the following new section:

8 **“REGULATION OF MANUFACTURING BY BELL TELEPHONE**
9 **COMPANIES**

10 **“SEC. 225. (a)** Subject to the requirements of this sec-
11 tion and the regulations prescribed thereunder, a Bell Tele-
12 phone Company may conduct research on and manufacture
13 and provide telecommunications equipment, notwithstanding
14 any restriction or obligation imposed before the date of enact-
15 ment of this section pursuant to the antitrust laws on the
16 lines of business in which a Bell Telephone Company may
17 engage, except that a Bell Telephone Company may not
18 engage in such manufacturing or provision or both through a
19 joint manufacturing agreement with another Bell Telephone
20 Company.

21 **“(b)** Any Bell Telephone Company engaged in any ac-
22 tivity authorized under subsection (a) shall conduct such ac-
23 tivity other than basic research only through a subsidiary that
24 is fully separate from any other entity owned or otherwise
25 affiliated with any Bell Telephone Company, including any
26 affiliate of one or more of the Bell Telephone Companies that

1 provides telecommunications services over the telephone net-
2 work. The Commission shall issue rules to ensure that such
3 subsidiary shall—

4 “(1) maintain books, records, and accounts sepa-
5 rate from the parent Bell Telephone Company which
6 identify all transactions with such parent Company
7 and, even if such subsidiary is not a publicly held cor-
8 poration, prepare financial statements which are in
9 compliance with Federal financial reporting require-
10 ments for publicly held corporations, file such state-
11 ments with the Commission, and make such statements
12 available for public inspection;

13 “(2) consistent with the provisions of this section,
14 carry out directly its own marketing, sales, advertising,
15 installation, production, maintenance operations, manu-
16 facturing, and research and development relating to the
17 equipment it provides, except that institutional adver-
18 tising of a type not related to specific telecommunica-
19 tions equipment carried out by the parent Bell Tele-
20 phone Company shall be permitted if each party pays
21 its pro rata share;

22 “(3) conduct all of its manufacturing activity, in-
23 cluding design and development as well as fabrication,
24 and including the manufacture of components, within
25 the United States;

1 “(4) have no more than 90 per centum of its
2 equity owned by its parent Bell Telephone Company;

3 “(5) acquire all of the debt necessary to finance
4 itself from the financial markets outside the operations
5 of its parent Bell Telephone Company, and be prohibit-
6 ed from acquiring debt in a manner that would permit
7 a creditor, on default, to have recourse to the assets of
8 the Bell Telephone Company’s telecommunications
9 services business; and

10 “(6) shall operate at all times on an arms-length
11 basis from any of its parent Bell Telephone Company’s
12 other businesses, including the Bell Telephone Com-
13 pany’s telecommunications services businesses.

14 “(c) The Commission shall issue regulations requiring
15 that any Bell Telephone Company that engages in any activ-
16 ity authorized by subsection (a) shall—

17 “(1) provide to other telecommunications equip-
18 ment manufacturers opportunities to sell such equip-
19 ment to itself or any of its affiliates which are compa-
20 rable to the opportunities which it provides to itself or
21 any of its affiliates; and

22 “(2) not subsidize its fully separated subsidiary
23 with revenues from its regulated telecommunications
24 services.

1 “(d) For the purposes of administering and enforcing the
2 provisions of this section and the regulations prescribed
3 thereunder, the Commission shall have the same authority,
4 power, and functions with respect to any Bell Telephone
5 Company as the Commission has in administering and enforce-
6 ing the provisions of this title with respect to any common
7 carrier subject to this Act.

8 “(e) The authority of the Commission to prescribe regu-
9 lations to carry out this section is effective on the date of
10 enactment of this section. The Commission shall prescribe
11 such regulations within one hundred and eighty days after
12 such date of enactment.

13 “(f) As used in this section:

14 “(1) The term ‘affiliate’ means any entity (A) that
15 is under direct or indirect common ownership by a Bell
16 Telephone Company, or directly or indirectly owns a
17 Bell Telephone Company, (B) that is under direct or
18 indirect control by a Bell Telephone Company, or di-
19 rectly or indirectly controls a Bell Telephone Compa-
20 ny, or (C) in which a Bell Telephone Company or its
21 other affiliates directly or indirectly (i) have an equity
22 interest (or the equivalent thereof) of more than 10 per
23 centum or (ii) exercise substantial management influ-
24 ence.

1 “(2) The term ‘antitrust laws’ has the meaning
2 given such term by subsection (a) of the first section of
3 the Clayton Act (15 U.S.C. 12(a)).

4 “(3) The term ‘Bell Telephone Company’ means
5 those companies listed in appendix A of the Modifica-
6 tion of Final Judgment entered August 24, 1982, in
7 United States v. Western Electric, Civil Action No.
8 82-0192 (United States District Court, District of Co-
9 lumbia), and includes any successor or assign of any
10 such company, but does not include any affiliate of any
11 such company.

12 “(4) The term ‘manufacturing’ has the same
13 meaning as such term has in the Modification of Final
14 Judgment entered August 24, 1982, in United States
15 v. Western Electric, Civil Action No. 82-0192 (United
16 States District Court, District of Columbia) as inter-
17 preted in United States v. Western Electric, Civil
18 Action No. 82-0192 (United States District Court,
19 District of Columbia) (filed December 3, 1987).

20 “(5) The term ‘telecommunications’ means the
21 transmission, between or among points specified by the
22 customer, or information of the customer’s choosing,
23 without change in the form of content of the informa-
24 tion as sent and received, by means of an electromag-
25 netic transmission medium, including all instrumental-

1 ities, facilities, apparatus, and services (including the
2 collection, storage, forwarding, switching, and delivery
3 of such information) essential to such transmission.

4 “(6) The term ‘telecommunications equipment’
5 means equipment, including customer premises equip-
6 ment, telecommunications products used by a carrier to
7 provide telecommunications services, and software nec-
8 essary to operate such equipment.

9 “(7) The term ‘telecommunications service’ means
10 the offering for hire of telecommunications facilities, or
11 of telecommunications by means of such facilities.”.

12 (b) CONFORMING AMENDMENT.—Section 2(b) of the
13 Communications Act of 1934 is amended by striking “section
14 224” by inserting “sections 224 and 225”.

○

Document No. 103

Calendar No. 675

101ST CONGRESS
2D SESSION

S. 1981

[Report No. 101-355]

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

NOVEMBER 21 (legislative day, NOVEMBER 6), 1989

Mr. HOLLINGS (for himself, Mr. STEVENS, Mr. LOTT, Mr. BENTSEN, Mr. SHELBY, Ms. MIKULSKI, Mr. MACK, Mr. BINGAMAN, and Mr. BURNS) introduced the following bill; which was read twice and referred to the Committee on Commerce, Science, and Transportation

JUNE 29, 1990

Reported, under authority of the order of the Senate of June 29 (legislative day, June 11), 1990 by Mr. HOLLINGS, with an amendment

(Strike out all after the enacting clause and insert the part printed in italic)

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,*

1 **SECTION 1. SHORT TITLE.**

2 This Act may be cited as the "Telecommunications
3 Equipment Research and Manufacturing Competition Act of
4 1989".

5 **SEC. 2. FINDINGS.**

6 The Congress finds that the continued economic growth
7 and the international competitiveness of American industry
8 would be assisted by permitting the Bell Telephone Compa-
9 nies to conduct research on, design, develop, manufacture,
10 and market telecommunications equipment for American resi-
11 dential and business telecommunications users.

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

13 **(a) IN GENERAL.**—Title II of the Communications Act
14 of 1934 (47 U.S.C. 201 et seq.) is amended by adding at the
15 end the following new section:

16 **"REGULATION OF MANUFACTURING BY BELL TELEPHONE**
17 **COMPANIES**

18 **"SEC. 225. (a)** Subject to the requirements of this sec-
19 tion and the regulations prescribed thereunder, a Bell Tele-
20 phone Company may conduct research on and manufacture
21 and provide telecommunications equipment, notwithstanding
22 any restriction or obligation imposed before the date of enact-
23 ment of this section pursuant to the antitrust laws on the
24 lines of business in which a Bell Telephone Company may
25 engage, except that a Bell Telephone Company may not
26 engage in such manufacturing or provision or both through a

1 joint manufacturing agreement with another Bell Telephone
2 Company.

3 “(b) Any Bell Telephone Company engaged in any ac-
4 tivity authorized under subsection (a) shall conduct such ac-
5 tivity other than basic research only through a subsidiary
6 that is fully separate from any other entity owned or other-
7 wise affiliated with any Bell Telephone Company, including
8 any affiliate of one or more of the Bell Telephone Companies
9 that provides telecommunications services over the telephone
10 network. The Commission shall issue rules to ensure that
11 such subsidiary shall—

12 “(1) maintain books, records, and accounts sepa-
13 rate from the parent Bell Telephone Company which
14 identify all transactions with such parent Company
15 and, even if such subsidiary is not a publicly held cor-
16 poration, prepare financial statements which are in
17 compliance with Federal financial reporting require-
18 ments for publicly held corporations, file such state-
19 ments with the Commission, and make such statements
20 available for public inspection;

21 “(2) consistent with the provisions of this section,
22 carry out directly its own marketing, sales, advertising,
23 installation, production, maintenance operations, manu-
24 facturing, and research and development relating to the
25 equipment it provides, except that institutional adver-

1 tising of a type not related to specific telecommunica-
2 tions equipment carried out by the parent Bell Tele-
3 phone Company shall be permitted if each party pays
4 its pro rata share;

5 “(2) conduct all of its manufacturing activity, in-
6 cluding design and development as well as fabrication,
7 and including the manufacture of components, within
8 the United States;

9 “(4) have no more than 90 per centum of its
10 equity owned by its parent Bell Telephone Company;

11 “(5) acquire all of the debt necessary to finance
12 itself from the financial markets outside the operations
13 of its parent Bell Telephone Company, and be prohibit-
14 ed from acquiring debt in a manner that would permit
15 a creditor, on default, to have recourse to the assets of
16 the Bell Telephone Company's telecommunications
17 services business; and

18 “(6) shall operate at all times on an arms-length
19 basis from any of its parent Bell Telephone Company's
20 other businesses, including the Bell Telephone Compa-
21 ny's telecommunications services businesses.

22 “(e) The Commission shall issue regulations requiring
23 that any Bell Telephone Company that engages in any activi-
24 ty authorized by subsection (a) shall—

1 “(1) provide to other telecommunications equip-
2 ment manufacturers opportunities to sell such equip-
3 ment to itself or any of its affiliates which are compa-
4 rable to the opportunities which it provides to itself or
5 any of its affiliates; and

6 “(2) not subsidize its fully separated subsidiary
7 with revenues from its regulated telecommunications
8 services.

9 “(d) For the purposes of administering and enforcing the
10 provisions of this section and the regulations prescribed
11 thereunder, the Commission shall have the same authority,
12 power, and functions with respect to any Bell Telephone
13 Company as the Commission has in administering and enforce-
14 ing the provisions of this title with respect to any common
15 carrier subject to this Act.

16 “(e) The authority of the Commission to prescribe regu-
17 lations to carry out this section is effective on the date of
18 enactment of this section. The Commission shall prescribe
19 such regulations within one hundred and eighty days after
20 such date of enactment.

21 “(f) As used in this section:

22 “(1) The term ‘affiliate’ means any entity (A) that
23 is under direct or indirect common ownership by a Bell
24 Telephone Company, or directly or indirectly owns a
25 Bell Telephone Company, (B) that is under direct or

1 indirect control by a Bell Telephone Company, or di-
2 rectly or indirectly controls a Bell Telephone Compa-
3 ny, or (C) in which a Bell Telephone Company or its
4 other affiliates directly or indirectly (i) have an equity
5 interest (or the equivalent thereof) of more than 10 per
6 centum or (ii) exercise substantial management influ-
7 ence.

8 “(2) The term ‘antitrust laws’ has the meaning
9 given such term by subsection (a) of the first section of
10 the Clayton Act (15 U.S.C. 12(a)).

11 “(3) The term ‘Bell Telephone Company’ means
12 those companies listed in appendix A of the Modifica-
13 tion of Final Judgment entered August 24, 1982, in
14 United States v. Western Electric, Civil Action No.
15 82-0192 (United States District Court, District of Co-
16 lumbia), and includes any successor or assign of any
17 such company, but does not include any affiliate of any
18 such company.

19 “(4) The term ‘manufacturing’ has the same
20 meaning as such term has in the Modification of Final
21 Judgment entered August 24, 1982, in United States
22 v. Western Electric, Civil Action No. 82-0192 (United
23 States District Court, District of Columbia) as inter-
24 preted in United States v. Western Electric, Civil

1 Action No. 82-0192 (United States District Court,
2 District of Columbia) (filed December 2, 1987).

3 “(5) The term ‘telecommunications’ means the
4 transmission, between or among points specified by the
5 customer, or information of the customer’s choosing,
6 without change in the form of content of the informa-
7 tion as sent and received, by means of an electromag-
8 netic transmission medium, including all instrumenta-
9 lities, facilities, apparatus, and services (including the
10 collection, storage, forwarding, switching, and delivery
11 of such information) essential to such transmission.

12 “(6) The term ‘telecommunications equipment’
13 means equipment, including customer premises equip-
14 ment, telecommunications products used by a carrier to
15 provide telecommunications services, and software nec-
16 essary to operate such equipment.

17 “(7) The term ‘telecommunications service’ means
18 the offering for hire of telecommunications facilities, or
19 of telecommunications by means of such facilities.”

20 (b) **CONFORMING AMENDMENT.**—Section 2(b) of the
21 Communications Act of 1934 is amended by striking “section
22 224” by inserting “sections 224 and 225”.

1 *former premises equipment, except that neither a Bell Tele-*
2 *phone Company nor any of its affiliates may engage in such*
3 *manufacturing in conjunction with a Bell Telephone Compa-*
4 *ny not so affiliated or any of its affiliates.*

5 “(b) *Any manufacturing or provision authorized under*
6 *subsection (a) shall be conducted only through an affiliate*
7 *(hereafter in this section referred to as a ‘manufacturing af-*
8 *iliate’) that is separate from any Bell Telephone Company.*

9 “(c) *The Commission shall prescribe regulations to*
10 *ensure that—*

11 “(1) *such manufacturing affiliate shall maintain*
12 *books, records, and accounts separate from its affiliated*
13 *Bell Telephone Company which identify all transac-*
14 *tions between the manufacturing affiliate and its affili-*
15 *ated Bell Telephone Company and, even if such manu-*
16 *facturing affiliate is not a publicly held corporation,*
17 *prepare financial statements which are in compliance*
18 *with Federal financial reporting requirements for pub-*
19 *licly held corporations, file such statements with the*
20 *Commission, and make such statements available for*
21 *public inspection;*

22 “(2) *consistent with the provisions of this section,*
23 *neither a Bell Telephone Company nor any of its non-*
24 *manufacturing affiliates shall perform sales, advertis-*
25 *ing, installation, production, or maintenance operations*

1 *for a manufacturing affiliate; except that institutional*
2 *advertising, of a type not related to specific telecom-*
3 *munications equipment, carried out by the Bell Tele-*
4 *phone Company or its affiliates shall be permitted if*
5 *each party pays its pro rata share;*

6 *“(3) such manufacturing affiliate shall conduct*
7 *all of its manufacturing within the United States and*
8 *all component parts, of customer premises equipment*
9 *manufactured by such affiliate or of telecommunica-*
10 *tions equipment manufactured by such affiliate, shall*
11 *have been manufactured within the United States;*
12 *except that the Commission may, no later than three*
13 *months after application by such affiliate, waive the re-*
14 *quirements of this paragraph upon a showing of ex-*
15 *traordinary circumstances;*

16 *“(4) no more than 90 percent of the equity of*
17 *such manufacturing affiliate shall be owned by its af-*
18 *iliated Bell Telephone Company and any affiliates of*
19 *that Bell Telephone Company;*

20 *“(5) any debt incurred by such manufacturing af-*
21 *iliate may not be issued by its affiliates, and such*
22 *manufacturing affiliate shall be prohibited from incur-*
23 *ring debt in a manner that would permit a creditor, on*
24 *default, to have recourse to the assets of its affiliated*

1 *Bell Telephone Company's telecommunications services*
2 *business;*

3 *“(6) such manufacturing affiliate shall not be re-*
4 *quired to operate separately from the other affiliates of*
5 *its affiliated Bell Telephone Company;*

6 *“(7) if an affiliate of a Bell Telephone Company*
7 *becomes affiliated with a manufacturing entity, such*
8 *affiliate shall be treated as a manufacturing affiliate of*
9 *that Bell Telephone Company within the meaning of*
10 *subsection (b) and shall comply with the requirements*
11 *of this section; and*

12 *“(8) such manufacturing affiliate shall make*
13 *available, without discrimination or self-preference as*
14 *to price, delivery, terms, or conditions, to all local tele-*
15 *phone exchange carriers, for use with the public tele-*
16 *communications network, any telecommunications*
17 *equipment manufactured by such affiliates so long as*
18 *each such purchasing carrier—*

19 *“(A) does not either manufacture telecom-*
20 *munications equipment, or have a manufacturing*
21 *affiliate which manufactures telecommunications*
22 *equipment, or*

23 *“(B) agrees to make available, to the Bell*
24 *Telephone Company affiliated with such manu-*
25 *facturing affiliate or any of the other affiliates of*

1 *such Company, any telecommunications equip-*
2 *ment manufactured by such purchasing carrier or*
3 *by any entity or organization with which such*
4 *carrier is affiliated.*

5 *“(d)(1) The Commission shall prescribe regulations to*
6 *require that each Bell Telephone Company shall maintain*
7 *and file with the Commission full and complete information*
8 *with respect to the protocols and technical requirements for*
9 *connection with and use of its telephone exchange service fa-*
10 *cilities. Such regulations shall require each such Company to*
11 *report promptly to the Commission any material changes or*
12 *proposed changes to such protocols and requirements, and the*
13 *schedule for implementation of such changes or proposed*
14 *changes.*

15 *“(2) A Bell Telephone Company shall not disclose to*
16 *any of its affiliates any information required to be filed*
17 *under paragraph (1) before that information is so filed.*

18 *“(3) When two or more carriers are providing regulated*
19 *telephone exchange service in the same area of interest, each*
20 *such carrier shall provide to other such carriers timely infor-*
21 *mation on the deployment of telecommunications equipment.*

22 *“(4) The Commission may prescribe such additional*
23 *regulations under this subsection as may be necessary to*
24 *ensure that manufacturers in competition with a Bell Tele-*
25 *phone Company’s manufacturing affiliate have ready and*

1 *equal access to the information required for such competition*
2 *that such Company makes available to its manufacturing*
3 *affiliate.*

4 “(e) *The Commission shall prescribe regulations requir-*
5 *ing that any Bell Telephone Company which has an affiliate*
6 *that engages in any manufacturing authorized by subsection*
7 *(a) shall—*

8 “(1) *provide, to other manufacturers of telecom-*
9 *munications equipment and customer premises equip-*
10 *ment, opportunities to sell such equipment to such Bell*
11 *Telephone Company which are comparable to the op-*
12 *portunities which such Company provides to its*
13 *affiliates;*

14 “(2) *not subsidize its manufacturing affiliate with*
15 *revenues from its regulated telecommunications ser-*
16 *ices; and*

17 “(3) *only purchase equipment from its manufac-*
18 *turing affiliate at the open market price.*

19 “(f) *A Bell Telephone Company and its affiliates may*
20 *engage in close collaboration with any manufacturer of cus-*
21 *tomers premises equipment or telecommunications equipment*
22 *during the design and development of hardware, software, or*
23 *combinations thereof relating to such equipment.*

1 “(g) *The Commission may prescribe such additional*
2 *rules and regulations as the Commission determines neces-*
3 *sary to carry out the provisions of this section.*

4 “(h) *For the purposes of administering and enforcing*
5 *the provisions of this section and the regulations prescribed*
6 *thereunder, the Commission shall have the same authority,*
7 *power, and functions with respect to any Bell Telephone*
8 *Company as the Commission has in administering and en-*
9 *forcing the provisions of this title with respect to any common*
10 *carrier subject to this Act.*

11 “(i) *The authority of the Commission to prescribe regu-*
12 *lations to carry out this section is effective on the date of*
13 *enactment of this section. The Commission shall prescribe*
14 *such regulations within 180 days after such date of enact-*
15 *ment, and the authority to engage in the manufacturing au-*
16 *thorized in subsection (a) shall not take effect until regula-*
17 *tions prescribed by the Commission under subsections (c),*
18 *(d), and (e) are in effect.*

19 “(j) *Nothing in this section shall prohibit any Bell Tele-*
20 *phone Company from engaging, directly or through any affil-*
21 *iate, in any manufacturing activity in which any company*
22 *or affiliate was authorized to engage on the date of enactment*
23 *of this section.*

24 “(k) *As used in this section:*

1 “(1) The term ‘affiliate’ means any organization
2 or entity that, directly or indirectly, owns or controls,
3 is owned or controlled by, or is under common owner-
4 ship with a Bell Telephone Company. Such term in-
5 cludes any organization or entity in which a Bell Tele-
6 phone Company or any of its affiliates has any finan-
7 cial or management interest.

8 “(2) The term ‘Bell Telephone Company’ means
9 those companies listed in appendix A of the Modifica-
10 tion of Final Judgment, and includes any successor or
11 assign of any such company, but does not include any
12 affiliate of any such company.

13 “(3) The term ‘customer premises equipment’
14 means equipment employed on the premises of a person
15 (other than a carrier) to originate, route, or terminate
16 telecommunications.

17 “(4) The term ‘manufacturing’ has the same
18 meaning as such term has in the Modification of Final
19 Judgment as interpreted in *United States v. Western*
20 *Electric*, Civil Action No. 82-0192 (United States
21 District Court, District of Columbia) (filed Decem-
22 ber 3, 1987).

23 “(5) The term ‘Modification of Final Judgment’
24 means the decree entered August 24, 1982, in *United*

1 *States v. Western Electric, Civil Action No. 82-0192*
2 *(United States District Court, District of Columbia).*

3 “(6) The term ‘telecommunications’ means the
4 transmission, between or among points specified by the
5 user, of information of the user’s choosing, without
6 change in the form or content of the information as
7 sent and received, by means of an electromagnetic
8 transmission medium, including all instrumentalities,
9 facilities, apparatus, and services (including the collec-
10 tion, storage, forwarding, switching, and delivery of
11 such information) essential to such transmission.

12 “(7) The term ‘telecommunications equipment’
13 means equipment, other than customer premises equip-
14 ment, used by a carrier to provide telecommunications
15 services.

16 “(8) The term ‘telecommunications service’ means
17 the offering for hire of telecommunications facilities, or
18 of telecommunications by means of such facilities.”

19 (b) **CONFORMING AMENDMENT.**—Section 2(b) of the
20 Communications Act of 1934 is amended striking “section
21 224” and inserting in lieu thereof “sections 224 and 225”.

Document No. 104

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 portunities which such Company provides to its affi-
2 ates;

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-
6minate 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

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;”.

O

Document No. 106

Union Calendar No. 487

102D CONGRESS
2D SESSION

H. R. 5096

[Report No. 102-850]

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

AUGUST 12, 1992

Additional sponsors: Mr. BRYANT, Mr. SYNAR, Mr. STAGGERS, Mr. HUBBARD, and Mr. JONES of North Carolina

AUGUST 12, 1992

Reported with an amendment, committed to the Committee of the Whole House on the State of the Union, and ordered to be printed

[Strike out all after the enacting clause and insert the part printed in italic]

[For text of introduced bill, see copy of bill as introduced on May 7, 1992]

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".*

6 **SEC. 2. AUTHORIZATION FOR BELL OPERATING COMPANY**
7 **MONOPOLY TO ENTER COMPETITIVE LINES**
8 **OF BUSINESS.**

9 (a) *APPLICATION.—*

10 (1) *IN GENERAL.—After the applicable date spec-*
11 *ified in paragraph (2), a Bell operating company*
12 *may apply to the Attorney General for authorization,*
13 *notwithstanding the Modification of Final*
14 *Judgment—*

15 (A) *to engage in research and development*
16 *relating to telecommunications equipment or cus-*
17 *tomers premises equipment,*

18 (B) *to provide information services,*

19 (C) *to manufacture or provide telecommuni-*
20 *cations equipment, or manufacture customer*
21 *premises equipment, or*

22 (D) *to provide interexchange telecommuni-*
23 *cations.*

24 *The application shall describe with particularity the*
25 *nature and scope of each activity, and of each product*

1 *market, service market, and geographic market, for*
2 *which authorization is sought.*

3 (2) *APPLICABLE DATES.*—*For purposes of para-*
4 *graph (1), the applicable date after which a Bell oper-*
5 *ating company may apply for authorization shall be*
6 *the date of the enactment of this Act.*

7 (3) *PUBLICATION.*—*Not later than 10 days after*
8 *receiving an application made under paragraph (1),*
9 *the Attorney General shall publish the application in*
10 *the Federal Register.*

11 (b) *DETERMINATION BY THE ATTORNEY GENERAL.*—

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

16 (2) *DETERMINATION.*—(A) *After the time for*
17 *comment under paragraph (1) has expired, but not*
18 *later than 120 days after the application is published*
19 *under subsection (a)(3), the Attorney General shall*
20 *issue a written determination with respect to grant-*
21 *ing the authorization for which the Bell operating*
22 *company has applied.*

23 (B)(i) *The Attorney General shall grant such au-*
24 *thorization only to the extent that the Attorney Gen-*
25 *eral believes that such company would satisfy the*

1 proof requirements described in subsection
2 (c)(2)(A)(i).

3 (ii) *The Attorney General shall deny the remain-*
4 *der of the requested authorization.*

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

10 (3) *PUBLICATION.—Not later than 10 days after*
11 *issuing a determination under paragraph (2), the At-*
12 *torney General shall publish the determination in the*
13 *Federal Register, together with a description of the*
14 *findings, studies, and analyses relied on for the deter-*
15 *mination.*

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

21 (c) *DE NOVO JUDICIAL DETERMINATION.—*

22 (1) *CIVIL ACTION.—Not later than—*

23 (A) *60 days after a determination by the*
24 *Attorney General is published under subsection*
25 *(b)(3), or*

1 (B) 60 days after the expiration of the 130-
2 day period beginning on the date the Attorney
3 General receives an application made under sub-
4 section (a)(1),

5 whichever occurs earlier, the Bell operating company
6 that applied to the Attorney General under subsection
7 (a), or any person who might be injured in its busi-
8 ness or property as a result of any determination re-
9 garding such company's engaging in the activity de-
10 scribed in such company's application, may com-
11 mence a civil action against the Attorney General, in
12 any district court of the United States in the district
13 in which such company resides or is found or has an
14 agent, for a de novo determination regarding the ap-
15 plication. Such company and any such person shall
16 also have the right to intervene as a party in the civil
17 action.

18 (2) JUDGMENT.—(A)(i) The court shall enter a
19 judgment granting the authorization for which the
20 Bell operating company applied to the Attorney Gen-
21 eral only to the extent that such company proves that
22 there is no substantial possibility that such company
23 or its affiliates could use monopoly power to impede
24 competition in any relevant market for the activity to
25 which the application relates.

1 (ii) *The court shall enter a judgment denying the*
2 *remainder of the requested authorization.*

3 (B) *A judgment granting any part of a requested*
4 *authorization shall describe with particularity the na-*
5 *ture and scope of each activity and of each product*
6 *market, service market, and geographic market to*
7 *which the authorization granted applies.*

8 (3) *STAY.—A judgment entered under paragraph*
9 *(2) shall be stayed until the time for all appeals with*
10 *respect to such judgment has expired.*

11 (d) *SPECIAL APPLICABLE DATE.—For purposes of sub-*
12 *section (a)(1), the applicable date for which a Bell operat-*
13 *ing company may apply for authorization with respect to*
14 *providing interexchange telecommunications, or an infor-*
15 *mation service relating to an alarm monitoring service,*
16 *shall be 5 years after the date of the enactment of this Act.*

17 **SEC. 3. AUTHORIZATION AS PREREQUISITE.**

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

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

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

5 (A) such order was entered on or before the
6 date of the enactment of this Act, or

7 (B) a request for such authorization was
8 pending before such court on the date of the en-
9 actment of this Act,

10 (2) in research and development in which any
11 such company was lawfully engaged at any time in
12 the period beginning on January 1, 1984, and ending
13 on the date of the enactment of this Act, or

14 (3) in providing a specific information service
15 (other than an information service relating to an
16 alarm monitoring service) in a particular geographic
17 market to the extent such company was lawfully en-
18 gaged in providing such service to customers in such
19 market at any time in the period beginning on Octo-
20 ber 7, 1991, and ending 60 days before the date of the
21 enactment of this Act.

22 **SEC. 4. PROHIBITIONS.**

23 (a) **ANTICOMPETITIVE DISCRIMINATION.**—A Bell oper-
24 ating company with monopoly power in any exchange serv-
25 ice market that is engaged (directly or through an affiliated

1 *enterprise) in an activity described in section 2(a)(1) shall*
2 *not discriminate, in any relevant market, between itself or*
3 *an affiliated enterprise and any other person, or between*
4 *any two such other persons, with respect to any product*
5 *or service related to the provision or use of a telecommuni-*
6 *cations service if the effect of such discrimination may be*
7 *to substantially lessen competition, or to tend to create a*
8 *monopoly, in any line of commerce.*

9 (b) *ANTICOMPETITIVE CROSS-SUBSIDIES.—A Bell op-*
10 *erating company with monopoly power in any exchange*
11 *service market shall not use (directly or indirectly) proceeds*
12 *obtained from providing exchange service in such market*
13 *to subsidize, in any relevant market, an activity described*
14 *in section 2(a)(1).*

15 (c) *ANTICOMPETITIVE CONCENTRATION AMONG BELL*
16 *OPERATING COMPANIES.—(1) Except as provided in para-*
17 *graph (2), a Bell operating company with monopoly power*
18 *in any exchange service market shall not become an affili-*
19 *ated enterprise of, or acquire (directly or indirectly) any*
20 *exchange service assets of, another Bell operating company*
21 *if the effect of such affiliation or acquisition may be to sub-*
22 *stantially lessen competition, or to tend to create a monop-*
23 *oly, in any line of commerce.*

24 (2) *Paragraph (1) shall not prohibit any acquisition*
25 *by a Bell operating company from another Bell operating*

1 company if the 2 companies are affiliates of each other on
2 the date of such acquisition and were affiliates of each other
3 on the date of the enactment of this Act.

4 (d) **ANTICOMPETITIVE JOINT ACTIVITY AMONG BELL**
5 **OPERATING COMPANIES.**—(1) Except as provided in para-
6 graph (2), it shall be unlawful for a Bell operating com-
7 pany with monopoly power in any exchange service market
8 to engage jointly (directly or through an affiliated enter-
9 prise) with another Bell operating company, in any rel-
10 evant market, in an activity described in section 2(a)(1)
11 in restraint of trade.

12 (2) **EXCEPTIONS.**—Paragraph (1) shall not prohibit
13 Bell operating companies from jointly engaging in an
14 activity—

15 (A) at Bell Communication Research (com-
16 monly known as “Bellcore”) if such companies were
17 lawfully engaging in such activity at Bell Commu-
18 nications Research at any time in the period begin-
19 ning on January 1, 1984, and ending on the date of
20 the enactment of this Act,

21 (B) if such companies are affiliates of each other
22 while jointly engaging in such activity and were af-
23 filiates of each other on the date of the enactment of
24 this Act, or

1 (C) if such companies were lawfully engaging
2 jointly in such activity on the date of the enactment
3 of this Act.

4 **SEC. 5. COMPLIANCE.**

5 (a) **DUTY TO ADVISE CERTAIN MANAGEMENT EMPLOY-**
6 **EES OF OBLIGATIONS UNDER ACT.**—Each Bell operating
7 company shall advise, in writing, each of its officers and
8 other management personnel with significant responsibility
9 for matters addressed in this Act, of the requirements of
10 this Act, and that violations of this Act may result in crimi-
11 nal liability.

12 (b) **CERTIFICATION OF COMPLIANCE.**—Not later than
13 30 days after the end of each calendar year, the chief execu-
14 tive officer of (or another officer responsible for the oper-
15 ation of) each Bell operating company that is not (directly
16 or indirectly) owned or controlled by another Bell operating
17 company shall certify in writing to the Attorney General
18 whether such company and its affiliates have complied
19 throughout such year with sections 3 and 4 and with sub-
20 section (a).

21 **SEC. 6. ENFORCEMENT.**

22 (a) **EQUITABLE POWERS OF UNITED STATES ATTOR-**
23 **NEYS.**—It shall be the duty of the several United States at-
24 torneys, under the direction of the Attorney General, to in-

1 *stitute proceedings in equity in their respective districts to*
2 *prevent and restrain violations of this Act.*

3 **(b) CRIMINAL LIABILITY.**—*Whoever knowingly engages*
4 *or knowingly attempts to engage in an activity that is pro-*
5 *hibited by section 3, 4, or 5 shall be guilty of a felony, and*
6 *on conviction thereof, shall be punished to the same extent*
7 *as a person is punished upon conviction of a violation of*
8 *section 1 of the Sherman Act (15 U.S.C. 1).*

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

12 **(1)** *may bring a civil action in any district*
13 *court of the United States in the district in which the*
14 *defendant resides or is found or has an agent, without*
15 *respect to the amount in controversy, and*

16 **(2)** *shall recover threefold the damages sustained,*
17 *and the cost of suit (including a reasonable attorney's*
18 *fee).*

19 *The court may award under this section, pursuant to a mo-*
20 *tion by such person promptly made, simple interest on ac-*
21 *tual damages for the period beginning on the date of service*
22 *of such person's pleading setting forth a claim under this*
23 *Act and ending on the date of judgment, or for any shorter*
24 *period therein, if the court finds that the award of such*
25 *interest for such period is just in the circumstances.*

1 (d) *PRIVATE INJUNCTIVE RELIEF.*—Any person shall
2 be entitled to sue for and have injunctive relief, in any court
3 of the United States having jurisdiction over the parties,
4 against threatened loss or damage by a violation of this Act,
5 when and under the same conditions and principles as in-
6 junctive relief is available under section 16 of the Clayton
7 Act (15 U.S.C. 26). In any action under this subsection
8 in which the plaintiff substantially prevails, the court shall
9 award the cost of suit, including a reasonable attorney's
10 fee, to such plaintiff.

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

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

19 (f) *SUBPOENAS.*—In an action commenced under this
20 Act, a subpoena requiring the attendance of a witness at
21 a hearing or a trial may be served at any place within
22 the United States.

23 **SEC. 7. DEFINITIONS.**

24 For purposes of this Act:

1 (1) *AFFILIATE.*—The term “affiliate” means a
2 person that (directly or indirectly) owns or controls,
3 is owned or controlled by, or is under common owner-
4 ship or control with, another person. For purposes of
5 this paragraph, to own refers to owning an equity in-
6 terest (or the equivalent thereof) of more than 50 per-
7 cent.

8 (2) *AFFILIATED ENTERPRISE.*—The term “affili-
9 ated enterprise” means, with respect to a Bell operat-
10 ing company, a person—

11 (A) that such company or its affiliate (di-
12 rectly or indirectly) owns or controls, is owned
13 or controlled by, or is under common ownership
14 with, to any extent whatsoever, or

15 (B) in whose gross revenues such company
16 or its affiliate has any direct or indirect finan-
17 cial or proprietary interest, through a revenue
18 sharing arrangement, royalty arrangement, or
19 otherwise.

20 (3) *ANTITRUST LAWS.*—The term “antitrust
21 laws” has the meaning given it in subsection (a) of
22 the first section of the Clayton Act (15 U.S.C. 12(a)),
23 except that such term includes the Act of June 19,
24 1936 (49 Stat. 1526; 15 U.S.C. 13 et seq.), commonly
25 known as the Robinson Patman Act, and section 5 of

1 *the Federal Trade Commission Act (15 U.S.C. 45) to*
2 *the extent that such section 5 applies to monopolies,*
3 *attempts to monopolize, and unlawful restraints of*
4 *trade.*

5 (4) *BELL OPERATING COMPANY.—The term “Bell*
6 *operating company” means—*

7 (A) *Bell Telephone Company of Nevada, Il-*
8 *linois Bell Telephone Company, Indiana Bell*
9 *Telephone Company, Incorporated, Michigan*
10 *Bell Telephone Company, New England Tele-*
11 *phone and Telegraph Company, New Jersey Bell*
12 *Telephone Company, New York Telephone Com-*
13 *pany, US West Communications Company,*
14 *South Central Bell Telephone Company, South-*
15 *ern Bell Telephone and Telegraph Company,*
16 *Southwestern Bell Telephone Company, The Bell*
17 *Telephone Company of Pennsylvania, The Chesa-*
18 *peake and Potomac Telephone Company, The*
19 *Chesapeake and Potomac Telephone Company of*
20 *Maryland, The Chesapeake and Potomac Tele-*
21 *phone Company of Virginia, The Chesapeake*
22 *and Potomac Telephone Company of West Vir-*
23 *ginia, The Diamond State Telephone Company,*
24 *The Ohio Bell Telephone Company, The Pacific*

1 *Telephone and Telegraph Company, or Wisconsin Telephone Company,*

2 *(B) any successor or assign of any such*
3 *company, or*

4 *(C) any affiliate of any person described in*
5 *subparagraph (A) or (B).*

6 (5) *CUSTOMER PREMISES EQUIPMENT.*—*The*
7 *term “customer premises equipment” means equip-*
8 *ment employed on the premises of a person (other*
9 *than a person engaged in the business of providing a*
10 *telecommunications service) to originate, route, or ter-*
11 *minate telecommunications, and includes software re-*
12 *lating to such equipment.*

13 (6) *ELECTRONIC PUBLISHING.*—*The term “elec-*
14 *tronic publishing” means the provision via tele-*
15 *communications, by a Bell operating company or af-*
16 *iliated enterprise to a person other than an affiliate*
17 *of such company, of information—*

18 *(A) which such company or affiliated enter-*
19 *prise has, or has caused to be, originated, au-*
20 *thored, compiled, collected, or edited, or*

21 *(B) in which such company or affiliated en-*
22 *terprise has a direct or indirect financial or pro-*
23 *prietary interest.*
24

1 (7) *EXCHANGE AREA.*—The term “exchange
2 area” means a contiguous geographic area established
3 by a Bell operating company such that no exchange
4 area includes points within more than 1 standard
5 metropolitan statistical area, consolidated statistical
6 area, or State, except as expressly permitted under the
7 Modification of Final Judgment before the date of the
8 enactment of this Act.

9 (8) *EXCHANGE ACCESS.*—The term “exchange ac-
10 cess” means exchange services provided for the pur-
11 pose of originating or terminating interexchange tel-
12 communications.

13 (9) *EXCHANGE SERVICE.*—The term “exchange
14 service” means a telecommunications service provided
15 within an exchange area.

16 (10) *INFORMATION.*—The term “information”
17 means knowledge or intelligence represented by any
18 form of writing, signs, signals, pictures, sounds, or
19 other symbols.

20 (11) *INFORMATION ACCESS.*—The term “infor-
21 mation access” means specialized exchange services
22 provided by a Bell operating company for the purpose
23 of originating, terminating, transmitting, forwarding,
24 or routing telecommunications to or from a provider
25 of information services.

1 (12) *INFORMATION SERVICE*.—The term “infor-
2 mation service” means the offering of a capability for
3 generating, acquiring, storing, transforming, process-
4 ing, retrieving, utilizing, or making available infor-
5 mation via telecommunications, and includes elec-
6 tronic publishing, but does not include the use of any
7 such capability to engage in the business of providing
8 an exchange service.

9 (13) *INTEREXCHANGE TELECOMMUNICATIONS*.—
10 The term “interexchange telecommunications” means
11 telecommunications between a point located in an ex-
12 change area and a point located outside such ex-
13 change area.

14 (14) *MODIFICATION OF FINAL JUDGMENT*.—The
15 term “Modification of Final Judgment” means the
16 order entered August 24, 1982, in the antitrust action
17 styled *U.S. v. Western Electric*, Civil Action No. 82-
18 9192, in the United States District Court for the Dis-
19 trict of Columbia, and includes any judgment or
20 order with respect to such action entered on or after
21 August 24, 1982.

22 (15) *PERSON*.—The term “person” has the mean-
23 ing given it in subsection (a) of the first section of the
24 Clayton Act (15 U.S.C. 12(a)).

- 1 (16) *RESEARCH AND DEVELOPMENT.*—*The term*
2 *“research and development” means—*
- 3 (A) *theoretical analysis, experimentation, or*
4 *systematic study of phenomena or observable*
5 *facts,*
- 6 (B) *development or testing of basic engi-*
7 *neering techniques,*
- 8 (C) *extension of investigative findings or*
9 *theory of a scientific or technical nature into*
10 *practical application for experimental or dem-*
11 *onstration purposes, but does not include produc-*
12 *tion or testing of models or prototypes,*
- 13 (D) *collection or analysis of research infor-*
14 *mation,*
- 15 (E) *establishment or operation of facilities*
16 *for conducting any activity included under sub-*
17 *paragraph (A), (B), (C), or (D), or*
- 18 (F) *prosecution of applications for patents,*
19 *or the granting of licenses, for the results of any*
20 *such activity.*
- 21 (17) *TELECOMMUNICATIONS.*—*The term “tele-*
22 *communications” means the transmission of informa-*
23 *tion between points by electromagnetic means.*
- 24 (18) *TELECOMMUNICATIONS EQUIPMENT.*—*The*
25 *term “telecommunications equipment” means equip-*

1 *ment, other than customer premises equipment, used*
2 *to provide a telecommunications service, and includes*
3 *software relating to such equipment.*

4 (19) *TELECOMMUNICATIONS SERVICE.*—*The term*
5 *“telecommunications service” means the offering for*
6 *hire of transmission facilities or of telecommuni-*
7 *cations by means of such facilities.*

8 (20) *TRANSMISSION FACILITIES.*—*The term*
9 *“transmission facilities” means equipment (including*
10 *wire, cable, microwave, satellite, and fiber-optics) that*
11 *transmits information by electromagnetic means or*
12 *that directly supports such transmission, but does not*
13 *include customer premises equipment.*

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

15 (a) *MODIFICATION OF FINAL JUDGMENT.*—*This Act*
16 *shall supersede the Modification of Final Judgment, except*
17 *that this Act shall not affect—*

18 (1) *section I of the Modification of Final Judg-*
19 *ment, relating to AT&T reorganization,*

20 (2) *section II(A) (including Appendix B) and*
21 *II(B) of the Modification of Final Judgment, relating*
22 *to equal access and nondiscrimination,*

23 (3) *section IV(F) and IV(I) of the Modification*
24 *of Final Judgment, with respect to the requirements*

- 1 *included in the definitions of "exchange access" and*
2 *"information access",*
- 3 *(4) section VIII(B) of the Modification of Final*
4 *Judgment, relating to printed advertising directories,*
- 5 *(5) section VIII(E) of the Modification of Final*
6 *Judgment, relating to notice to customers of AT&T,*
- 7 *(6) section VIII(F) of the Modification of Final*
8 *Judgment, relating to less than equal exchange access,*
- 9 *(7) section VIII(G) of the Modification of Final*
10 *Judgment, relating to transfer of AT&T assets, in-*
11 *cluding all exceptions granted thereunder before the*
12 *date of the enactment of this Act,*
- 13 *(8) with respect to the parts of the Modification*
14 *of Final Judgment described in paragraphs (1)*
15 *through (7)—*
- 16 *(A) section III of the Modification of Final*
17 *Judgment, relating to applicability,*
- 18 *(B) section IV of the Modification of Final*
19 *Judgment, relating to definitions,*
- 20 *(C) section V of the Modification of Final*
21 *Judgment, relating to compliance,*
- 22 *(D) section VI of the Modification of Final*
23 *Judgment, relating to visitorial provisions,*

1 (E) section VII of the Modification of Final
2 Judgment, relating to retention of jurisdiction,
3 and

4 (F) section VIII(I) of the Modification of
5 Final Judgment, relating to the court's sua
6 sponte authority.

7 (b) ANTITRUST LAWS.—Nothing in this Act shall be
8 construed to modify, impair, or supersede the applicability
9 of any other antitrust law.

10 (c) FEDERAL, STATE, AND LOCAL LAW.—(1) Except
11 as provided in paragraph (2), this Act shall not be con-
12 strued to modify, impair, or supersede Federal, State, or
13 local law other than law expressly referred to in this Act.

14 (2) This Act shall supersede State and local law to the
15 extent that such law would impair or prevent the operation
16 of this Act.

17 (d) CUMULATIVE PENALTY.—Any penalty imposed, or
18 relief granted, under this Act shall be in addition to, and
19 not in lieu of, any penalty or relief authorized by any other
20 law to be imposed with respect to conduct described in this
21 Act.

1 SEC. 9. AMENDMENT TO DEFINITION OF ANTITRUST LAWS

2 APPEARING IN THE CLAYTON ACT.

3 Subsection (a) of the first section of the Clayton Act
4 (15 U.S.C. 12(a)) is amended by inserting "the Antitrust
5 Reform Act of 1992;" after "thirteen;"

Document No. 107

103^D CONGRESS
1ST SESSION

S. 544

To amend the Federal Power Act to protect consumers of multistate utility systems, and for other purposes.

IN THE SENATE OF THE UNITED STATES

MARCH 10 (legislative day, MARCH 3), 1993

Mr. BUMPERS introduced the following bill; which was read twice and referred to the Committee on Energy and Natural Resources

A BILL

To amend the Federal Power Act to protect consumers of multistate utility systems, 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 referred to as the "Multistate Utility
5 Company Consumer Protection Act of 1993".

6 **SEC. 2. AFFILIATE CHARGES.**

7 (a) Section 205(a) of the Federal Power Act (16
8 U.S.C. 824d(a)) is amended—

9 (1) by inserting "(1)" immediately after "(a)";

10 and

1 (2) by adding at the end the following:

2 “(2) Notwithstanding any provision of the Public
3 Utility Holding Company Act of 1935, if a public utility
4 engages in a transaction with an affiliated company, the
5 Commission shall have the authority to review and dis-
6 allow the costs associated with such transaction for the
7 purposes of determining a just and reasonable rate under
8 subsection (a)(1).”.

9 (b) Section 206(a) of the Federal Power Act (16
10 U.S.C. 824e(a)) is amended—

11 (1) by inserting “(1)” immediately after “(a)”;

12 and

13 (2) by adding at the end the following:

14 “(2) Notwithstanding any provision of the Public
15 Utility Holding Company Act of 1935, if a public utility
16 engages in a transaction with an affiliated company, the
17 Commission shall have the authority to review and dis-
18 allow the costs associated with such transaction for the
19 purposes of determining a just and reasonable rate under
20 subsection (a)(1).”.

○

Document No. 108

Calendar No. 592

103D CONGRESS
2D SESSION

S. 544

[Report No. 103-351]

To amend the Federal Power Act to protect consumers of multistate utility systems, and for other purposes.

IN THE SENATE OF THE UNITED STATES

MARCH 10 (legislative day, MARCH 3), 1993

Mr. BUMPERS (for himself and Mr. METZENBAUM) introduced the following bill; which was read twice and referred to the Committee on Energy and Natural Resources

AUGUST 22 (legislative day, AUGUST 18), 1994

Reported by Mr. JOHNSTON, with an amendment

[Strike out all after the enacting clause and insert the part printed in italic]

A BILL

- 1 *Be it enacted by the Senate and House of Representa-*
- 2 *tives of the United States of America in Congress assembled,*
- 3 *Be it enacted by the Senate and House of Representa-*
- 4 *tives of the United States of America in Congress assembled,*

1 **SECTION 1. SHORT TITLE.**

2 This Act may be referred to as the "Multistate Utility
3 Company Consumer Protection Act of 1997".

4 **SEC. 2. AFFILIATE CHARGES.**

5 (a) Section 205(a) of the Federal Power Act (16
6 U.S.C. 821d(a)) is amended—

7 (1) by inserting "(1)" immediately after "(a)";

8 and

9 (2) by adding at the end the following:

10 "(2) Notwithstanding any provision of the Public
11 Utility Holding Company Act of 1935, if a public utility
12 engages in a transaction with an affiliated company, the
13 Commission shall have the authority to review and dis-
14 allow the costs associated with such transaction for the
15 purposes of determining a just and reasonable rate under
16 subsection (a)(1)."

17 (b) Section 206(a) of the Federal Power Act (16
18 U.S.C. 824e(a)) is amended—

19 (1) by inserting "(1)" immediately after "(a)";

20 and

21 (2) by adding at the end the following:

22 "(2) Notwithstanding any provision of the Public
23 Utility Holding Company Act of 1935, if a public utility
24 engages in a transaction with an affiliated company, the
25 Commission shall have the authority to review and dis-
26 allow the costs associated with such transaction for the

1 purposes of determining a just and reasonable rate under
2 subsection (a)(1).”

3 **SECTION 1. SHORT TITLE.**

4 *This Act may be cited as the “Multistate Utility*
5 *Consumer Protection Act of 1994”.*

6 **SEC. 2. AUTHORITY TO DISALLOW RECOVERY OF CERTAIN**
7 **COSTS UNDER FEDERAL POWER ACT.**

8 *Section 318 of the Federal Power Act is amended—*

9 *(1) by inserting “(a)” after “Sec. 318.”; and*

10 *(2) by adding at the end thereof the following*
11 *new subsections:*

12 *“(b)(1) The Commission shall have the authority to*
13 *disallow recovery in jurisdictional rates of any costs in-*
14 *curred by a public utility pursuant to a transaction that*
15 *has been authorized under section 13(b) of the Public Util-*
16 *ity Holding Company Act of 1935, including costs allocated*
17 *to such public utility in accordance with subsection (d), if*
18 *the Commission determines that the recovery of such costs*
19 *is unjust, unreasonable, or unduly preferential or discrimi-*
20 *natory under sections 205 or 206 of this Act.*

21 *“(2) Nothing in the Public Utility Holding Company*
22 *Act of 1935, or any actions taken thereunder, shall prevent*
23 *a State commission from exercising its jurisdiction to the*
24 *extent otherwise authorized under applicable law with re-*
25 *spect to the recovery by a public utility in its retail rates*

1 of costs incurred by such public utility pursuant to a trans-
2 action authorized by the Securities and Exchange Commis-
3 sion under section 13(b) between an associate company and
4 such public utility, including costs allocated to such public
5 utility in accordance with subsection (d).

6 “(c) In any proceeding of the Commission to consider
7 the recovery of costs described in subsection (b)(1), there
8 shall be a rebuttable presumption that such costs are just,
9 reasonable, and not unduly discriminatory or preferential
10 within the meaning of this Act.

11 “(d)(1) In any proceeding of the Commission to con-
12 sider the recovery of costs, the Commission shall give sub-
13 stantial deference to an allocation of charges for services,
14 construction work or goods among associate companies
15 under section 13 of the Public Utility Holding Company
16 Act of 1935, whether made by rule, regulation, or order of
17 the Securities and Exchange Commission prior to or follow-
18 ing the enactment of this subsection.

19 “(2) If the Commission pursuant to subsection (d)(1)
20 establishes an allocation of charges that differs from an allo-
21 cation established by the Securities and Exchange Commis-
22 sion with respect to the same charges, the allocation estab-
23 lished by the Federal Energy Regulatory Commission shall
24 be effective twelve months from the date of the order of the
25 Federal Energy Regulatory Commission establishing such

1 *allocation, and binding on the Securities and Exchange*
 2 *Commission as of that date.*

3 “(e) *An allocation of charges for services, construction*
 4 *work, or goods among associate companies under section 13*
 5 *of the Public Utility Holding Company Act of 1935, wheth-*
 6 *er made by rule, regulation, or order of the Securities and*
 7 *Exchange Commission prior to or following enactment of*
 8 *this subsection, shall prevent a State commission from*
 9 *using a different allocation with respect to the assignment*
 10 *of costs to any associate company.*

11 “(f) *Subsection (b) shall not apply to—*

12 “(1) *any cost incurred and recovered prior to*
 13 *July 15, 1994, whether or not subject to refund or ad-*
 14 *justment; or*

15 “(2) *any uncontested settlement approved by the*
 16 *Commission or a State commission prior to the date*
 17 *of enactment of the Multistate Utility Consumer Pro-*
 18 *tection Act of 1994.*

19 “(g) *IMPACT ON OTHER MATTERS.—The enactment of*
 20 *the Multistate Utility Consumer Protection Act of 1994*
 21 *shall in no way affect FERC Docket No. FA89-28.*

22 “(h) *SAVINGS PROVISION.—Section 318(b) of the Fed-*
 23 *eral Power Act shall not apply to any cost incurred and*
 24 *recovered prior to the date of enactment of the Multistate*
 25 *Utility Consumer Protection Act of 1994 pursuant to a con-*

1 *tract or other arrangement for the sale of fuel from Windsor*
2 *Coal Company or Central Ohio Coal Company which has*
3 *been the subject of a determination by the Securities and*
4 *Exchange Commission prior to the date of enactment of the*
5 *Multistate Utility Consumer Protection Act of 1994, or any*
6 *cost prudently incurred after the date of enactment of the*
7 *Multistate Utility Consumer Protection Act of 1994 pursu-*
8 *ant to such a contract or other such arrangement on or be-*
9 *fore December 31, 2000.”.*

Document No. 109

103D CONGRESS
1ST SESSION

H. R. 3626

To supersede the Modification of Final Judgment entered August 24, 1982, in the antitrust action styled United States v. Western Electric, Civil Action No. 82-0192, United States District Court for the District of Columbia; to amend the Communications Act of 1934 to regulate the manufacturing of Bell operating companies, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

NOVEMBER 22, 1993

Mr. BROOKS (for himself and Mr. DINGELL) introduced the following bill; which was referred jointly to the Committees on the Judiciary and Energy and Commerce

A BILL

To supersede the Modification of Final Judgment entered August 24, 1982, in the antitrust action styled United States v. Western Electric, Civil Action No. 82-0192, United States District Court for the District of Columbia; to amend the Communications Act of 1934 to regulate the manufacturing of Bell operating companies, 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 TITLES.**

4 (a) **TITLE I.**—Title I of this Act may be cited as the
5 “Antitrust Reform Act of 1993”.

1 (b) TITLE II.—Title II of this Act may be cited as
2 the Communications Reform Act of 1993”.

3 **TITLE I—SUPERSESSION OF THE**
4 **MODIFICATION OF FINAL**
5 **JUDGMENT**

6 **SEC. 101. AUTHORIZATION FOR BELL OPERATING COM-**
7 **PANY TO ENTER COMPETITIVE LINES OF**
8 **BUSINESS.**

9 (a) APPLICATION.—

10 (1) IN GENERAL.—After the applicable date
11 specified in paragraph (2), a Bell operating company
12 may apply simultaneously to the Attorney General
13 and the Federal Communications Commission for
14 authorization, notwithstanding the Modification of
15 Final Judgment—

16 (A) to provide alarm monitoring services,
17 or
18 (B) to provide interexchange telecommuni-
19 cations.

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

24 (2) APPLICABLE DATES.—For purposes of
25 paragraph (1), the applicable date after which a Bell

1 operating company may apply for authorization shall
2 be—

3 (A) the date of enactment of this Act, with
4 respect to—

5 (i) engaging in any activity described
6 in subparagraph (B), (C), or (D), to the
7 extent, with respect to each market to
8 which the activity relates, that there exists
9 no actual or potential competition,

10 (ii) offering of a service described in
11 subsection (b)(3)(D)(iii),

12 (iii) providing, through transmission
13 facilities owned by such company, of inter-
14 state interexchange telecommunications
15 that originate and terminate in exchange
16 areas in which the Bell operating company,
17 or an affiliate (as of November 21, 1993)
18 of such company that is a Bell operating
19 company, provided telephone exchange
20 service as of November 21, 1993,

21 (B) except to the extent that an earlier
22 date is available under subparagraph (A), the
23 date that occurs 18 months after the date of
24 enactment of this Act, with respect to providing
25 interexchange telecommunications through the

1 acquisition and resale of telecommunications
2 services,

3 (C) except to the extent that an earlier
4 date is available under subparagraph (A) or
5 (B), the date that occurs 60 months after the
6 date of enactment of this Act, with respect to
7 providing any interstate telecommunications,
8 and

9 (D) the date that occurs 66 months after
10 the date of enactment of this Act, with respect
11 to providing alarm monitoring services.

12 (3) INTERAGENCY NOTIFICATION.—Whenever
13 the Attorney General or the Federal Communica-
14 tions Commission receives an application made
15 under paragraph (1), the recipient of the application
16 shall notify the other of such receipt.

17 (4) PUBLICATION.—Not later than 10 days
18 after receiving an application made under paragraph
19 (1), the Attorney General and the Federal Commu-
20 nications Commission jointly shall publish the appli-
21 cation in the Federal Register.

22 (b) SEPARATE DETERMINATIONS BY THE ATTORNEY
23 GENERAL AND THE FEDERAL COMMUNICATIONS COMMIS-
24 SION.—

1 (1) COMMENT PERIOD.—Not later than 45 days
2 after the application is published under subsection
3 (a)(4), interested persons may submit comments to
4 the Attorney General, to the Federal Communica-
5 tions Commission, or to both regarding the applica-
6 tion. Submitted comments shall be available to the
7 public.

8 (2) INTERAGENCY CONSULTATION.—Before
9 making their respective determinations under para-
10 graph (3), the Attorney General and the Federal
11 Communications Commission shall consult with each
12 other regarding the application involved.

13 (3) DETERMINATIONS.—(A) After the time for
14 comment under paragraph (1) has expired, but not
15 later than 180 days after the application is received
16 under subsection (a)(1), the Attorney General and
17 the Federal Communications Commission each shall
18 issue separately a written determination, on the
19 record after an opportunity for a hearing, with re-
20 spect to granting the authorization for which the
21 Bell operating company has applied.

22 (B) Such determination shall be based on clear
23 and convincing evidence.

24 (C) A person who might be injured in its busi-
25 ness or property as a result of the approval of the

1 authorization requested shall be permitted to partici-
2 pate as a party in the proceeding on which the de-
3 termination is based.

4 (D)(i) The Attorney General shall approve the
5 granting of the authorization requested in the appli-
6 cation only to the extent that the Attorney General
7 finds that there is no substantial possibility that
8 such company or its affiliates could use monopoly
9 power to impede competition in the market such
10 company seeks to enter. The Attorney General shall
11 deny the remainder of the requested authorization.

12 (ii) The Federal Communications Commission
13 shall approve the granting of the requested author-
14 ization only to the extent that the Commission finds
15 that granting such request is consistent with the
16 public interest, convenience, and necessity. The
17 Commission shall deny the remainder of the re-
18 quested authorization.

19 (iii) Notwithstanding clauses (i) and (ii), within
20 180 days after the date of enactment of this Act, the
21 Attorney General and the Federal Communications
22 Commission shall jointly prescribe regulations to es-
23 tablish procedures and criteria for the expedited de-
24 termination and approval of applications for pro-
25 posed interexchange telecommunications services

1 that are incidental to the provision of another serv-
2 ice which the Bell operating company may lawfully
3 provide.

4 (E) In making any determination under sub-
5 paragraph (D)(ii) of the public interest, convenience,
6 and necessity, the Commission shall take into
7 account—

8 (i) the probability that approval of the re-
9 quested authorization will secure reduced rates
10 for consumers of the services that are the sub-
11 ject of the application, especially residential
12 subscribers,

13 (ii) whether approval of the requested au-
14 thorization will result in increases in rates for
15 consumers of exchange service,

16 (iii) the extent to which approval of the re-
17 quested authorization will expedite the delivery
18 of new services and products to consumers,

19 (iv) the extent to which the Commission's
20 regulations will preclude the applicant from en-
21 gaging in predatory pricing or other coercive
22 economic practices with respect to the services
23 that are the subject of the application,

24 (v) the extent to which approval of the re-
25 quested authorization would permit collusive

1 acts or practices between or among Bell operat-
2 ing companies that are not affiliates of each
3 other,

4 (vi) whether approval of the requested au-
5 thorization will result, directly or indirectly, in
6 increasing concentration among providers of the
7 service that is the subject of the application to
8 such an extent that consumers will not be pro-
9 tected from rates that are unjust or unreason-
10 able or that are unjustly or unreasonably dis-
11 criminatory, and

12 (vii) in the case of an application to pro-
13 vide alarm monitoring services, whether the
14 Commission has the capability to enforce effec-
15 tively the regulations established pursuant to
16 section 230 of the Communications Act of 1934
17 as added by this Act.

18 (F) A determination that approves the granting
19 of any part of a requested authorization shall de-
20 scribe with particularity the nature and scope of
21 each activity, and of each product market or service
22 market, and each geographic market, to which ap-
23 proval applies.

24 (4) PUBLICATION.—Not later than 10 days
25 after issuing a determination under paragraph (3),

1 the Attorney General or the Federal Communica-
2 tions Commission, as the case may be, shall publish
3 in the Federal Register a brief description of the
4 determination.

5 (5) FINALITY.—A determination made under
6 paragraph (3) shall be final unless a civil action with
7 respect to such determination is timely commenced
8 under subsection (c)(1).

9 (6) AUTHORIZATION GRANTED.—Subject to
10 paragraph (7), a requested authorization is granted
11 to the extent that—

12 (A)(i) both the Attorney General and the
13 Federal Communications Commission approved
14 under paragraph (3) the granting of the au-
15 thorization, and

16 (ii) neither of their approvals is vacated or
17 reversed as a result of judicial review author-
18 ized by subsection (c), or

19 (B) as a result of such judicial review of
20 either or both determinations, both the Attor-
21 ney General and the Federal Communications
22 Commission approve the granting of the re-
23 quested authorization.

24 (c) JUDICIAL REVIEW.—

1 (1) **CIVIL ACTION.**—Not later than 45 days
2 after a determination by the Attorney General or the
3 Federal Communications Commission is published
4 under subsection (b)(4), the Bell operating company
5 that applied to the Attorney General and the Fed-
6 eral Communications Commission under subsection
7 (a), or any person who might be injured in its busi-
8 ness or property as a result of the determination re-
9 garding such company's engaging in the activity de-
10 scribed in such company's application, may com-
11 mence a civil action against the Attorney General or
12 the Federal Communications Commission, as the
13 case may be, in the United States Court of Appeals
14 for the District of Columbia for review of the deter-
15 mination regarding the application.

16 (2) **CERTIFICATION OF RECORD.**—As part of
17 the answer to the complaint, the Attorney General
18 or the Federal Communications Commission, as the
19 case may be, shall file in such court a certified copy
20 of the record upon which the determination is based.

21 (3) **CONSOLIDATION OF ACTIONS.**—The court
22 shall consolidate for review all civil actions com-
23 menced under this subsection with respect to the ap-
24 plication.

1 (4) **JUDGMENT.**—(A) The court shall enter a
2 judgment after reviewing the determination in ac-
3 cordance with section 706 of title 5 of the United
4 States Code.

5 (B) A judgment—

6 (i) affirming the part of the determination
7 that approves granting all or part of the re-
8 quested authorization, or

9 (ii) reversing the part of the determination
10 that denies all or part of the requested author-
11 ization,

12 shall describe with particularity the nature and
13 scope of each activity, and of each product market
14 or service market, and each geographic market, to
15 which the affirmance or reversal applies.

16 **SEC. 102. AUTHORIZATION AS PREREQUISITE.**

17 (a) **PREREQUISITE.**—Until a Bell operating company
18 is so authorized in accordance with section 101, it shall
19 be unlawful for such company, directly or through an af-
20 filiated enterprise, to engage in an activity described in
21 section 101(a)(1).

22 (b) **EXCEPTIONS.**—Subsection (a) shall not prohibit
23 a Bell operating company from engaging, at any time after
24 the date of enactment of this Act—

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

5 (A) such order was entered on or before
6 the date of the enactment of this Act, or

7 (B) a request for such authorization was
8 pending before such court on the date of the
9 enactment of this Act,

10 (2) in providing interexchange telecommuni-
11 cations on an intrastate basis if, after the date of
12 enactment of this Act, such telecommunications have
13 been approved by, or are authorized under the laws
14 of, the State involved, and public notice of the avail-
15 ability of such authority has occurred at least 60
16 days before the offering of such interexchange tele-
17 communications, or

18 (3) in providing interexchange telecommuni-
19 cations through the purchase and resale of tele-
20 communications services obtained from a person who
21 is not an affiliate of such company if—

22 (A) such interexchange telecommunications
23 originate in any State that, after the date of
24 the enactment of this Act, approves or author-
25 izes persons that are not affiliates of such com-

1 pany to provide intraexchange toll telecommuni-
2 cations services in such a manner that cus-
3 tomers in such State have the ability to route
4 automatically, without the use of any access
5 code, their intraexchange toll telecommuni-
6 cations to the telecommunications services pro-
7 vider of the customer's designation from among
8 2 or more telecommunications services providers
9 (including such company), and

10 (B) not less than 45 days before such
11 company so provides such interexchange
12 telecommunications—

13 (i) such company gives public notice
14 of the availability of such approval or au-
15 thorization, and

16 (ii) the Attorney General fails to com-
17 mence a civil action to enjoin such com-
18 pany from so providing such interexchange
19 telecommunications.

20 **SEC. 103. LIMITATIONS ON MANUFACTURING AND PROVID-**
21 **ING EQUIPMENT.**

22 (a) **ABSOLUTE LIMITATION.**—Until the expiration of
23 the 1-year period beginning on the date of the enactment
24 of this Act, it shall be unlawful for a Bell operating com-
25 pany, directly or through an affiliated enterprise, to mar u-

1 facture or provide telecommunications equipment, or to
2 manufacture customer premises equipment.

3 (b) QUALIFIED LIMITATION.—

4 (1) REQUIRED CONDITIONS.—After the expira-
5 tion of the 1-year period beginning on the date of
6 the enactment of this Act, it shall be lawful for a
7 Bell operating company, directly or through an af-
8 filiated enterprise, to manufacture or provide tele-
9 communications equipment, or to manufacture cus-
10 tomer premises equipment, if—

11 (A) such company submits to the Attorney
12 General the notification described in paragraph
13 (2) and such additional material and informa-
14 tion described in such paragraph as the Attor-
15 ney General may request, and complies with the
16 waiting period specified in paragraph (3), and

17 (B) before the expiration of the waiting pe-
18 riod specified in paragraph (3)—

19 (i) the Attorney General fails to com-
20 mence a civil action to enjoin such com-
21 pany from engaging in the activity de-
22 scribed in such notification, or

23 (ii) the Attorney General notifies such
24 company that for purposes of this sub-
25 section the Attorney General does not in-

1 tend to commence such civil action before
2 the expiration of such waiting period.

3 (2) NOTIFICATION.—The notification required
4 by paragraph (1) shall be in such form and shall
5 contain such documentary material and information
6 relevant to the proposed activity as is necessary and
7 appropriate for the Attorney General to determine
8 whether there is no substantial possibility that such
9 company or its affiliates could use monopoly power
10 to impede competition in the market such company
11 seeks to enter for such activity.

12 (3) WAITING PERIOD.—The waiting period re-
13 ferred to in paragraph (1) is the 1-year period be-
14 ginning on the date the notification required by such
15 paragraph is received by the Attorney General.

16 (4) CIVIL ACTION.—Not later than 1 year after
17 receiving a notification required by paragraph (1),
18 the Attorney General may commence a civil action
19 an appropriate district court of the United States to
20 enjoin the Bell operating company from engaging in
21 the activity described in such notification.

22 (c) EXCEPTION FOR PREVIOUSLY AUTHORIZED AC-
23 TIVITIES.—Subsections (a) and (b) shall not prohibit a
24 Bell operating company from engaging, at any time after
25 the date of enactment of this Act, in any activity as au-

1 thORIZED BY AN ORDER ENTERED BY THE UNITED STATES DISTRICT
2 COURT FOR THE DISTRICT OF COLUMBIA PURSUANT TO SECTION
3 VIII(C) OF THE MODIFICATION OF FINAL JUDGMENT, IF—

4 (1) SUCH ORDER WAS ENTERED ON OR BEFORE THE
5 DATE OF THE ENACTMENT OF THIS ACT, OR

6 (2) A REQUEST FOR SUCH AUTHORIZATION WAS PEND-
7 ING BEFORE SUCH COURT ON THE DATE OF THE ENACTMENT
8 OF THIS ACT.

9 **SEC. 104. ANTICOMPETITIVE TYING ARRANGEMENTS.**

10 A BELL OPERATING COMPANY WITH MONOPOLY POWER IN
11 ANY EXCHANGE SERVICE MARKET SHALL NOT TIE (DIRECTLY OR INDI-
12 RECTLY) IN ANY RELEVANT MARKET THE SALE OF ANY PRODUCT OR
13 SERVICE TO THE PROVISION OF ANY TELECOMMUNICATIONS SERVICE,
14 IF THE EFFECT OF SUCH TYING MAY BE TO SUBSTANTIALLY LESSEN
15 COMPETITION, OR TO TEND TO CREATE MONOPOLY, IN ANY LINE
16 OF COMMERCE.

17 **SEC. 105. ENFORCEMENT.**

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

23 (b) **CRIMINAL LIABILITY.**—Whoever knowingly en-
24 gages or knowingly attempts to engage in an activity that
25 is prohibited by section 102, 103, or 104 shall be guilty

1 of a felony, and on conviction thereof, shall be punished
2 to the same extent as a person is punished upon conviction
3 of a violation of section 1 of the Sherman Act
4 (15 U.S.C. 1).

5 (c) PRIVATE RIGHT OF ACTION.—Any person who is
6 injured in its business or property by reason of a violation
7 of this Act—

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

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

15 The court may award under this section, pursuant to a
16 motion by such person promptly made, simple interest on
17 actual damages for the period beginning on the date of
18 service of such person's pleading setting forth a claim
19 under this Act and ending on the date of judgment, or
20 for any shorter period therein, if the court finds that the
21 award of such interest for such period is just in the
22 circumstances.

23 (d) PRIVATE INJUNCTIVE RELIEF.—Any person shall
24 be entitled to sue for and have injunctive relief, in any
25 court of the United States having jurisdiction over the

1 parties, against threatened loss or damage by a violation
2 of this Act, when and under the same conditions and prin-
3 ciples as injunctive relief is available under section 16 of
4 the Clayton Act (15 U.S.C. 26). In any action under this
5 subsection in which the plaintiff substantially prevails, the
6 court shall award the cost of suit, including a reasonable
7 attorney's fee, to such plaintiff.

8 (e) JURISDICTION.—(1) Subject to paragraph (2),
9 the courts of the United States shall have exclusive juris-
10 diction to make determinations with respect to a duty,
11 claim, or right arising under this Act, other than deter-
12 minations authorized to be made by the Attorney General
13 and the Federal Communications Commission under sec-
14 tion 101(b)(3).

15 (2) The United States Court of Appeals for the Dis-
16 trict of Columbia shall have exclusive jurisdiction to review
17 determinations made under section 101(b)(3).

18 (3) No action commenced to assert or enforce a duty,
19 claim, or right arising under this Act shall be stayed pend-
20 ing any such determination by the Attorney General or
21 the Federal Communications Commission.

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

1 **SEC. 106. DEFINITIONS.**

2 For purposes of this Act:

3 (1) **AFFILIATE.**—The term “affiliate” means a
4 person that (directly or indirectly) owns or controls,
5 is owned or controlled by, or is under common own-
6 ership or control with, another person. For purposes
7 of this paragraph, to own refers to owning an equity
8 interest (or the equivalent thereof) of more than 50
9 percent.

10 (2) **ALARM MONITORING SERVICES.**—The term
11 “alarm monitoring services” means services that de-
12 tect threats to life, safety, or property, by burglary,
13 fire, vandalism, bodily injury, or other emergency,
14 through the use of devices that transmit signals to
15 a central point in a customer’s residence, place of
16 business, or other fixed premises which—

17 “(A) retransmits such signals to a remote
18 monitoring center by means of telephone ex-
19 change service facilities, and

20 “(B) serves to alert persons at the mon-
21 itoring center of the need to inform police, fire,
22 rescue, or other security or public safety per-
23 sonnel of the threat at such premises.

24 Such term does not include medical monitoring de-
25 vices attached to individuals for the automatic sur-
26 veillance of ongoing medical conditions.

1 (3) ANTITRUST LAWS.—The term “antitrust
2 laws” has the meaning given it in subsection (a) of
3 the first section of the Clayton Act (15 U.S.C.
4 12(a)), except that such term includes the Act of
5 June 19, 1936 (49 Stat. 1526; 15 U.S.C. 13 et
6 seq.), commonly known as the Robinson Patman
7 Act, and section 5 of the Federal Trade Commission
8 Act (15 U.S.C. 45) to the extent that such section
9 5 applies to monopolies, attempts to monopolize, and
10 unlawful restraints of trade.

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

13 (A) Bell Telephone Company of Nevada,
14 Illinois Bell Telephone Company, Indiana Bell
15 Telephone Company, Incorporated, Michigan
16 Bell Telephone Company, New England Tele-
17 phone and Telegraph Company, New Jersey
18 Bell Telephone Company, New York Telephone
19 Company, US West Communications Company,
20 South Central Bell Telephone Company, South-
21 ern Bell Telephone and Telegraph Company,
22 Southwestern Bell Telephone Company, The
23 Bell Telephone Company of Pennsylvania, The
24 Chesapeake and Potomac Telephone Company,
25 The Chesapeake and Potomac Telephone Com-

1 pany of Maryland, The Chesapeake and Poto-
2 mac Telephone Company of Virginia, The
3 Chesapeake and Potomac Telephone Company
4 of West Virginia, The Diamond State Tele-
5 phone Company, The Ohio Bell Telephone
6 Company, The Pacific Telephone and Telegraph
7 Company, or Wisconsin Telephone Company, or

8 (B) any successor or assign of any such
9 company.

10 (5) CUSTOMER PREMISES EQUIPMENT.—The
11 term “customer premises equipment” means equip-
12 ment employed on the premises of a person (other
13 than a person engaged in the business of providing
14 a telecommunications service) to originate, route, or
15 terminate telecommunications, and includes software
16 relating to such equipment.

17 (6) ELECTRONIC PUBLISHING.—The term
18 “electronic publishing” means the provision via tele-
19 communications, by a Bell operating company or an
20 affiliate of such company to a person other than an
21 affiliate of such company, of information—

22 (A) which such company or affiliate has, or
23 has caused to be, originated, authored, com-
24 piled, collected, or edited, or

1 (B) in which such company or affiliate has
2 a direct or indirect financial or proprietary
3 interest.

4 (7) EXCHANGE AREA.—The term “exchange
5 area” means a contiguous geographic area estab-
6 lished by a Bell operating company such that no ex-
7 change area includes points within more than 1 met-
8 ropolitan statistical area, consolidated metropolitan
9 statistical area, or State, except as expressly per-
10 mitted under the Modification of Final Judgment
11 before the date of the enactment of this Act.

12 (8) EXCHANGE ACCESS.—The term “exchange
13 access” means exchange services provided for the
14 purpose of originating or terminating interexchange
15 telecommunications.

16 (9) EXCHANGE SERVICE.—The term “exchange
17 service” means a telecommunications service pro-
18 vided within an exchange area.

19 (10) INFORMATION.—The term “information”
20 means knowledge or intelligence represented by any
21 form of writing, signs, signals, pictures, sounds, or
22 other symbols.

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

1 located in an exchange area and a point located out-
2 side such exchange area. Such term does not include
3 alarm monitoring services or electronic publishing.

4 (12) **MODIFICATION OF FINAL JUDGMENT.**—

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

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

15 (14) **TELECOMMUNICATIONS.**—The term “tele-
16 communications” means the transmission of infor-
17 mation between points by electromagnetic means.

18 (15) **TELECOMMUNICATIONS EQUIPMENT.**—The
19 term “telecommunications equipment” means equip-
20 ment, other than customer premises equipment, used
21 to provide a telecommunications service, and in-
22 cludes software relating to such equipment.

23 (16) **TELECOMMUNICATIONS SERVICE.**—The
24 term “telecommunications service” means the offer-
25 ing for hire of transmission facilities or of tele-

1 communications by means of such facilities. Such
2 term does not include alarm monitoring services or
3 electronic publishing.

4 (17) TRANSMISSION FACILITIES.—The term
5 “transmission facilities” means equipment (including
6 wire, cable, microwave, satellite, and fiber-optics)
7 that transmits information by electromagnetic means
8 or that directly supports such transmission, but does
9 not include customer premises equipment.

10 **SEC. 107. RELATIONSHIP TO OTHER LAWS.**

11 (a) MODIFICATION OF FINAL JUDGMENT.—This Act
12 shall supersede the Modification of Final Judgment, ex-
13 cept that this Act shall not affect—

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

16 (2) section II(A) (including Appendix B) and
17 II(B) of the Modification of Final Judgment, relat-
18 ing to equal access and nondiscrimination,

19 (3) section IV(F) and IV(I) of the Modification
20 of Final Judgment, with respect to the requirements
21 included in the definitions of “exchange access” and
22 “information access”,

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

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

3 (6) section VIII(F) of the Modification of Final
4 Judgment, relating to less than equal exchange
5 access,

6 (7) section VIII(G) of the Modification of Final
7 Judgment, relating to transfer of AT&T assets, in-
8 cluding all exceptions granted thereunder before the
9 date of the enactment of this Act,

10 (8) with respect to the parts of the Modification
11 of Final Judgment described in paragraphs (1)
12 through (7)—

13 (A) section III of the Modification of Final
14 Judgment, relating to applicability,

15 (B) section IV of the Modification of Final
16 Judgment, relating to definitions,

17 (C) section V of the Modification of Final
18 Judgment, relating to compliance,

19 (D) section VI of the Modification of Final
20 Judgment, relating to visitorial provisions,

21 (E) section VII of the Modification of
22 Final Judgment, relating to retention of juris-
23 diction, and

1 (F) section VIII(I) of the Modification of
2 Final Judgment, relating to the court's sua
3 sponte authority.

4 (b) ANTITRUST LAWS.—Nothing in this Act shall be
5 construed to modify, impair, or supersede the applicability
6 of any other antitrust law.

7 (c) FEDERAL, STATE, AND LOCAL LAW.—(1) Except
8 as provided in paragraph (2), this Act shall not be con-
9 strued to modify, impair, or supersede Federal, State, or
10 local law unless expressly so provided in this Act.

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

14 (d) CUMULATIVE PENALTY.—Any penalty imposed,
15 or relief granted, under this Act shall be in addition to,
16 and not in lieu of, any penalty or relief authorized by any
17 other law to be imposed with respect to conduct described
18 in this Act.

19 **SEC. 108. AMENDMENT TO DEFINITION OF ANTITRUST**
20 **LAWS APPEARING IN THE CLAYTON ACT.**

21 Subsection (a) of the first section of the Clayton Act
22 (15 U.S.C. 12(a)) is amended by inserting “the Antitrust
23 Reform Act of 1993;” after “thirteen;”.

1 **TITLE II—REGULATION OF MAN-**
2 **UFACTURING, ALARM SERV-**
3 **ICES AND ELECTRONIC PUB-**
4 **LISHING BY BELL OPERATING**
5 **COMPANIES**

6 **SEC. 201. REGULATION OF MANUFACTURING BY BELL OP-**
7 **ERATING COMPANIES.**

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

11 **"SEC. 229. REGULATION OF MANUFACTURING BY BELL**
12 **OPERATING COMPANIES.**

13 "(a) **GENERAL AUTHORITY.**—Subject to the require-
14 ments of this section and the regulations prescribed there-
15 under, but notwithstanding any restriction or obligation
16 imposed before the date of enactment of this section pur-
17 suant to the Modification of Final Judgment on the lines
18 of business in which a Bell operating company may en-
19 gage, a Bell operating company, through an affiliate of
20 that company, may manufacture and provide tele-
21 communications equipment and manufacture customer
22 premises equipment.

23 "(b) **SEPARATE MANUFACTURING AFFILIATE.**—Any
24 manufacturing or provision authorized under subsection

1 (a) shall be conducted only through an affiliate that is sep-
2 arate from any Bell operating company.

3 “(c) COMMISSION REGULATION OF MANUFACTURING
4 AFFILIATE.—

5 “(1) REGULATIONS REQUIRED.—The Commis-
6 sion shall prescribe regulations to ensure that Bell
7 operating companies and their affiliates comply with
8 the requirements of this section.

9 “(2) BOOKS, RECORDS, ACCOUNTS.—A manu-
10 facturing affiliate required by subsection (b) shall
11 maintain books, records, and accounts separate from
12 its affiliated Bell operating company which identify
13 all financial transactions between the manufacturing
14 affiliate and its affiliated Bell operating company
15 and, even if such manufacturing affiliate is not a
16 publicly held corporation, prepare financial state-
17 ments which are in compliance with financial report-
18 ing requirements under the Federal securities laws
19 for publicly held corporations, file such statements
20 with the Commission, and make such statements
21 available for public inspection.

22 “(3) IN-KIND BENEFITS TO AFFILIATE.—Con-
23 sistent with the provisions of this section, neither a
24 Bell operating company nor any of its
25 nonmanufacturing affiliates shall perform sales, ad-

1 vertising, installation, production, or maintenance
2 operations for a manufacturing affiliate, except
3 that—

4 “(A) a Bell operating company and its
5 nonmanufacturing affiliates may sell, advertise,
6 install, and maintain telecommunications equip-
7 ment and customer premises equipment after
8 acquiring such equipment from their manufac-
9 turing affiliate; and

10 “(B) institutional advertising, of a type not
11 related to specific telecommunications equip-
12 ment, carried out by the Bell operating com-
13 pany or its affiliates, shall be permitted.

14 “(4) DOMESTIC MANUFACTURING REQUIRED.—

15 “(A) GENERAL RULE.—A manufacturing
16 affiliate required by subsection (b) shall conduct
17 all of its manufacturing within the United
18 States and, except as otherwise provided in this
19 paragraph, all component parts of customer
20 premises equipment manufactured by such affil-
21 iate, and all component parts of telecommuni-
22 cations equipment manufactured by such affili-
23 ate, shall have been manufactured within the
24 United States.

1 “(B) EXCEPTION.—Such affiliate may use
2 component parts manufactured outside the
3 United States if—

4 “(i) such affiliate first makes a good
5 faith effort to obtain equivalent component
6 parts manufactured within the United
7 States at reasonable prices, terms, and
8 conditions; and

9 “(ii) for the aggregate of tele-
10 communications equipment and customer
11 premises equipment manufactured and sold
12 in the United States by such affiliate, the
13 cost of the components manufactured out-
14 side the United States contained in all
15 such equipment does not exceed 40 percent
16 of the sales revenue derived in any cal-
17 endar year from such equipment.

18 “(C) CERTIFICATION REQUIRED.—Any
19 such affiliate that uses component parts manu-
20 factured outside the United States in the manu-
21 facture of telecommunications equipment and
22 customer premises equipment within the United
23 States shall—

24 “(i) certify to the Commission that a
25 good faith effort was made to obtain equiv-

1 alent parts manufactured within the
2 United States at reasonable prices, terms,
3 and conditions, which certification shall be
4 filed on a quarterly basis with the Commis-
5 sion and list component parts, by type,
6 manufactured outside the United States;
7 and

8 “(ii) certify to the Commission on an
9 annual basis that such affiliate complied
10 with the requirements of subparagraph
11 (B)(ii), as adjusted in accordance with
12 subparagraph (G).

13 “(D) REMEDIES FOR FAILURES.—(i) If the
14 Commission determines, after reviewing the cer-
15 tification required in subparagraph (C)(i), that
16 such affiliate failed to make the good faith ef-
17 fort required in subparagraph (B)(i) or, after
18 reviewing the certification required in subpara-
19 graph (C)(ii), that such affiliate has exceeded
20 the percentage specified in subparagraph
21 (B)(ii), the Commission may impose penalties
22 or forfeitures as provided for in title V of this
23 Act.

24 “(ii) Any supplier claiming to be damaged
25 because a manufacturing affiliate failed to

1 make the good faith effort required in subpara-
2 graph (B)(i) may make complaint to the Com-
3 mission as provided for in section 208 of this
4 Act, or may bring suit for the recovery of actual
5 damages for which such supplier claims such
6 affiliate may be liable under the provisions of
7 this Act in any district court of the United
8 States of competent jurisdiction.

9 “(E) ANNUAL REPORT.—The Commission,
10 in consultation with the Secretary of Commerce,
11 shall, on an annual basis, determine the cost of
12 component parts manufactured outside the
13 United States contained in all telecommuni-
14 cations equipment and customer premises
15 equipment sold in the United States as a per-
16 centage of the revenues from sales of such
17 equipment in the previous calendar year.

18 “(F) USE OF INTELLECTUAL PROPERTY IN
19 MANUFACTURE.—Notwithstanding subpara-
20 graph (A), a manufacturing affiliate may use
21 intellectual property created outside the United
22 States in the manufacture of telecommuni-
23 cations equipment and customer premises
24 equipment in the United States. A component
25 manufactured using such intellectual property

1 shall not be treated for purposes of subpara-
2 graph (B)(ii) as a component manufactured
3 outside the United States solely on the basis of
4 the use of such intellectual property.

5 “(G) RESTRICTIONS ON COMMISSION AU-
6 THORITY.—The Commission may not waive or
7 alter the requirements of this paragraph, except
8 that the Commission, on an annual basis, shall
9 adjust the percentage specified in subparagraph
10 (B)(ii) to the percentage determined by the
11 Commission, in consultation with the Secretary
12 of Commerce, pursuant to subparagraph (E).

13 “(5) INSULATION OF RATE PAYERS FROM MAN-
14 UFACTURING AFFILIATE DEBT.—Any debt incurred
15 by any such manufacturing affiliate may not be is-
16 sued by its affiliated Bell operating company and
17 such manufacturing affiliate shall be prohibited from
18 incurring debt in a manner that would permit a
19 creditor, on default, to have recourse to the assets
20 of its affiliated Bell operating company.

21 “(6) RELATION TO OTHER AFFILIATES.—A
22 manufacturing affiliate required by subsection (b)
23 shall not be required to operate separately from the
24 other affiliates of its affiliated Bell operating com-
25 pany, but if an affiliate of a Bell operating company

1 becomes affiliated with a manufacturing entity, such
2 affiliate shall be treated as a manufacturing affiliate
3 of that Bell operating company and shall comply
4 with the requirements of this section.

5 “(7) AVAILABILITY OF EQUIPMENT TO OTHER
6 CARRIERS.—A manufacturing affiliate required by
7 subsection (b) shall make available, without discrimi-
8 nation or self-preference as to price, delivery, terms,
9 or conditions, to any common carrier any tele-
10 communications equipment that is used in the provi-
11 sion of telephone exchange service and that is manu-
12 factured by such affiliate so long as each such pur-
13 chasing carrier—

14 “(A) does not either manufacture tele-
15 communications equipment, or have an affili-
16 ated telecommunications equipment manufac-
17 turing entity; or

18 “(B) agrees to make available, to the Bell
19 operating company affiliated with such manu-
20 facturing affiliate or any common carrier affili-
21 ate of such Bell operating company, any tele-
22 communications equipment that is used in the
23 provision of telephone exchange service and that
24 is manufactured by such purchasing carrier or

1 by any entity or organization with which such
2 purchasing carrier is affiliated.

3 “(8) SALES PRACTICES OF MANUFACTURING
4 AFFILIATES.—

5 “(A) PROHIBITION OF DISCONTINUATION
6 OF EQUIPMENT FOR WHICH THERE IS REASON-
7 ABLE DEMAND.—A manufacturing affiliate re-
8 quired by subsection (b) shall not discontinue or
9 restrict sales to a common carrier of any tele-
10 communications equipment that is used in the
11 provision of telephone exchange service and that
12 such affiliate manufactures for sale as long as
13 there is reasonable demand for the equipment
14 by such carriers; except that such sales may be
15 discontinued or restricted if such manufactur-
16 ing affiliate demonstrates to the Commission
17 that it is not making a profit, under a marginal
18 cost standard implemented by the Commission
19 by regulation, on the sale of such equipment.

20 “(B) DETERMINATIONS OF REASONABLE
21 DEMAND.—Within 60 days after receipt of an
22 application under subparagraph (A), the Com-
23 mission shall reach a determination as to the
24 existence of reasonable demand for purposes of

1 such subparagraph. In making such determina-
2 tion the Commission shall consider—

3 “(i) whether the continued manufac-
4 ture of the equipment will be profitable;

5 “(ii) whether the equipment is func-
6 tionally or technologically obsolete;

7 “(iii) whether the components nec-
8 essary to manufacture the equipment con-
9 tinue to be available;

10 “(iv) whether alternatives to the
11 equipment are available in the market; and

12 “(v) such other factors as the Com-
13 mission deems necessary and proper.

14 “(9) JOINT PLANNING OBLIGATIONS.—Each
15 Bell operating company shall, consistent with the
16 antitrust laws, engage in joint network planning and
17 design with other contiguous common carriers pro-
18 viding telephone exchange service, but agreement
19 with such other carriers shall not be required as a
20 prerequisite for such introduction or deployment.

21 “(d) INFORMATION REQUIREMENTS.—

22 “(1) FILING OF INFORMATION ON PROTOCOLS
23 AND TECHNICAL REQUIREMENTS.—Each Bell oper-
24 ating company shall, in accordance with regulations
25 prescribed by the Commission, maintain and file

1 with the Commission full and complete information
2 with respect to the protocols and technical require-
3 ments for connection with and use of its telephone
4 exchange service facilities. Each such company shall
5 report promptly to the Commission any material
6 changes or planned changes to such protocols and
7 requirements, and the schedule for implementation
8 of such changes or planned changes.

9 “(2) FILING AS PREREQUISITE TO DISCLOSURE
10 TO AFFILIATE.—A Bell operating company shall not
11 disclose to any of its affiliates any information re-
12 quired to be filed under paragraph (1) unless that
13 information is filed promptly, as required by regula-
14 tion by the Commission.

15 “(3) ACCESS BY COMPETITORS TO INFORMA-
16 TION.—The Commission may prescribe such addi-
17 tional regulations under this subsection as may be
18 necessary to ensure that manufacturers in competi-
19 tion with a Bell operating company’s manufacturing
20 affiliate have access to the information with respect
21 to the protocols and technical requirements for con-
22 nection with and use of its telephone exchange serv-
23 ice facilities required for such competition that such
24 company makes available to its manufacturing
25 affiliate.

1 “(4) **PLANNING INFORMATION.**—Each Bell op-
2 erating company shall provide, to contiguous com-
3 mon carriers providing telephone exchange service,
4 timely information on the planned deployment of
5 telecommunications equipment.

6 “(e) **ADDITIONAL COMPETITION REQUIREMENTS.**—
7 The Commission shall prescribe regulations requiring that
8 any Bell operating company which has an affiliate that
9 engages in any manufacturing authorized by subsection
10 (a) shall—

11 “(1) provide, to other manufacturers of tele-
12 communications equipment and customer premises
13 equipment that is functionally equivalent to equip-
14 ment manufactured by the Bell operating company
15 manufacturing affiliate, opportunities to sell such
16 equipment to such Bell operating company which are
17 comparable to the opportunities which such Com-
18 pany provides to its affiliates; and

19 “(2) not subsidize its manufacturing affiliate
20 with revenues from telephone exchange service or
21 telephone toll service.

22 “(f) **COLLABORATION PERMITTED.**—Nothing in this
23 section (other than subsection (m)) shall be construed to
24 limit or restrict the ability of a Bell operating company
25 and its affiliates to engage in close collaboration with any

1 manufacturer of customer premises equipment or tele-
2 communications equipment during the design and develop-
3 ment of hardware, software, or combinations thereof
4 related to such equipment.

5 **“(g) ACCESSIBILITY REQUIREMENTS.—**

6 **“(1) MANUFACTURING.—**The Commission shall,
7 within 1 year after the date of enactment of this sec-
8 tion, prescribe such regulations as are necessary to
9 ensure that telecommunications equipment and cus-
10 tomer premises equipment designed, developed, and
11 fabricated pursuant to the authority granted in this
12 section shall be accessible and usable by individuals
13 with disabilities, including individuals with func-
14 tional limitations of hearing, vision, movement, ma-
15 nipulation, speech, and interpretation of information,
16 unless the costs of making the equipment accessible
17 and usable would result in an undue burden or an
18 adverse competitive impact.

19 **“(2) NETWORK SERVICES.—**The Commission
20 shall, within 1 year after the date of enactment of
21 this section, prescribe such regulations as are nec-
22 essary to ensure that advances in network services
23 deployed by a Bell operating company shall be acces-
24 sible and usable by individuals whose access might
25 otherwise be impeded by a disability or functional

1 limitation, unless the costs of making the services
2 accessible and usable would result in an undue bur-
3 den or adverse competitive impact. Such regulations
4 shall seek to permit the use of both standard and
5 special equipment and seek to minimize the need of
6 individuals to acquire additional devices beyond
7 those used by the general public to obtain such
8 access.

9 “(3) COMPATIBILITY.—The regulations pre-
10 scribed under paragraphs (1) and (2) shall require
11 that whenever an undue burden or adverse competi-
12 tive impact would result from the manufacturing or
13 network services requirements in such paragraphs,
14 the manufacturing affiliate that designs, develops, or
15 fabricates the equipment or the Bell operating com-
16 pany that deploys the network service shall ensure
17 that the equipment or network service in question is
18 compatible with existing peripheral devices or spe-
19 cialized customer premises equipment commonly
20 used by persons with disabilities to achieve access,
21 unless doing so would result in an undue burden or
22 adverse competitive impact.

23 “(4) DEFINITIONS.—As used in this subsection:

24 “(A) UNDUE BURDEN.—The term ‘undue
25 burden’ means significant difficulty or expense.

1 In determining whether an activity would result
2 in an undue burden, factors to be considered
3 include—

4 “(i) the nature and cost of the activ-
5 ity;

6 “(ii) the impact on the operation of
7 the facility involved in the manufacturing
8 of the equipment or deployment of the net-
9 work service;

10 “(iii) the financial resources of the
11 manufacturing affiliate in the case of man-
12 ufacturing of equipment, for as long as ap-
13 plicable regulatory rules prohibit cross-sub-
14 sidization of equipment manufacturing
15 with revenues from regulated telecommuni-
16 cations service or when the manufacturing
17 activities are conducted in a separate sub-
18 sidiary;

19 “(iv) the financial resources of the
20 Bell operating company in the case of net-
21 work services, or in the case of manufac-
22 turing of equipment if applicable regula-
23 tory rules permit cross subsidization of
24 equipment manufacturing with revenues
25 from regulated telecommunications services

1 and the manufacturing activities are not
2 conducted in a separate subsidiary; and

3 “(v) the type of operation or oper-
4 ations of the manufacturing affiliate or
5 Bell operating company as applicable.

6 “(B) ADVERSE COMPETITIVE IMPACT.—In
7 determining whether the activity would result in
8 an adverse competitive impact, the following
9 factors will be considered:

10 (i) whether such activity would raise
11 the cost of the equipment or network serv-
12 ice in question beyond the level at which
13 there would be sufficient consumer demand
14 by the general population to make the
15 equipment or network service profitable;
16 and

17 (ii) whether such activity would, with
18 respect to the equipment or network serv-
19 ice in question, put the manufacturing af-
20 filiate or Bell operating company, as appli-
21 cable, at a competitive disadvantage in
22 comparison with one or more providers of
23 one or more competing products and serv-
24 ices. This factor may only be considered so
25 long as competing manufacturers and net-

1 work service providers are not held to the
2 same obligation with respect to access by
3 persons with disabilities.

4 **“(C) ACTIVITY.—**For the purposes of this
5 paragraph, the term ‘activity’ includes—

6 (i) the research, design, development,
7 deployment, and fabrication activities nec-
8 essary to comply with the requirements of
9 this section; and

10 (ii) the acquisition of the related ma-
11 terials and equipment components.

12 **“(5) EFFECTIVE DATE.—**The regulations re-
13 quired by this subsection shall become effective 18
14 months after the date of enactment of this section.

15 **“(6) IMPACT OF ADA.—**Nothing in this section
16 shall be interpreted to limit or otherwise affect the
17 application of the Americans with Disabilities Act or
18 its implementing regulations.

19 **“(h) PUBLIC NETWORK ENHANCEMENT.—**A Bell op-
20 erating company manufacturing affiliate shall, as a part
21 of its overall research and development effort, establish
22 a permanent program for the manufacturing research and
23 development of products and applications for the enhance-
24 ment of the public switched telephone network and to pro-
25 mote public access to advanced telecommunications serv-

1 ices. Such program shall focus its work substantially on
2 developing technological advancements in public telephone
3 network applications, telecommunication equipment and
4 products, and access solutions to new services and tech-
5 nology, including access by (1) public institutions, includ-
6 ing educational and health care institutions; and (2) peo-
7 ple with disabilities and functional limitations. Notwith-
8 standing the limitations in subsection (a), a Bell operating
9 company and its affiliates may engage in such a program
10 in conjunction with a Bell operating company not so affili-
11 ated or any of its affiliates. The existence or establishment
12 of such a program that is jointly provided by manufactur-
13 ing affiliates of Bell operating companies shall satisfy the
14 requirements of this section as it pertains to all such affili-
15 ates of a Bell operating company.

16 “(i) **ADDITIONAL RULES AUTHORIZED.**—The Com-
17 mission may prescribe such additional rules and regula-
18 tions as the Commission determines necessary to carry out
19 the provisions of this section.

20 “(j) **ADMINISTRATION AND ENFORCEMENT AUTHOR-**
21 **ITY.**—

22 “(1) **COMMISSION REGULATORY AUTHORITY.**—
23 For the purposes of administering and enforcing the
24 provisions of this section and the regulations pre-
25 scribed thereunder, the Commission shall have the

1 same authority, power, and functions with respect to
2 any Bell operating company as the Commission has
3 in administering and enforcing the provisions of this
4 title with respect to any common carrier subject to
5 this Act.

6 “(2) PRIVATE ACTIONS.—Any common carrier
7 that provides telephone exchange service and that is
8 injured by an act or omission of a Bell operating
9 company or its manufacturing affiliate which vio-
10 lates the requirements of paragraph (7) or (8) of
11 subsection (c), or the Commission’s regulations im-
12 plementing such paragraphs, may initiate an action
13 in a district court of the United States to recover
14 the full amount of damages sustained in con-
15 sequence of any such violation and obtain such or-
16 ders from the court as are necessary to terminate
17 existing violations and to prevent future violations;
18 or such regulated local telephone exchange carrier
19 may seek relief from the Commission pursuant to
20 sections 206 through 209.

21 “(k) RULEMAKING REQUIRED.—The Commission
22 shall prescribe regulations to implement this section with-
23 in 180 days after the date of enactment of this section.

24 “(l) EXISTING MANUFACTURING AUTHORITY.—
25 Nothing in this section shall prohibit any Bell operating

1 company from engaging, directly or through any affiliate,
2 in any manufacturing activity in which any Bell operating
3 company or affiliate was authorized to engage on the date
4 of enactment of this section.

5 “(m) **ANTITRUST LAWS.**—Nothing in this section
6 shall be construed to modify, impair, or supersede the ap-
7 plicability of any of the antitrust laws.

8 “(n) **DEFINITIONS.**—As used in this section:

9 “(1) The term ‘affiliate’ means any organiza-
10 tion or entity that, directly or indirectly, owns or
11 controls, is owned or controlled by, or is under com-
12 mon ownership with a Bell operating company. The
13 terms ‘owns’, ‘owned’, and ‘ownership’ mean an eq-
14 uity interest of more than 10 percent.

15 “(2) The term ‘Bell operating company’ means
16 those companies listed in appendix A of the Modi-
17 fication of Final Judgment, and includes any succes-
18 sor or assign of any such company, but does not in-
19 clude any affiliate of any such company.

20 “(3) The term ‘customer premises equipment’
21 means equipment employed on the premises of a
22 person (other than a carrier) to originate, route, or
23 terminate telecommunications.

24 “(4) The term ‘manufacturing’ has the same
25 meaning as such term has in the Modification of

1 Final Judgment, and includes research, design, de-
2 velopment, and fabrication.

3 “(5) The term ‘manufacturing affiliate’ means
4 an affiliate of a Bell operating company established
5 in accordance with subsection (b) of this section.

6 “(6) The term ‘Modification of Final Judg-
7 ment’ means the decree entered August 24, 1982, in
8 United States v. Western Electric Civil Action No.
9 82-0192 (United States District Court, District of
10 Columbia), and includes any judgment or order with
11 respect to such action entered on or after August
12 24, 1982, and before the date of enactment of this
13 section.

14 “(7) The term ‘telecommunications’ means the
15 transmission, between or among points specified by
16 the user, of information of the user’s choosing, with-
17 out change in the form or content of the information
18 as sent and received, by means of an electromagnetic
19 transmission medium, including all instrumentalities,
20 facilities, apparatus, and services (including the col-
21 lection, storage, forwarding, switching, and delivery
22 of such information) essential to such transmission.

23 “(8) The term ‘telecommunications equipment’
24 means equipment, other than customer premises
25 equipment, used by a carrier to provide tele-

1 “(2) to prohibit Bell operating companies and
2 their affiliates, at that or any earlier time after the
3 date of enactment of this section, from recording in
4 any fashion the occurrence or the contents of calls
5 received by providers of alarm monitoring services
6 for the purposes of marketing such services on be-
7 half of the Bell operating company, any of its affili-
8 ates, or any other entity; and

9 “(3) to establish procedures for the receipt and
10 review of complaints concerning violations by such
11 companies of such regulations, or of any other provi-
12 sion of this Act or the regulations thereunder, that
13 result in material financial harm to a provider of
14 alarm monitoring services.

15 “(b) **EXPEDITED CONSIDERATION OF COM-**
16 **PLAINTS.**—The procedures established under subsection
17 (a)(3) shall ensure that the Commission will make a final
18 determination with respect to any complaint described in
19 such subsection within 120 days after receipt of the com-
20 plaint. If the complaint contains an appropriate showing
21 that the alleged violation occurred, as determined by the
22 Commission in accordance with such regulations, the Com-
23 mission shall, within 60 days after receipt of the com-
24 plaint, issue a cease and desist order to prevent the Bell

1 operating company and its affiliates from continuing to
2 engage in such violation pending such final determination.

3 “(c) REMEDIES.—The Commission may use any rem-
4 edy available under title V of this Act to terminate and
5 punish violations described in subsection (a)(2). Such rem-
6 edies may include, if the Commission determines that such
7 violation was willful or repeated, ordering the Bell operat-
8 ing company to cease offering alarm monitoring services.

9 “(d) DEFINITIONS.—As used in this section, the
10 terms ‘Bell operating company’, ‘affiliate’, and ‘alarm
11 monitoring services’ have the meanings provided in section
12 106 of the Antitrust Reform Act of 1993.”.

13 **SEC. 203. REGULATION OF ELECTRONIC PUBLISHING.**

14 Title II of the Communications Act of 1934 (47
15 U.S.C. 201 et seq.) is amended by adding at the end there-
16 of the following new section:

17 **“SEC. 231. REGULATION OF ELECTRONIC PUBLISHING.**

18 “(a) IN GENERAL.—(1) A Bell operating company
19 and any affiliate shall not engage in the provision of elec-
20 tronic publishing that is disseminated by means of such
21 Bell operating company’s or any of its affiliates’ basic tele-
22 phone service.

23 “(2) Nothing in this section shall prohibit a separated
24 affiliate or electronic publishing joint venture from engag-

1 ing in the provision of electronic publishing or any other
2 lawful service in any area.

3 “(3) Nothing in this section shall prohibit a Bell op-
4 erating company or affiliate from engaging in the provi-
5 sion of any lawful service other than electronic publishing
6 in any area or from engaging in the provision of electronic
7 publishing that is not disseminated by means of such Bell
8 operating company’s or any of its affiliates’ basic tele-
9 phone service.

10 “(b) SEPARATED AFFILIATE OR ELECTRONIC PUB-
11 LISHING JOINT VENTURE REQUIREMENTS.—A separated
12 affiliate or electronic publishing joint venture shall—

13 “(1) maintain books, records, and accounts that
14 are separate from those of the Bell operating com-
15 pany and from any affiliate and which record in ac-
16 cordance with generally accepted accounting prin-
17 ciples all transactions, whether direct or indirect,
18 with the Bell operating company;

19 “(2) not incur debt in a manner that would per-
20 mit a creditor upon default to have recourse to the
21 assets of the Bell operating company;

22 “(3) prepare financial statements that are not
23 consolidated with those of the Bell operating com-
24 pany or an affiliate, provided that consolidated
25 statements may also be prepared;

1 “(4) file with the Commission annual reports in
2 a form substantially equivalent to the Form 10-K
3 referenced at 17 C.F.R. 249.310 as that section and
4 form are in effect on the date of enactment;

5 “(5) after 1 year from the effective date of this
6 section, not hire as corporate officers sales and mar-
7 keting management personnel whose responsibilities
8 at the separated affiliate or electronic publishing
9 joint venture will include the geographic area where
10 the Bell operating company provides basic telephone
11 service, or network operations personnel whose re-
12 sponsibilities at the separated affiliate or electronic
13 publishing joint venture would require dealing di-
14 rectly with the Bell operating company, any person
15 who was employed by the Bell operating company
16 during the year preceding their date of hire, pro-
17 vided that this requirement shall not apply to per-
18 sons subject to a collective bargaining agreement
19 that gives such persons rights to be employed by a
20 separated affiliate or electronic publishing joint ven-
21 ture of the Bell operating company;

22 “(6) not provide any wireline telephone ex-
23 change service in any telephone exchange area where
24 a Bell operating company with which it is under

1 common ownership or control provides basic tele-
2 phone exchange service except on a resale basis;

3 “(7) not use the name, trademarks, or service
4 marks of an existing Bell operating company except
5 for names or service marks that are or were used in
6 common with the entity that owns or controls the
7 Bell operating company;

8 “(8) have performed annually by March 31, or
9 any other date prescribed by the Commission, a
10 compliance review which—

11 “(A) must be conducted by an independent
12 entity which is subject to professional, legal,
13 and ethical obligations for the purpose of deter-
14 mining compliance during the preceding cal-
15 endar year with any provision of this section
16 that imposes a requirement on such separated
17 affiliate or electronic publishing joint venture;
18 and

19 “(B) must be maintained by the separated
20 affiliate for a period of 5 years subject to re-
21 view by any lawful authority;

22 “(9) within 90 days of receiving a review de-
23 scribed in paragraph (8), file a report of such excep-
24 tions and any corrective action with the Commission
25 and allow any person to inspect and copy such re-

1 port subject to reasonable safeguards to protect any
2 proprietary information contained in such report
3 from being used for purposes other than to enforce
4 or pursue remedies under this section.

5 “(c) BELL OPERATING COMPANY REQUIREMENTS.—

6 A Bell operating company under common ownership or
7 control with a separated affiliate or electronic publishing
8 joint venture shall—

9 “(1) not provide a separated affiliate any facili-
10 ties, services, or basic telephone service information
11 unless it makes such facilities, services, or informa-
12 tion available to unaffiliated entities upon request
13 and on the same terms and conditions;

14 “(2) carry out transactions with a separated af-
15 filiate in a manner equivalent to the manner that
16 unrelated parties would carry out independent trans-
17 actions and not based upon the affiliation;

18 “(3) carry out transactions with a separated af-
19 filiate, which involve the transfer of personnel, as-
20 sets, or anything of value, pursuant to written con-
21 tracts or tariffs that are filed with the Commission
22 and made publicly available;

23 “(4) carry out transactions with a separated af-
24 filiate in a manner that is auditable in accordance
25 with generally accepted accounting principles;

1 “(5) value any assets that are transferred to a
2 separated affiliate at the greater of net book cost or
3 fair market value;

4 “(6) value any assets that are transferred to it
5 by its separated affiliate at the lesser of net book
6 cost or fair market value;

7 “(7) except for—

8 “(A) instances where Commission or State
9 regulations permit in-arrears payment for
10 tariffed telecommunications services; or

11 “(B) the investment by an affiliate of divi-
12 dends or profits derived from a Bell operating
13 company,

14 not provide debt or equity financing directly or indi-
15 rectly to a separated affiliate;

16 “(8) comply fully with all applicable Commis-
17 sion and State cost allocation and other accounting
18 rules;

19 “(9) have performed annually by March 31, or
20 any other date prescribed by the Commission, a
21 compliance review which—

22 “(A) must be conducted by an independent
23 entity which is subject to professional, legal,
24 and ethical obligations for the purpose of deter-
25 mining compliance during the preceding cal-

1 endar year with any provision of this section
2 that imposes a requirement on such Bell oper-
3 ating company; and

4 “(B) must be maintained by the Bell oper-
5 ating company for a period of 5 years subject
6 to review by any lawful authority;

7 “(10) within 90 days of receiving a review de-
8 scribed in paragraph (9), file a report of such excep-
9 tions and any corrective action with the Commission
10 and allow any person to inspect and copy such re-
11 port subject to reasonable safeguards to protect any
12 proprietary information contained in such report
13 from being used for purposes other than to enforce
14 or pursue remedies under this section;

15 “(11) if it provides facilities or services for tele-
16 communication, transmission, billing and collection,
17 or physical collocation to any electronic publisher,
18 including a separated affiliate, for use with or in
19 connection with the provision of electronic publishing
20 that is disseminated by means of such Bell operating
21 company’s or any of its affiliates’ basic telephone
22 service, provide to all other electronic publishers the
23 same type of facilities and services on request, on
24 the same terms and conditions or as required by the
25 Commission or a State, and unbundled and individ-

1 ually tariffed to the same extent as provided to such
2 publisher;

3 “(12) provide network access and interconnec-
4 tions for basic telephone service to electronic pub-
5 lishers at prices that are regulated so long as the
6 prices for these services are subject to regulation;

7 “(13) if prices for network access and inter-
8 connection for basic telephone service are no longer
9 subject to regulation, provide electronic publishers
10 such services on the same terms and conditions as
11 a separated affiliate receives such services;

12 “(14) if any basic telephone service used by
13 electronic publishers ceases to require a tariff, pro-
14 vide electronic publishers with such service on the
15 same terms and conditions as a separated affiliate
16 receives such service;

17 “(15) provide reasonable advance notification at
18 the same time and on the same terms to all affected
19 electronic publishers of information relating to
20 changes in basic telephone service network design
21 and technical standards which would affect the pro-
22 vision of electronic publishing;

23 “(16) not directly or indirectly provide anything
24 of monetary value to a separated affiliate unless in
25 exchange for consideration at least equal to the

1 greater of its net book cost or fair market value, ex-
2 cept the investment by an affiliate of dividends or
3 profits derived from a Bell operating company;

4 “(17) not discriminate in the presentation or
5 provision of any gateway for electronic publishing
6 services or any electronic directory of information
7 services, which is provided over such Bell operating
8 company’s basic telephone service;

9 “(18) have no directors, officers or employees in
10 common with a separated affiliate;

11 “(19) not own any property in common with a
12 separated affiliate;

13 “(20) not perform hiring or training of person-
14 nel performed on behalf of a separated affiliate;

15 “(21) not perform the purchasing, installation
16 or maintenance of equipment on its behalf of a sepa-
17 rated affiliate, except for telephone service that it
18 provides under tariff or contract subject to the pro-
19 visions of this section; and

20 “(22) not perform research and development on
21 behalf of a separated affiliate.

22 “(d) CUSTOMER PROPRIETARY NETWORK INFORMA-
23 TION.—A Bell operating company or any affiliate shall not
24 provide to any electronic publisher, including a separated
25 affiliate or electronic publishing joint venture, customer

1 proprietary network information for use with or in connec-
2 tion with the provision of electronic publishing that is dis-
3 seminated by means of such Bell operating company's or
4 any of its affiliates' basic telephone service that is not
5 made available by the Bell operating company or affiliate
6 to all electronic publishers on the same terms and condi-
7 tions.

8 “(e) COMPLIANCE WITH SAFEGUARDS.—A Bell oper-
9 ating company, affiliate or its separated affiliate is prohib-
10 ited from acting in concert with another Bell operating
11 company or any entity in order to knowingly and willfully
12 violate or evade the requirements of this section.

13 “(f) TELEPHONE OPERATING COMPANY DIVI-
14 DENDS.—Nothing in this section shall prohibit an affiliate
15 from investing dividends derived from a Bell operating
16 company in its separated affiliate and subsections (i) and
17 (j) of this section shall not apply to any such investment.

18 “(g) JOINT MARKETING, ETC.—Except as provided
19 in subsection (h)—

20 “(1) a Bell operating company shall not carry
21 out any promotion, marketing, sales, or advertising
22 for or in conjunction with a separated affiliate.

23 “(2) A Bell operating company shall not carry
24 out any promotion, marketing, sales, or advertising

1 for or in conjunction with an affiliate that is related
2 to the provision of electronic publishing.

3 “(h) PERMISSIBLE JOINT ACTIVITIES.—

4 “(1) JOINT TELEMARKETING.—A Bell operat-
5 ing company may provide inbound telemarketing or
6 referral services related to the provision of electronic
7 publishing for a separated affiliate, electronic pub-
8 lishing joint venture, affiliate, or unaffiliated elec-
9 tronic publisher, provided that if such services are
10 provided to a separated affiliate, electronic publish-
11 ing joint venture, or affiliate, such services shall be
12 made available to all electronic publishers on re-
13 quest, on nondiscriminatory terms, at compensatory
14 prices, and subject to regulations of the Commission
15 to ensure that the Bell operating company’s method
16 of providing telemarketing or referral and its price
17 structure do not competitively disadvantage any elec-
18 tronic publishers regardless of size, including those
19 which do not use the Bell operating company’s
20 telemarketing services.

21 “(2) TEAMING ARRANGEMENTS.—A Bell oper-
22 ating company may engage in nondiscriminatory
23 teaming or business arrangements to engage in elec-
24 tronic publishing with any separated affiliate or with
25 any other electronic publisher provided that the Bell

1 operating company only provides facilities, services,
2 and basic telephone service information as author-
3 ized by this section and provided that the Bell oper-
4 ating company does not own such teaming or busi-
5 ness arrangement.

6 “(3) ELECTRONIC PUBLISHING JOINT VEN-
7 TURES.—A Bell operating company or affiliate may
8 participate on a nonexclusive basis in electronic pub-
9 lishing joint ventures with entities that are not any
10 Bell operating company, affiliate, or separated affili-
11 ate to provide electronic publishing services, provided
12 that the Bell operating company or affiliate has not
13 more than a 50 percent direct or indirect equity in-
14 terest (or the equivalent thereof) or the right to
15 more than 50 percent of the gross revenues under
16 a revenue sharing or royalty agreement in any elec-
17 tronic publishing joint venture. Officers and employ-
18 ees of a Bell operating company or affiliate partici-
19 pating in an electronic publishing joint venture may
20 not have more than 50 percent of the voting control
21 over the electronic publishing joint venture. In the
22 case of joint ventures with small, local electronic
23 publishers, the Commission for good cause shown
24 may authorize the Bell operating company or affili-
25 ate to have a larger equity interest, revenue share,

1 or voting control but not to exceed 80 percent. A
2 Bell operating company participating in an elec-
3 tronic publishing joint venture may provide pro-
4 motion, marketing, sales, or advertising personnel
5 and services to such joint venture.

6 “(i) TRANSACTIONS RELATED TO THE PROVISION OF
7 ELECTRONIC PUBLISHING BETWEEN A TELEPHONE OP-
8 ERATING COMPANY AND ANY AFFILIATE.—

9 “(1) Any provision of facilities, services or basic
10 telephone service information or any transfer of as-
11 sets, personnel, or anything of commercial or com-
12 petitive value from a Bell operating company to any
13 affiliate related to the provision of electronic publish-
14 ing shall be—

15 “(A) recorded in the books and records of
16 each entity;

17 “(B) auditable in accordance with gen-
18 erally accepted accounting principles; and

19 “(C) pursuant to written contracts or tar-
20 iffs filed with the Commission or a State and
21 made publicly available.

22 “(2) Any transfer of assets directly related to
23 the provision of electronic publishing from a Bell op-
24 erating company to an affiliate shall be valued at the
25 greater of net book cost or fair market value. Any

11 transfer of assets related to the provision of elec-
 22 tronic publishing from an affiliate to the Bell operat-
 33 ing company shall be valued at the lesser of net book
 44 cost or fair market value.

53 “(3) A Bell operating company shall not pro-
 66 vide an affiliate any facilities, services, or basic telep-
 77 hone service information related to the provision of
 83 electronic publishing, which such affiliate then di-
 99 rectly or indirectly provides to a separated affiliate,
 100 and which is not made available to unaffiliated com-
 111 panies on the same terms and conditions.

122 “(J) TRANSACTIONS RELATED TO THE PROVISION OF
 133 ELECTRONIC PUBLISHING BETWEEN AN AFFILIATE AND
 144 A SEPARATED AFFILIATE.—

153 “(1) Any facilities, services, or basic telephone
 165 service information provided or any assets, person-
 177 nel, or anything of commercial or competitive value
 188 transferred, from a Bell operating company to any
 199 affiliate as described in subsection (I) and then pro-
 200 vided or transferred to a separated affiliate shall
 211 be—

222 “(A) recorded in the books and records of
 233 each entity;

244 “(B) audited in accordance with gene-
 255 rally accepted accounting principles; and

1 “(C) pursuant to written contracts or tar-
2 iffs filed with the Commission or a State and
3 made publicly available.

4 “(2) Any transfer of assets directly related to
5 the provision of electronic publishing from a Bell op-
6 erating company to any affiliate as described in sub-
7 section (i) and then transferred to a separated affili-
8 ate shall be valued at the greater of net book cost
9 or fair market value. Any transfer of assets related
10 to the provision of electronic publishing from a separ-
11 ated affiliate to any affiliate and then transferred
12 to the Bell operating company as described in sub-
13 section (i) shall be valued at the lesser of net book
14 cost or fair market value.

15 “(3) An affiliate shall not provide a separated
16 affiliate any facilities, services, or basic telephone
17 service information related to the provision of elec-
18 tronic publishing, which were provided to such affili-
19 ate directly or indirectly by a Bell operating com-
20 pany, and which is not made available to unaffiliated
21 companies on the same terms and conditions.

22 “(k) OTHER ELECTRONIC PUBLISHERS.—Except as
23 provided in subsection (h)(3)—

24 “(1) A Bell operating company shall not have
25 any officers, employees, property, or facilities in

1 common with any entity whose principal business is
2 publishing of which a part is electronic publishing.

3 “(2) No officer or employee of a Bell operating
4 company shall serve as a director of any entity
5 whose principal business is publishing of which a
6 part is electronic publishing.

7 “(3) For the purposes of paragraphs (1) and
8 (2), a Bell operating company or an affiliate that
9 owns an electronic publishing joint venture shall not
10 be deemed to be engaged in the electronic publishing
11 business solely because of such ownership.

12 “(4) A Bell operating company shall not carry
13 out—

14 “(A) any marketing or sales for any entity
15 that engages in electronic publishing; or

16 “(B) any hiring of personnel, purchasing,
17 or production,

18 for any entity that engages in electronic publishing.

19 “(5) The Bell operating company shall not pro-
20 vide any facilities, services, or basic telephone service
21 information to any entity that engages in electronic
22 publishing, for use with or in connection with the
23 provision of electronic publishing that is dissemi-
24 nated by means of such Bell operating company’s or
25 any of its affiliates’ basic telephone service, unless

1 equivalent facilities, services, or information are
2 made available on equivalent terms and conditions to
3 all.

4 “(l) TRANSITION.—Any electronic publishing service
5 being offered to the public by a Bell operating company
6 or affiliate on the date of enactment of this section shall
7 have one year from such date of enactment to comply with
8 the requirements of this section.

9 “(m) SUNSET.—The provisions of this section shall
10 cease to apply to a Bell operating company or its affiliate
11 or separated affiliate in any telephone exchange area on
12 June 30, 2000.

13 “(n) PRIVATE RIGHT OF ACTION.—

14 “(1) Any person claiming that any act or prac-
15 tice of any Bell operating company, affiliate, or sep-
16 arated affiliate constitutes a violation of this section
17 may file a complaint with the Commission or bring
18 suit as provided in section 207 of the Communica-
19 tions Act of 1934 (47 U.S.C. 207), and such Bell
20 operating company, affiliate, or separated affiliate
21 shall be liable as provided in section 206 of the
22 Communications Act of 1934, (47 U.S.C. 207): *Pro-*
23 *vided, however,* That damages may not be awarded
24 for a violation that is discovered by a compliance re-

1 view as required by subsection (b)(8) or (c)(9) of
2 this section and corrected within 90 days.

3 “(2) In addition to the provisions of paragraph
4 (1), any person claiming that any act or practice of
5 any Bell operating company, affiliate, or separated
6 affiliate constitutes a violation of this section may
7 make application to the Commission for an order to
8 cease and desist such violation or may make applica-
9 tion in any district court of the United States of
10 competent jurisdiction for an order enjoining such
11 acts or practices or for an order compelling compli-
12 ance with such requirement.

13 “(o) ANTITRUST LAWS.—Nothing in this section
14 shall be construed to modify, impair, or supersede the ap-
15 plicability of any of the antitrust laws.

16 “(p) DEFINITIONS.—As used in this section—

17 “(1) The term ‘affiliate’ means any entity that,
18 directly or indirectly, owns or controls, is owned or
19 controlled by, or is under common ownership or con-
20 trol with, a Bell operating company. Such term shall
21 not include a separated affiliate.

22 “(2) The term ‘basic telephone service’ means
23 wireline telephone exchange service provided by a
24 Bell operating company in a telephone exchange
25 area, except

1 “(A) a competitive wireline telephone ex-
2 change service provided in a telephone exchange
3 area where another entity provides a wireline
4 telephone exchange service that was provided on
5 January 1, 1984, and

6 “(B) wireless telephone exchange service
7 provided by an affiliate that is required by the
8 Commission to be a corporate entity separate
9 from the Bell operating company.

10 “(3) The term ‘basic telephone service informa-
11 tion’ means network and customer information of a
12 Bell operating company and other information ac-
13 quired by a Bell operating company as a result of
14 its engaging in the provision of basic telephone
15 service.

16 “(4) The term ‘control’ has the meaning that it
17 has in 17 C.F.R. 240.12b-2, the regulations promul-
18 gated by the Securities and Exchange Commission
19 pursuant to the Securities Exchange Act of 1934
20 (15 U.S.C. 78a et seq.) or any successor provision
21 to such section.

22 “(5) The term ‘customer proprietary network
23 information’ means—

24 “(A) information which—

1 “(i) relates to the quantity, technical
2 configuration, type, destination, and
3 amount of use of telephone exchange serv-
4 ice or interexchange telephone service sub-
5 scribed to by any customer of a Bell oper-
6 ating company, and

7 “(ii) is available to the Bell operating
8 company by virtue of the telephone com-
9 pany-customer relationship; and

10 “(B) information contained in the bills for
11 telephone exchange service or interexchange
12 telephone service received by a customer of a
13 Bell operating company.

14 “(6)(A) The term ‘electronic publishing’ means
15 the dissemination, provision, publication, or sale to
16 an unaffiliated entity or person, using a Bell operat-
17 ing company’s basic telephone service, of—

18 “(i) news;

19 “(ii) business and financial reports;

20 “(iii) editorials;

21 “(iv) columns;

22 “(v) sports reporting;

23 “(vi) features;

24 “(vii) advertising;

1 “(viii) photos and images used in publish-
2 ing;

3 “(ix) archival material used in publishing;

4 “(x) legal notices; or

5 “(xi) other like or similar information.

6 “(B) The term ‘electronic publishing’ shall not
7 include the following network services:

8 “(i) Information access as that term is de-
9 fined by the Modification of Final Judgment.

10 “(ii) The transmission of information as a
11 common carrier.

12 “(iii) The transmission of information as
13 part of a gateway to an information service that
14 does not involve the generation or alteration of
15 the content of information, including data
16 transmission, address translation, protocol con-
17 version, billing management, introductory infor-
18 mation content, and navigational systems that
19 enable users to access electronic publishing
20 services, which do not affect the presentation of
21 such electronic publishing services to users.

22 “(iv) Voice storage and retrieval services,
23 including voice messaging and electronic mail
24 services.

1 “(v) Level 2 gateway services as those
2 services are defined by the Commission's Sec-
3 ond Report and Order, Recommendation to
4 Congress and Second Further Notice of Pro-
5 posed Rulemaking in CC Docket No. 87-266
6 dated August 14, 1992.

7 “(vi) Data processing services that do not
8 involve the generation or alteration of the con-
9 tent of information.

10 “(vii) Transaction processing systems that
11 do not involve the generation or alteration of
12 the content of information.

13 “(viii) Electronic billing or advertising of a
14 Bell operating company's regulated tele-
15 communications services.

16 “(ix) Language translation.

17 “(x) Conversion of data from one format
18 to another.

19 “(xi) The provision of information nec-
20 essary for the management, control, or oper-
21 ation of a telephone company telecommuni-
22 cations system.

23 “(xii) The provision of directory assistance
24 that provides names, addresses, and telephone
25 numbers and does not include advertising.

1 “(xiii) Caller identification services.

2 “(xiv) Repair and provisioning databases
3 for telephone company operations.

4 “(xv) Credit card and billing validation for
5 telephone company operations.

6 “(xvi) 911-E and other emergency assist-
7 ance databases.

8 “(xvii) Any other network service of a type
9 that is like or similar to these network services
10 and that does not involve the generation or al-
11 teration of the content of information.

12 “(xviii) Any upgrades to these network
13 services that do not involve the generation or
14 alteration of the content of information.

15 “(C) The term ‘electronic publishing’ also shall
16 not include—

17 “(i) full motion video entertainment on de-
18 mand; and

19 “(ii) video programming as defined in sec-
20 tion 602 of the Communications Act of 1934.

21 “(7) The term ‘electronic publishing joint ven-
22 ture’ means a joint venture owned by a Bell operat-
23 ing company or affiliate that engages in the provi-
24 sion of electronic publishing which is disseminated

1 by means of such Bell operating company's or any
2 of its affiliates' basic telephone service.

3 "(8) The term 'entity' means any organization,
4 and includes corporations, partnerships, sole propri-
5 etorships, associations, and joint ventures.

6 "(9) The term 'inbound telemarketing' means
7 the marketing of property, goods, or services by tele-
8 phone to a customer or potential customer who initi-
9 ated the call.

10 "(10) The term 'own' with respect to an entity
11 means to have a direct or indirect equity interest (or
12 the equivalent thereof) of more than 10 percent of
13 an entity, or the right to more than 10 percent of
14 the gross revenues of an entity under a revenue
15 sharing or royalty agreement.

16 "(11) The term 'separated affiliate' means a
17 corporation under common ownership or control with
18 a Bell operating company that does not own or con-
19 trol a Bell operating company and is not owned or
20 controlled by a Bell operating company and that en-
21 gages in the provision of electronic publishing which
22 is disseminated by means of such Bell operating
23 company's or any of its affiliates' basic telephone
24 service.

1 “(12) The term ‘Bell operating company’ means
2 the corporations subject to the Modification of Final
3 Judgment and listed in Appendix A thereof, or any
4 entity owned or controlled by such corporation, or
5 any successor or assign of such corporation, but
6 does not include an electronic publishing joint ven-
7 ture owned by such corporation or entity.”.

○

Document No. 110

103^D CONGRESS
2^D SESSION

H. R. 3626

[Report No. 103-559, Parts I and II]

To supersede the Modification of Final Judgment entered August 24, 1982, in the antitrust action styled United States v. Western Electric, Civil Action No. 82-0192, United States District Court for the District of Columbia; to amend the Communications Act of 1934 to regulate the manufacturing of Bell operating companies, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

NOVEMBER 22, 1993

Mr. BROOKS (for himself and Mr. DINGELL) introduced the following bill; which was referred jointly to the Committees on the Judiciary and Energy and Commerce

JUNE 24, 1994

Reported from the Committee on Energy and Commerce with an Amendment
[Strike out all after the enacting clause and insert the part printed in *italics*]

JUNE 24, 1994

Additional sponsors: Mr. NADLER, Mr. LAZIO, Mr. BLUTE, Mr. GILMAN, Mr. FISH, Mr. MOORHEAD, Mr. MARKEY, and Mr. FIELDS of Texas

JUNE 24, 1994

Reported from the Committee on the Judiciary with amendments, committed to the Committee of the Whole House on the State of the Union, and ordered to be printed.

[Strike out all after the enacting clause and insert the part printed in **Boldface Roman**]

[For text of introduced bill, see copy of bill as introduced on November 22, 1993]

A BILL

To supersede the Modification of Final Judgment entered August 24, 1982, in the antitrust action styled United States v. Western Electric, Civil Action No. 82-0192, United States District Court for the District of Columbia; to amend the Communications Act of 1934 to regulate the manufacturing of Bell operating companies, 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; TABLE OF CONTENTS.**

4 (a) *SHORT TITLE.—This Act may be cited as the*
 5 *“Antitrust and Communications Reform Act of 1994”.*

6 (b) *TABLE OF CONTENTS.—*

Sec. 1. Short title; table of contents.

**TITLE I—SUPERSESSION OF THE MODIFICATION OF FINAL
 JUDGMENT**

*Sec. 101. Authorization for Bell operating company to enter competitive lines of
 business.*

Sec. 102. Authorization as prerequisite.

Sec. 103. Limitations on manufacturing and providing equipment.

Sec. 104. Anticompetitive tying arrangements.

Sec. 105. Enforcement.

Sec. 106. Definitions.

Sec. 107. Relationship to other laws.

*Sec. 108. Amendment to definition of antitrust laws appearing in the Clayton
 Act.*

**TITLE II—REGULATION OF MANUFACTURING, ALARM SERVICES
 AND ELECTRONIC PUBLISHING BY BELL OPERATING COMPANIES**

Sec. 201. Regulation of manufacturing by Bell operating companies.

Sec. 202. Regulation of entry into alarm monitoring services.

Sec. 203. Regulation of electronic publishing.

Sec. 204. Privacy of customer information.

TITLE III—FEDERAL COMMUNICATIONS COMMISSION RESOURCES*Sec. 301. Authorization of appropriations.*

1 **TITLE I—SUPERSESSION OF THE**
 2 **MODIFICATION OF FINAL**
 3 **JUDGMENT**

4 **SEC. 101. AUTHORIZATION FOR BELL OPERATING COMPANY**
 5 **TO ENTER COMPETITIVE LINES OF BUSINESS.**

6 *(a) APPLICATION.—*

7 *(1) IN GENERAL.—After the applicable date spec-*
 8 *ified in paragraph (2), a Bell operating company*
 9 *may apply to the Attorney General and the Federal*
 10 *Communications Commission for authorization, not-*
 11 *withstanding the Modification of Final Judgment—*

12 *(A) to provide alarm monitoring services, or*
 13 *(B) to provide interexchange telecommuni-*
 14 *cations services.*

15 *The application shall describe with particularity the*
 16 *nature and scope of the activity, and of each product*
 17 *market or service market, and each geographic mar-*
 18 *ket, for which authorization is sought.*

19 *(2) APPLICABLE DATES.—For purposes of para-*
 20 *graph (1), the applicable date after which a Bell oper-*
 21 *ating company may apply for authorization shall*
 22 *be—*

23 *(A) the date of the enactment of this Act,*
 24 *with respect to—*

1 (i) *engaging in any activity described*
2 *in subparagraph (B), (C), or (D), to the ex-*
3 *tent, with respect to each market to which*
4 *the activity relates, that there exists no ac-*
5 *tual or potential competition,*

6 (ii) *providing a service described in*
7 *subsection (b)(3)(D)(iii),*

8 (iii) *providing, through transmission*
9 *facilities owned by such company, interstate*
10 *interexchange telecommunications services*
11 *that originate and terminate in exchange*
12 *areas in which the Bell operating company,*
13 *or an affiliate (as of November 21, 1993) of*
14 *such company that is a Bell operating com-*
15 *pany, provided telephone exchange service*
16 *on November 21, 1993,*

17 (B) *except to the extent that an earlier date*
18 *is available under subparagraph (A), the date*
19 *that occurs 18 months after the date of the enact-*
20 *ment of this Act, with respect to providing*
21 *interexchange telecommunications services*
22 *through the acquisition and resale of tele-*
23 *communications services,*

24 (C) *except to the extent that an earlier date*
25 *is available under subparagraph (A) or (B), the*

1 *date that occurs 60 months after the date of the*
2 *enactment of this Act, with respect to providing*
3 *any interstate telecommunications, and*

4 *(D) the date that occurs 66 months after the*
5 *date of the enactment of this Act, with respect to*
6 *providing alarm monitoring services.*

7 ***(3) INTERAGENCY NOTIFICATION.—Whenever the***
8 ***Attorney General or the Federal Communications***
9 ***Commission receives an application made under***
10 ***paragraph (1), the recipient of the application shall***
11 ***notify the other of such receipt.***

12 ***(4) PUBLICATION.—Not later than 10 days after***
13 ***receiving an application made under paragraph (1),***
14 ***the Attorney General and the Federal Communica-***
15 ***tions Commission jointly shall publish the applica-***
16 ***tion in the Federal Register.***

17 ***(b) SEPARATE DETERMINATIONS BY THE ATTORNEY***
18 ***GENERAL AND THE FEDERAL COMMUNICATIONS COMMIS-***
19 ***SION.—***

20 ***(1) COMMENT PERIOD.—Not later than 45 days***
21 ***after an application is published under subsection***
22 ***(a)(4), interested persons may submit written com-***
23 ***ments to the Attorney General, to the Federal Com-***
24 ***munications Commission, or to both regarding the***

1 *application. Submitted comments shall be available to*
2 *the public.*

3 (2) *INTERAGENCY CONSULTATION.—Before mak-*
4 *ing their respective determinations under paragraph*
5 *(3), the Attorney General and the Federal Commu-*
6 *nications Commission shall consult with each other*
7 *regarding the application involved.*

8 (3) *DETERMINATIONS.—(A) After the time for*
9 *comment under paragraph (1) has expired, but not*
10 *later than 180 days after receiving an applicati-n*
11 *made under subsection (a)(1), the Attorney General*
12 *and the Federal Communications Commission each*
13 *shall issue separately a written determination, on the*
14 *record after an opportunity for a hearing, with re-*
15 *spect to granting the authorization for which the Bell*
16 *operating company has applied.*

17 (B) *Such determination shall be based on clear*
18 *and convincing evidence.*

19 (C) *Any person who might be injured in its busi-*
20 *ness or property as a result of the approval of the au-*
21 *thorization requested shall be permitted to participate*
22 *as a party in the proceeding on which the determina-*
23 *tion is based.*

24 (D)(i) *The Attorney General shall approve the*
25 *granting of the authorization requested in the appli-*

1 *cation only to the extent that the Attorney General*
2 *finds that there is no substantial possibility that such*
3 *company or its affiliates could use monopoly power to*
4 *impede competition in the market such company seeks*
5 *to enter. The Attorney General shall deny the remain-*
6 *der of the requested authorization.*

7 *(ii) The Federal Communications Commission*
8 *shall approve the granting of the requested authoriza-*
9 *tion only to the extent that the Commission finds that*
10 *granting the requested authorization is consistent*
11 *with the public interest, convenience, and necessity.*
12 *The Commission shall deny the remainder of the re-*
13 *quested authorization.*

14 *(iii) Notwithstanding clauses (i) and (ii), within*
15 *180 days after the date of the enactment of this Act,*
16 *the Attorney General and the Federal Communica-*
17 *tions Commission shall each prescribe regulations to*
18 *establish procedures and criteria for the expedited de-*
19 *termination and approval of applications to provide*
20 *interexchange telecommunications services that are*
21 *incidental to the provision of another service which*
22 *the Bell operating company may lawfully provide*
23 *(and that are not described in section 102(c)). In pre-*
24 *scribing such regulations, the Attorney General and*