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# 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.

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## 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)

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## 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 *tomer 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**

