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102D CONGRESS
2D SESSION

H. R. 5096

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

IN THE HOUSE OF REPRESENTATIVES

MAY 7, 1992

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

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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.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the "Antitrust Reform Act of 1992".

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

(a) APPLICATION.—

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

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

(B) to provide information services,

(C) to manufacture or provide telecommunications equipment, or manufacture customer premises equipment, or

(D) to provide interexchange telecommunications.

The application shall describe with particularity the nature and scope of each activity, and of each product market, service market, and geographic market, for which authorization is sought.

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

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

(i) engaging in research and development relating to telecommunications equipment or customer premises equipment, or

(ii) engaging in any activity described in subparagraph (B), (C), or (D), to the extent that such company proves, with respect to each product market, service market, and geographic market to which the activity relates, that—

(I) there exists no actual or potential competition, and

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

(B) except as provided in subparagraph (A)(ii), the date that occurs 3 years after the date of enactment of this Act, with respect to providing information services (other than electronic publishing),

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

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manufacturing or providing telecommunications equipment, or manufacturing customer premises equipment, and

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

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

(b) DETERMINATION BY THE ATTORNEY GENERAL.—

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

(2) DETERMINATION.—(A) After the time for comment under paragraph (1) has expired, but not later than 120 days after the application is published under subsection (a)(3), the Attorney General shall issue a written determination with respect to granting the authorization for which the Bell operating company has applied.

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

(ii) The Attorney General shall deny the remainder of the requested authorization.

(C) A determination granting any part of a requested authorization shall describe with particularity the nature and scope of each activity and of each product market, service market, and geographic market to which the authorization granted applies.

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

(4) FINALITY.—The Attorney General's determination regarding an application made under this subsection shall be final unless a civil action with respect to such application is timely commenced under subsection (c)(1).

(c) DE NOVO JUDICIAL DETERMINATION.—

(1) CIVIL ACTION.—Not later than—

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

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

whichever occurs earlier, the Bell operating company that applied to the Attorney General under subsection (a), or any person who might be injured in its business or property as a result of any determination regarding such company's engaging in the activity described in such company's application, may commence a civil action against the Attorney General, in any district court of the United States in the district in which such company resides or is found or has an agent, for a de novo determination regarding the application. Such company and any such person shall also have the right to intervene as a party in the civil action.

(2) JUDGMENT.—(A)(i) The court shall enter a judgment granting the authorization for which the Bell operating company applied to the Attorney General only to the extent that such company—

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(I) proves that there is no substantial possibility that such company or its affiliates could use monopoly power to impede competition in any relevant market for the activity to which the application relates, and

(II) satisfies the proof requirement described in subsection (a)(2)(A)(ii) if such proof requirement applies.

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

(B) A judgment granting any part of a requested authorization shall describe with particularity the nature and scope of each activity and of each product market, service market, and geographic market to which the authorization granted applies.

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

SEC. 3. AUTHORIZATION AS PREREQUISITE.

(a) PREREQUISITE.—Until a Bell operating company is so authorized in accordance with section 2, it shall be unlawful for such company, directly or through an affiliated enterprise, to engage in an activity described in section 2(a)(1).

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(b) EXCEPTION FOR PREVIOUSLY AUTHORIZED ACTIVITIES.—Subsection (a) shall not prohibit a Bell operating company from engaging—

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

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

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

(2) in research and development in which any such company was lawfully engaged at any time in the period beginning on January 1, 1984, and ending on May 6, 1992.

SEC. 4. PROHIBITIONS.

(a) ANTICOMPETITIVE DISCRIMINATION.—A Bell operating company with monopoly power in any exchange service market that is engaged (directly or through an affiliated enterprise) in an activity described in section 2(a)(1) shall not discriminate, in any relevant market, between itself or an affiliated enterprise and any other person, or between any two such other persons, with respect to any product or service related to the provision or use of a telecommunications service.

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

(c) ANTICOMPETITIVE CONCENTRATION AMONG BELL OPERATING COMPANIES.—(1) Except as provided in paragraph (2), a Bell operating company with monopoly power in any exchange service market shall not become an affiliated enterprise of, or acquire (directly or indirectly) any exchange service assets of, another Bell operating company.

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

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

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

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

(A) at Bell Communications Research (commonly known as "Bellcore") if such companies were lawfully engaging in such activity at Bell Communications Research at any time in the period beginning on January 1, 1984, and ending on May 6, 1992,

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

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

SEC. 5. COMPLIANCE.

(a) DUTY TO ADVISE CERTAIN MANAGEMENT EMPLOYEES OF OBLIGATIONS UNDER ACT.—Each Bell operating company shall advise, in writing, each of its officers and other management personnel with significant responsibility for matters addressed in this Act, of the requirements of this Act, and that violations of this Act may result in criminal liability.

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(b) CERTIFICATION OF COMPLIANCE.—Not later than 30 days after the end of each calendar year, the chief executive officer of (or another officer responsible for the operation of) each Bell operating company that is not (directly or indirectly) owned or controlled by another Bell operating company shall certify in writing to the Attorney General whether such company and its affiliates have complied throughout such year with sections 3 and 4 and with subsection (a).

SEC. 6. ENFORCEMENT.

(a) EQUITABLE POWERS OF UNITED STATES ATTORNEYS.—It shall be the duty of the several United States attorneys, under the direction of the Attorney General, to institute proceedings in equity in their respective districts to prevent and restrain violations of this Act.

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

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

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

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

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

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

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(e) JURISDICTION.—(1) The courts of the United States shall have exclusive jurisdiction to make determinations with respect to a duty, claim, or right arising under this Act, other than a determination by the Attorney General under section 2(b)(2).

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

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

SEC. 7. DEFINITIONS.

For purposes of this Act:

(1) AFFILIATE.—The term "affiliate" means a person that (directly or indirectly) owns or controls, is owned or controlled by, or is under common ownership or control with, another person. For purposes of this paragraph, to own refers to owning an equity interest (or the equivalent thereof) of more than 50 percent.

(2) AFFILIATED ENTERPRISE.—The term "affiliated enterprise" means, with respect to a Bell operating company, a person—

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(A) that such company or its affiliate (directly or indirectly) owns or controls, is owned or controlled by, or is under common ownership with, to any extent whatsoever, or

(B) in whose gross revenues such company or its affiliate has any direct or indirect financial or proprietary interest, through a revenue sharing arrangement, royalty arrangement, or otherwise.

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

(4) BELL OPERATING COMPANY.—The term "Bell operating company" means—

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

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phone and Telegraph Company, New Jersey Bell Telephone Company, New York Telephone Company, US West Communications Company, South Central Bell Telephone Company, Southern Bell Telephone and Telegraph Company, Southwestern Bell Telephone Company, The Bell Telephone Company of Pennsylvania, The Chesapeake and Potomac Telephone Company, The Chesapeake and Potomac Telephone Company of Maryland, The Chesapeake and Potomac Telephone Company of Virginia, The Chesapeake and Potomac Telephone Company of West Virginia, The Diamond State Telephone Company, The Ohio Bell Telephone Company, The Pacific Telephone and Telegraph Company, or Wisconsin Telephone Company,

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

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

(5) CUSTOMER PREMISES EQUIPMENT.—The term "customer premises equipment" means equipment employed on the premises of a person (other than a person engaged in the business of providing a telecommunications service) to originate, route, or

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terminate telecommunications, and includes software relating to such equipment.

(6) ELECTRONIC PUBLISHING.—The term "electronic publishing" means the provision via telecommunications, by a Bell operating company or affiliated enterprise to a person other than an affiliate of such company, of information—

(A) which such company or affiliated enterprise has, or has caused to be, originated, authored, compiled, collected, or edited, or

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

(7) EXCHANGE AREA.—The term "exchange area" means a contiguous geographic area established by a Bell operating company such that no exchange area includes points within more than 1 standard metropolitan statistical area, consolidated statistical area, or State, except as expressly permitted under the Modification of Final Judgment before May 6, 1992.

(8) EXCHANGE ACCESS.—The term "exchange access" means exchange services provided for the purpose of originating or terminating interexchange telecommunications.

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(9) EXCHANGE SERVICE.—The term "exchange service" means a telecommunications service provided within an exchange area.

(10) INFORMATION.—The term "information" means knowledge or intelligence represented by any form of writing, signs, signals, pictures, sounds, or other symbols.

(11) INFORMATION ACCESS.—The term "information access" means specialized exchange services provided by a Bell operating company for the purpose of originating, terminating, transmitting, forwarding, or routing telecommunications to or from a provider of information services.

(12) INFORMATION SERVICE.—The term "information service" means the offering of a capability for generating, acquiring, storing, transforming, processing, retrieving, utilizing, or making available information via telecommunications, and includes electronic publishing, but does not include the use of any such capability to engage in the business of providing an exchange service.

(13) INTEREXCHANGE TELECOMMUNICATIONS.—The term "interexchange telecommunications" means telecommunications between a point

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located in an exchange area and a point located outside such exchange area.

(14) MODIFICATION OF FINAL JUDGMENT.—The term "Modification of Final Judgment" means the order entered August 24, 1982, in the antitrust action styled U.S. v. Western Electric, Civil Action No. 82-0192, in the United States District Court for the District of Columbia, and includes any judgment or order with respect to such action entered on or after August 24, 1982.

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

(16) RESEARCH AND DEVELOPMENT.—The term "research and development" means—

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

(B) development or testing of basic engineering techniques,

(C) extension of investigative findings or theory of a scientific or technical nature into practical application for experimental or demonstration purposes, but does not include production or testing of models or prototypes,

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(D) collection or analysis of research information,

(E) establishment or operation of facilities for conducting any activity included under subparagraph (A), (B), (C), or (D), or

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

(17) TELECOMMUNICATIONS.—The term "telecommunications" means the transmission of information between points by electromagnetic means.

(18) TELECOMMUNICATIONS EQUIPMENT.—The term "telecommunications equipment" means equipment, other than customer premises equipment, used to provide a telecommunications service, and includes software relating to such equipment.

(19) TELECOMMUNICATIONS SERVICE.—The term "telecommunications service" means the offering for hire of transmission facilities or of telecommunications by means of such facilities.

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

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

SEC. 8. RELATIONSHIP TO OTHER LAWS.

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

(1) section I of the Modification of Final Judgment, relating to AT&T reorganization,

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

(3) section IV(F) and IV(I) of the Modification of Final Judgment, with respect to the requirements included in the definitions of "exchange access" and "information access",

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

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

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

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

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cluding all exceptions granted thereunder before May 6, 1992,

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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