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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.

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.

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

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SECTION 1. SHORT TITLE.

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

SEC. 2. FINDINGS.

The Congress finds that the continued economic growth and the international competitiveness of American industry would be assisted by permitting the Bell Telephone Companies to conduct research on, design, develop, manufacture, and market telecommunications equipment for American residential and business telecommunications users.

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

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

"REGULATION OF MANUFACTURING BY BELL TELEPHONE COMPANIES

"SEC. 225. (a) Subject to the requirements of this section and the regulations prescribed thereunder, a Bell Telephone Company may conduct research on and manufacture and provide telecommunications equipment, notwithstanding any restriction or obligation imposed before the date of enactment of this section pursuant to the antitrust laws on the lines of business in which a Bell Telephone Company may engage, except that a Bell Telephone Company may not engage in such manufacturing or provision or both through a

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joint manufacturing agreement with another Bell Telephone Company.

"(b) Any Bell Telephone Company engaged in any activity authorized under subsection (a) shall conduct such activity other than basic research only through a subsidiary that is fully separate from any other entity owned or otherwise affiliated with any Bell Telephone Company, including any affiliate of one or more of the Bell Telephone Companies that provides telecommunications services over the telephone network. The Commission shall issue rules to ensure that such subsidiary shall—

"(1) maintain books, records, and accounts separate from the parent Bell Telephone Company which identify all transactions with such parent Company and, even if such subsidiary is not a publicly held corporation, prepare financial statements which are in compliance with Federal financial reporting requirements for publicly held corporations, file such statements with the Commission, and make such statements available for public inspection;

"(2) consistent with the provisions of this section, carry out directly its own marketing, sales, advertising, installation, production, maintenance operations, manufacturing, and research and development relating to the equipment it provides, except that institutional adver-

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~~tising of a type not related to specific telecommunications equipment carried out by the parent Bell Telephone Company shall be permitted if each party pays its pro rata share;~~

~~"(3) conduct all of its manufacturing activity, including design and development as well as fabrication, and including the manufacture of components, within the United States;~~

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

~~"(5) acquire all of the debt necessary to finance itself from the financial markets outside the operations of its parent Bell Telephone Company, and be prohibited from acquiring debt in a manner that would permit a creditor, on default, to have recourse to the assets of the Bell Telephone Company's telecommunications services business; and~~

~~"(6) shall operate at all times on an arms-length basis from any of its parent Bell Telephone Company's other businesses, including the Bell Telephone Company's telecommunications services businesses.~~

~~"(c) The Commission shall issue regulations requiring that any Bell Telephone Company that engages in any activity authorized by subsection (a) shall—~~

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"(1) provide to other telecommunications equipment manufacturers opportunities to sell such equipment to itself or any of its affiliates which are comparable to the opportunities which it provides to itself or any of its affiliates; and

"(2) not subsidize its fully separated subsidiary with revenues from its regulated telecommunications services.

"(d) For the purposes of administering and enforcing the provisions of this section and the regulations prescribed thereunder, the Commission shall have the same authority, power, and functions with respect to any Bell Telephone Company as the Commission has in administering and enforcing the provisions of this title with respect to any common carrier subject to this Act.

"(e) The authority of the Commission to prescribe regulations to carry out this section is effective on the date of enactment of this section. The Commission shall prescribe such regulations within one hundred and eighty days after such date of enactment.

"(f) As used in this section:

"(1) The term 'affiliate' means any entity (A) that is under direct or indirect common ownership by a Bell Telephone Company, or directly or indirectly owns a Bell Telephone Company, (B) that is under direct or

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indirect control by a Bell Telephone Company, or directly or indirectly controls a Bell Telephone Company, or (C) in which a Bell Telephone Company or its other affiliates directly or indirectly (i) have an equity interest (or the equivalent thereof) of more than 10 per centum or (ii) exercise substantial management influence.

"(2) The term 'antitrust laws' has the meaning given such term by subsection (a) of the first section of the Clayton Act (15 U.S.C. 12(a)).

"(3) The term 'Bell Telephone Company' means those companies listed in appendix A of the Modification of Final Judgment entered August 24, 1982, in United States v. Western Electric, Civil Action No. 82-0192 (United States District Court, District of Columbia), and includes any successor or assign of any such company, but does not include any affiliate of any such company.

"(4) The term 'manufacturing' has the same meaning as such term has in the Modification of Final Judgment entered August 24, 1982, in United States v. Western Electric, Civil Action No. 82-0192 (United States District Court, District of Columbia) as interpreted in United States v. Western Electric, Civil

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Action No. 82-0192 (United States District Court, District of Columbia) (filed December 3, 1987).

"(5) The term 'telecommunications' means the transmission, between or among points specified by the customer, or information of the customer's choosing, without change in the form of content of the information as sent and received, by means of an electromagnetic transmission medium, including all instrumentalities, facilities, apparatus, and services (including the collection, storage, forwarding, switching, and delivery of such information) essential to such transmission.

"(6) The term 'telecommunications equipment' means equipment, including customer premises equipment, telecommunications products used by a carrier to provide telecommunications services, and software necessary to operate such equipment.

"(7) The term 'telecommunications service' means the offering for hire of telecommunications facilities, or of telecommunications by means of such facilities.".

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

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SECTION 1. SHORT TITLE.

This Act may be cited as the "Telecommunications Equipment Research and Manufacturing Competition Act of 1990".

SEC. 2. FINDINGS.

The Congress finds that the continued economic growth and the international competitiveness of American industry would be assisted by permitting the Bell Telephone Companies, through their affiliates, to manufacture (including design, development, and fabrication) telecommunications equipment and customer premises equipment, and to engage in research with respect to such equipment.

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

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

"REGULATION OF MANUFACTURING BY BELL TELEPHONE COMPANIES

"SEC. 225. (a) Subject to the requirements of this section and the regulations prescribed thereunder, a Bell Telephone Company, through an affiliate of that Company, notwithstanding any restriction or obligation imposed before the date of enactment of this section pursuant to the Modification of Final Judgment on the lines of business in which a Bell Telephone Company may engage, may manufacture and provide telecommunications equipment and manufacture cus-

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tomer premises equipment, except that neither a Bell Telephone Company nor any of its affiliates may engage in such manufacturing in conjunction with a Bell Telephone Company not so affiliated or any of its affiliates.

"(b) Any manufacturing or provision authorized under subsection (a) shall be conducted only through an affiliate (hereafter in this section referred to as a 'manufacturing affiliate') that is separate from any Bell Telephone Company.

"(c) The Commission shall prescribe regulations to ensure that—

"(1) such manufacturing affiliate shall maintain books, records, and accounts separate from its affiliated Bell Telephone Company which identify all transactions between the manufacturing affiliate and its affiliated Bell Telephone Company and, even if such manufacturing affiliate is not a publicly held corporation, prepare financial statements which are in compliance with Federal financial reporting requirements for publicly held corporations, file such statements with the Commission, and make such statements available for public inspection;

"(2) consistent with the provisions of this section, neither a Bell Telephone Company nor any of its nonmanufacturing affiliates shall perform sales, advertising, installation, production, or maintenance operations

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for a manufacturing affiliate; except that institutional advertising, of a type not related to specific telecommunications equipment, carried out by the Bell Telephone Company or its affiliates shall be permitted if each party pays its pro rata share;

"(3) such manufacturing affiliate shall conduct all of its manufacturing within the United States and all component parts, of customer premises equipment manufactured by such affiliate or of telecommunications equipment manufactured by such affiliate, shall have been manufactured within the United States; except that the Commission may, no later than three months after application by such affiliate, waive the requirements of this paragraph upon a showing of extraordinary circumstances;

"(4) no more than 90 percent of the equity of such manufacturing affiliate shall be owned by its affiliated Bell Telephone Company and any affiliates of that Bell Telephone Company;

"(5) any debt incurred by such manufacturing affiliate may not be issued by its affiliates, and such manufacturing affiliate shall be prohibited from incurring debt in a manner that would permit a creditor, on default, to have recourse to the assets of its affiliated

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Bell Telephone Company's telecommunications services business;

"(6) such manufacturing affiliate shall not be required to operate separately from the other affiliates of its affiliated Bell Telephone Company;

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

"(8) such manufacturing affiliate shall make available, without discrimination or self-preference as to price, delivery, terms, or conditions, to all local telephone exchange carriers, for use with the public telecommunications network, any telecommunications equipment manufactured by such affiliates so long as each such purchasing carrier—

"(A) does not either manufacture telecommunications equipment, or have a manufacturing affiliate which manufactures telecommunications equipment, or

"(B) agrees to make available, to the Bell Telephone Company affiliated with such manufacturing affiliate or any of the other affiliates of

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such Company, any telecommunications equipment manufactured by such purchasing carrier or by any entity or organization with which such carrier is affiliated.

"(d)(1) The Commission shall prescribe regulations to require that each Bell Telephone Company shall maintain and file with the Commission full and complete information with respect to the protocols and technical requirements for connection with and use of its telephone exchange service facilities. Such regulations shall require each such Company to report promptly to the Commission any material changes or proposed changes to such protocols and requirements, and the schedule for implementation of such changes or proposed changes.

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

"(3) When two or more carriers are providing regulated telephone exchange service in the same area of interest, each such carrier shall provide to other such carriers timely information on the deployment of telecommunications equipment.

"(4) The Commission may prescribe such additional regulations under this subsection as may be necessary to ensure that manufacturers in competition with a Bell Telephone Company's manufacturing affiliate have ready and

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

"(e) The Commission shall prescribe regulations requiring that any Bell Telephone Company which has an affiliate that engages in any manufacturing authorized by subsection (a) shall—

"(1) provide, to other manufacturers of telecommunications equipment and customer premises equipment, opportunities to sell such equipment to such Bell Telephone Company which are comparable to the opportunities which such Company provides to its affiliates;

"(2) not subsidize its manufacturing affiliate with revenues from its regulated telecommunications services; and

"(3) only purchase equipment from its manufacturing affiliate at the open market price.

"(f) A Bell Telephone Company and its affiliates may engage in close collaboration with any manufacturer of customer premises equipment or telecommunications equipment during the design and development of hardware, software, or combinations thereof relating to such equipment.

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"(g) The Commission may prescribe such additional rules and regulations as the Commission determines necessary to carry out the provisions of this section.

"(h) For the purposes of administering and enforcing the provisions of this section and the regulations prescribed thereunder, the Commission shall have the same authority, power, and functions with respect to any Bell Telephone Company as the Commission has in administering and enforcing the provisions of this title with respect to any common carrier subject to this Act.

"(i) The authority of the Commission to prescribe regulations to carry out this section is effective on the date of enactment of this section. The Commission shall prescribe such regulations within 180 days after such date of enactment, and the authority to engage in the manufacturing authorized in subsection (a) shall not take effect until regulations prescribed by the Commission under subsections (c), (d), and (e) are in effect.

"(j) Nothing in this section shall prohibit any Bell Telephone Company from engaging, directly or through any affiliate, in any manufacturing activity in which any company or affiliate was authorized to engage on the date of enactment of this section.

"(k) As used in this section:

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"(1) The term 'affiliate' means any organization or entity that, directly or indirectly, owns or controls, is owned or controlled by, or is under common ownership with a Bell Telephone Company. Such term includes any organization or entity in which a Bell Telephone Company or any of its affiliates has any financial or management interest.

"(2) The term 'Bell Telephone Company' means those companies listed in appendix A of the Modification of Final Judgment, and includes any successor or assign of any such company, but does not include any affiliate of any such company.

"(3) The term 'customer premises equipment' means equipment employed on the premises of a person (other than a carrier) to originate, route, or terminate telecommunications.

"(4) The term 'manufacturing' has the same meaning as such term has in the Modification of Final Judgment as interpreted in United States v. Western Electric, Civil Action No. 82-0192 (United States District Court, District of Columbia) (filed December 3, 1987).

"(5) The term 'Modification of Final Judgment' means the decree entered August 24, 1982, in United

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

"(6) The term 'telecommunications' means the transmission, between or among points specified by the user, of information of the user's choosing, without change in the form or content of the information as sent and received, by means of an electromagnetic transmission medium, including all instrumentalities, facilities, apparatus, and services (including the collection, storage, forwarding, switching, and delivery of such information) essential to such transmission.

"(7) The term 'telecommunications equipment' means equipment, other than customer premises equipment, used by a carrier to provide telecommunications services.

"(8) The term 'telecommunications service' means the offering for hire of telecommunications facilities, or of telecommunications by means of such facilities.".

(b) CONFORMING AMENDMENT.—Section 2(b) of the Communications Act of 1934 is amended striking "section 224" and inserting in lieu thereof "sections 224 and 225".

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