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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

THE COMMUNICATIONS DECENCY ACT

Volume 6
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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

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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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Doc. No. 117 - H.R. 411 - Antitrust and Communications Reform Act of 1995. Introduced by Mr. Dingell, et. al., and referred to the House Commerce Committee and the House Judiciary Committee, House of Representatives, 104th Congress, 1st Session (January 4, 1995).

Doc. No. 118 - H.R. 514 - Bill to Repeal Restrictions on Foreign Ownership of Licensed Telecommunications Facilities. Introduced by Rep. Oxley, et. al. and referred to the Committee on Commerce, House of Representatives, 104th Congress, 1st Session, (January 13, 1995).

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Doc. No. 123 - 137 CONG. REC. E1022-25 (daily ed. March 10, 1991) (extension of remarks by Rep. Slattery on the introduction of the Telecommunications Equipment, Research, and Manufacturing Competition Act of 1991).

Doc. No. 124 - 137 CONG. REC. S6437-39 (daily ed. May 22, 1991) (Senate Amendment No. 260 to be proposed to S. 173 by Sen. Pressler).

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Doc. No. 132 - 138 CONG. REC. H3038-39 (daily ed. May 7, 1992) (remarks by Rep. Brooks on a Comprehensive Telecommunications Antitrust Policy).

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Doc. No. 144 - 139 CONG. REC. H10911 (daily ed. November 22, 1993) (remarks of Rep. Dingell on H.R. 3626).

Doc. No. 145 - 139 CONG. REC. E3114-15 (daily ed. November 24, 1993) (extension of remarks of Rep. Markey on the National Communications Competition and Information Infrastructure Act of 1993).

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Doc. No. 148 - 140 CONG. REC. S6942-45 (daily ed. June 15, 1994) (remarks of Sen. Inouye on the National Public Telecommunications Infrastructure Act of 1994).

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Doc. No. 153 - 140 CONG. REC. E1387-88 (daily ed. June 30, 1994) (extension of remarks by Rep. Hastert on

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Calendar No. 610

103D CONGRESS
2D SESSION

S. 1822

[Report No. 103–367]

To foster the further development of the Nation's telecommunications infrastructure and protection of the public interest, and for other purposes.

IN THE SENATE OF THE UNITED STATES

FEBRUARY 3 (legislative day, JANUARY 25), 1994

Mr. HOLLINGS (for himself, Mr. DANFORTH, Mr. INOUYE, Mr. STEVENS, Mr. EXON, Mr. PRESSLER, Mr. ROCKEFELLER, Mr. BURNS, Mr. ROBB, Mr. GORTON, Mr. DORGAN, Mr. KERREY, Mr. KERRY, Mr. BOND, Ms. MOSELEY-BRAUN, Mr. AKAKA, Mr. LOTT, Mr. MATHEWS, and Mr. LIEBERMAN) introduced the following bill; which was read twice and referred to the Committee on Commerce, Science, and Transportation

SEPTEMBER 14 (legislative day, SEPTEMBER 12), 1994

Reported by Mr. HOLLINGS, with an amendment

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

A BILL

To foster the further development of the Nation's telecommunications infrastructure and protection of the public interest, 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 "Communications Act of 1994".

SEC. 2. FINDINGS.

The Congress finds that—

(1) Congress has not passed a broad review of the Communications Act of 1934 since that Act was originally passed;

(2) Congress must pass comprehensive communications legislation to promote the development and growth of the national information superhighway;

(3) changes in the telecommunications marketplace have made some of the provisions of the Communications Act of 1934 obsolete, unnecessary, or inimical to advances in communications technologies and services;

(4) for instance, competition has emerged in many services that were previously thought to be natural monopolies, but the Communications Act of 1934 requires all carriers to be regulated as if they were monopolies;

(5) as communications markets change, government must ensure that the public interest, convenience and necessity is preserved;

(6) the public interest requires that universal telephone service is protected and advanced, that

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~~new telecommunications technologies are deployed rapidly and equitably, and that access by schools, hospitals, public broadcasters, libraries, other public entities, community newspapers, and broadcasters in the smallest markets to advanced telecommunications services is assisted;~~

~~(7) access to basic telecommunications services is fundamental to safety of life and participation in a democratic society;~~

~~(8) telecommunications networks make substantial use of public rights of way in real property and in spectrum frequencies, and carriers that make use of such public rights of way have an obligation to provide preferential rates to entities that provide significant public benefits;~~

~~(9) advanced telecommunications services can enhance the quality of life and promote economic development and international competitiveness;~~

~~(10) telecommunications infrastructure development is particularly crucial to the continued economic development of rural areas that may lack an adequate industrial or service base for continued development;~~

~~(11) advancements in the Nation's telecommunications infrastructure will enhance the pub-~~

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~~lic welfare by helping to speed the delivery of new services, such as distance learning, remote medical sensing, and distribution of health information;~~

~~(12) infrastructure advancement can be assisted by joint planning and infrastructure sharing by all carriers providing communications services;~~

~~(13) increased competition in telecommunications services can, if subject to appropriate safeguards, encourage infrastructure development and have beneficial effects on the price, universal availability, variety, and quality of telecommunications services;~~

~~(14) the emergence of competition in telecommunications services has already contributed, and can be expected to continue contributing, to the modernization of the infrastructure;~~

~~(15) competition in the long distance industry and the communications equipment market has brought about lower prices and higher quality services;~~

~~(16) competition for local communications services has already begun to benefit the public; competitive access providers have deployed thousands of miles of optical fiber in their local networks; local exchange carriers have been prompted by competition~~

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to accelerate the installation of optical fiber in their own networks;

(17) electric utilities, satellite carriers, and others are prepared to enter the local telephone market over the next few years;

(18) a diversity of telecommunications carriers enhances network reliability by providing redundant capacity, thereby lessening the impact of any network failure;

(19) competition must proceed under rules that protect consumers and are fair to all telecommunications carriers;

(20) all telecommunications carriers, including competitors to the telephone companies, should contribute to universal service and should make their networks available for interconnection by others;

(21) removal of all State and local barriers to entry into the telecommunications services market and provision of national standards for interconnection are warranted after mechanisms to protect universal service and rules are established to ensure that competition develops fairly;

(22) increasing the availability of interconnection and interoperability among the facilities of tele-

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communications carriers will help stimulate the development of fair competition among providers;

(23) the portability of telecommunications numbers will eliminate a significant advantage held by traditional telephone companies over competitors in the provision of telecommunications services;

(24) restrictions on resale and sharing of telecommunications networks retard the growth of competition and restrict the diversity of services available to the public;

(25) additional regulatory measures are needed to allow consumers in rural markets and noncompetitive markets the opportunity to benefit from high-quality telecommunications capabilities;

(26) regulatory flexibility for existing providers of telephone exchange service is necessary to allow them to respond to competition;

(27) the Federal Communications Commission (hereinafter referred to as the "Commission") and the States must have the flexibility to adjust their regulations to the market power of each provider of telecommunications services;

(28) the Commission should take steps to ensure network reliability and the development of network standards;

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~~(29) access to switched, digital telecommunications service for all segments of the population promotes the core First Amendment goal of diverse information sources by enabling individuals and organizations alike to publish and otherwise make information available in electronic form;~~

~~(30) the national welfare will be enhanced if community newspapers and broadcasters in the smallest markets are provided ease of entry into the operation of information services disseminated through electronic means primarily to customers in the localities served by such newspapers and broadcasters at reasonable, nondiscriminatory rates to such newspapers;~~

~~(31) a clear national mandate is needed for full participation in access to telecommunications networks and services by individuals with disabilities;~~

~~(32) the obligations of telecommunications carriers includes the duty to furnish telecommunications services which are designed to be fully accessible to individuals with disabilities in accordance with such standards as the Commission may prescribe;~~

~~(33) permitting the Bell operating companies to enter the manufacturing market will stimulate great-~~

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er research and development, create more jobs, and enhance our international competitiveness;

(34) the Bell operating companies should be permitted to provide long distance service for cable television and for cellular hands off immediately because there is little harm, if any, that such entry could cause the public;

(35) the Bell operating companies should not be permitted to enter the market for other long distance services until they have eliminated the barriers to competition and interconnection and until the Bell operating company faces competition for local telephone service;

(36) safeguards are necessary to ensure that the Bell operating companies do not abuse their market power over local telephone service to discriminate against competitors in the markets for electronic publishing, alarm, and other information services;

(37) amending the legal barriers to the provision of video programming by telephone companies in their service areas will encourage competition to existing cable television service providers and encourage telephone companies to upgrade their telecommunications facilities to enable them to deliver

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video programming, as long as telephone companies are prohibited from buying or combining with existing cable companies in their telephone service areas;

(38) as communications technologies and services proliferate, consumers must be given the right to control information concerning their use of those technologies and services; and

(39) as competition in the media increases, the Commission should reexamine the need for national and local ownership limits on broadcast stations, consistent with the need to maintain diversity of information sources.

SEC. 3. EFFECT ON OTHER LAW.

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

(b) FEDERAL, STATE, AND LOCAL LAW.—(1) Except as provided in paragraph (2), this Act shall not be construed to modify, impair, or supersede Federal, State, or local law unless expressly so provided 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.

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TITLE I—PROTECTION AND ADVANCEMENT OF UNIVERSAL SERVICE

SEC. 101. NATIONAL POLICY GOALS.

Section 1 of the Communications Act of 1934 (47 U.S.C. 151) is amended by inserting "(a)" immediately before "For the purpose of" and by adding at the end the following new subsection:

"(b) the primary objective of United States national and international communications policy shall be to protect the public interest. The goals of United States national and international communications policy shall include the following:

"(1) To ensure that every person has access to basic telecommunications at reasonable charges.

"(2) To promote the development and widespread availability of new technologies.

"(3) To ensure that consumes have access to diverse sources of information.

"(4) To allow each individual the opportunity to contribute to the free flow of ideas and information through telecommunications services.

"(5) To maximize the contribution of communications and information technologies and services to economic welfare and quality of life.

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"(6) To protect each individual's right to control the use of information concerning his or her use of telecommunications services.

"(7) To promote democracy.".

SEC. 102. UNIVERSAL SERVICE PROTECTION AND ADVANCEMENT.

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

"SEC. 201A. UNIVERSAL SERVICE PROTECTION AND ADVANCEMENT.

"(a) DUTY TO CONTRIBUTE.—It shall be the duty of every common carrier engaged in intrastate, interstate, or foreign communication by wire or radio to contribute to the preservation and advancement of universal service. Such contributions can include monetary payment, certain service obligations, in-kind payment, or other forms of contribution as determined by the Commission and any State as set forth in subsections (b) and (c).

"(b) RESPONSIBILITIES OF THE COMMISSION.—(1) Within one year after the date of enactment of this section, the Commission, after receiving comment from the States, shall set forth minimum guidelines for the definition of universal service. Such guidelines shall ensure that—

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"(A) universal service includes no less than voice grade telephone exchange services at a charge that includes no more than a reasonable share of the joint and common costs of facilities used to provide such services; and

"(B) any other service that utilizes such facilities shall bear a reasonable share of such costs.

The Commission shall periodically revise such guidelines.

"(2) Within two years after the date of enactment of this section, the Commission shall prescribe and implement regulations to provide that a charge be collected, or other action be taken, to ensure that providers of interstate telecommunications make a contribution to the protection and advancement of universal service on a competitively neutral basis. Any funds contributed under this section shall be distributed to each State.

"(c) PRIMARY RESPONSIBILITY.—(1) The Commission shall delegate to each State the primary responsibility for defining universal service and ensuring that universal service goals are met. Each State may impose a nondiscriminatory charge on intrastate telecommunications, or take other action, as the State finds necessary to protect and advance universal service.

"(2) In considering methods of protecting and advancing universal service, the State may consider assisting

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directly telecommunications carriers, assisting directly individuals and entities who cannot afford the cost of certain telecommunications services, assisting directly individuals or entities in purchasing or leasing equipment or programming, allowing carriers to compete for the right to obtain funding in exchange for providing certain services, and other options. To the extent that a State establishes a fund to support universal service, all provider of telecommunications services shall be eligible to receive payment from such fund.

"(3) If a State has not implemented procedures to carry out the objectives of paragraphs (1) and (2) within two years after the date of enactment of this section, or at any time thereafter fails to meet the objectives of such paragraphs, the Commission shall assume the primary responsibility to ensure that those objectives are met."

(b) CONFORMING AMENDMENT.—Section 332(c)(1)(A) of the Communications Act of 1934 (47 U.S.C. 332(c)(1)(A)) is amended by inserting "201A," immediately after "section 201,".

SEC. 103. PUBLIC ACCESS.

(a) AMENDMENT.—Section 202 of the Communications Act of 1934 (47 U.S.C. 202) is amended by adding at the end the following new subsection:

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"(d)(1) Notwithstanding subsections (a) through (c), it shall be the duty of all telecommunications carriers that use public rights of way to permit educational institutions, health care institutions, local and State governments, public broadcast stations, public libraries, other public entities, community newspapers, and broadcasters in the smallest markets to obtain access to intrastate and interstate services provided by such carriers at preferential rates. Entities that obtain services under this provision may not resell such services, except to other entities that are eligible for preferential rates under this subsection.

"(2) Within one year after the date of enactment of this subsection, the Commission shall prescribe regulations to enforce the provisions of this subsection.".

(b) RULEMAKING ON ADVANCED TELECOMMUNICATIONS SERVICES.—The Commission shall commence a rulemaking proceeding for the purpose of prescribing regulations that—

(1) enhance, to the extent feasible, the availability of advanced telecommunications services to all public elementary and secondary school classrooms, health care institutions, and libraries; and

(2) ensure that appropriate functional requirements or performance standards, or both, including interoperability standards, are established for tele-

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communications arrangements that interconnect educational institutions, health care institutions, and libraries with the public switched network.

TITLE II—TELECOMMUNICATIONS INVESTMENT

SEC. 201. INFRASTRUCTURE INVESTMENT.

Title II of the Communications Act of 1934 (47 U.S.C. 201 et seq.), as amended by this Act, is further amended by adding at the end the following new section:

"SEC. 229. INFRASTRUCTURE INVESTMENT.

"(a) RURAL MARKETS AND NONCOMPETITIVE MARKETS.—If State regulatory authorities fail to achieve the goal of ensuring that telecommunications carriers provide consumers in rural markets and noncompetitive markets with access to high quality, interoperable telecommunications network facilities and capabilities which—

"(1) provide subscribers with sufficient interactive bi-directional network capacity to allow access to information services that provide a combination of voice, data, image, and video; and

"(2) are widely available at reasonable nondiscriminatory rates that are based on reasonably identifiable costs of providing such services,

then the Commission may take any action necessary to achieve that goal.

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"(b) FULL EFFECTUATION.—The Commission shall have the authority to preempt any State or local statute or regulation, or other State or local legal requirement, that prevents the full effectuation of the goal embodied in subsection (a).

"(c) STATE REGULATORY INCENTIVES.—The States are encouraged to implement regulatory incentives to promote the development of high quality telecommunications network facilities and capabilities. If regulatory incentives fail to result in the deployment of high quality telecommunications network facilities and capabilities in rural markets and noncompetitive markets, the States may adopt other methods to ensure that the goal of subsection (a) is achieved.

"(d) NETWORK STANDARDS AND PLANNING.—

"(1) NETWORK STANDARDS.—

"(A) INTERCONNECTION AND INTEROPERABILITY STANDARDS.—The Commission shall encourage telecommunications carriers and telecommunications equipment manufacturers to develop standards to ensure interconnection and interoperability of telecommunications networks.

"(B) INDUSTRY ASSISTANCE.—The Commission shall, when necessary, establish dead-

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~~lines, create incentives, or use other mechanisms to assist the industry to develop and implement such standards.~~

~~"(C) COMMISSION AUTHORITY TO ESTABLISH STANDARDS.—The Commission may establish standards when industry participants fail to reach agreement.~~

~~"(2) NETWORK PLANNING.—~~

~~"(A) REGULATIONS ON JOINT COORDINATED ACTION.—The Commission shall prescribe regulations that permit joint coordinated network planning, design, and cooperative implementation among all telecommunications carriers in the provision of public switched network infrastructure and services.~~

~~"(B) PROCEDURES.—The Commission shall prescribe regulations establishing procedures to ensure that—~~

~~"(i) telecommunications carriers shall make available timely information to other such carriers and information service providers in the same geographic area about the deployment of telecommunications equipment, including software integral to such telecommunications equipment, in-~~

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cluding upgrades, that will affect a telecommunications carrier's or information service provider's ability to interconnect or interoperate in the same geographic area;

"(ii) telecommunications carriers shall not be required to share information required under clause (i) with anyone, including carriers with whom they directly compete, except as may be necessary to meet the interconnection and interoperability requirements set forth in this paragraph; and

"(iii) the recipient of any information described in clause (i) shall use it only for its own interconnection and interoperability.

"(3) INFRASTRUCTURE SHARING ARRANGEMENTS BETWEEN OR AMONG TELECOMMUNICATIONS CARRIERS.—

"(A) REGULATIONS REQUIRED.—The Commission shall prescribe regulations that require a local exchange carrier to share public switched network infrastructure and function with requesting telecommunications carriers

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lacking economies of scale or scope, as defined in subparagraph (B).

"(B) DEFINITION.—For the purposes of this paragraph, the term 'telecommunications carrier lacking economies of scale or scope' means any telecommunications carrier which serves a geographic area for which it lacks economies of scale or scope for the particular required network function.

"(C) CONTENTS OF REGULATIONS.—The regulations governing such sharing between local exchange carriers and telecommunications carriers shall—

"(i) promote economically efficient decisionmaking by local exchange carriers and telecommunications carriers lacking economies of scale or scope;

"(ii) not require any local exchange carrier or telecommunications carrier lacking economies of scale or scope to make any decision that is uneconomic or adverse to the public interest;

"(iii) permit, but not require, joint ownership and operation of public switched network infrastructure and services by

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~~local exchange carriers and telecommunications carriers lacking economics of scale or scope;~~

~~"(iv) ensure that fair and reasonable terms and conditions for and in connection with the business arrangement described in this paragraph are determined by local exchange carriers and telecommunications carriers lacking economics of scale or scope in accordance with general guidelines contained in the regulations prescribed pursuant to this paragraph.~~

~~"(v) establish conditions that promote cooperation between local exchange carriers and telecommunications carriers lacking economics of scale or scope; and~~

~~"(vi) ensure that all regulation rights and obligations for and in connection with the business arrangements described in this paragraph shall be determined exclusively in accordance with the regulations prescribed pursuant to his paragraph.~~

~~"(4) DISABILITY ACCESS.—The Commission and the States shall ensure that advances in network capabilities and telecommunications service deployed~~

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by telecommunications carries are designed to be accessible to individuals with disabilities.

"(e) ANNUAL SURVEY.—The Commission shall publish annually a survey of the deployment of technologies on a State-by-State basis.

"(f) COST ALLOCATION REGULATIONS.—The Commission shall develop regulations, consistent with the need to protect universal service to allocate a local exchange carrier's costs of deploying of broadband telecommunications facilities between local exchange service and competitive services.".

TITLE III—REGULATORY REFORM

SEC. 301. DEFINITIONS.

Section 3 of the Communications Act of 1934 (49 U.S.C. 153) is amended by adding at the end the following new subsections:

"(hh) 'Local exchange carrier' means a provider of telephone exchange service that the Commission determines that market power.

"(ii) 'Telecommunications' means the transmission, between or among points specified by the user, or information of the user's choosing, without change in the reform or content of the information as sent and received, by means of electromagnetic transmission, with or without benefit of any closed transmission medium, including all

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~~instrumentalities facilities, apparatus, and services (including the receipt, switching, and delivery of such information) essential to such transmission.~~

~~"(jj) 'Telecommunications service' means the offering for profit to the public or to such classes and eligible users as to be effectively available to a substantial portion of the public of—~~

~~"(1) telecommunications facilities that (A) are owned or controlled by a provider of telephone exchange service or (B) interconnect with the network of a provider of telephone exchange service; or~~

~~"(2) telecommunications by means of such telecommunications facilities.~~

~~Such term does not include information services.~~

~~"(kk) 'Telecommunications carrier' means any provider of telecommunications services, except that such term does not include hotels, motels, hospitals, and other aggregators of telecommunications services as defined in section 226.~~

~~"(ll) 'Telecommunications number portability' means the ability of users of telecommunications services to retain existing telecommunications numbers without impairment of quality, reliability, or convenience when switching from one telecommunications carrier to another.~~

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"(mm) 'Information service' means the offering of services over common carrier transmission facilities which employ computer processing applications that act on the format, content, code, protocol or similar aspects of the subscriber's transmitted information, provide the subscriber additional, different, or restructured information, or involve subscriber interaction with stored information.

"(nn) 'Bell operating company' means any of the 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.

"(oo) 'Modification of Final Judgment' means the decree entered August 24, 1982, in United States v. Western Electric, Civil Action No. 82-0192 (United States District Court, District of Columbia).".

SEC. 302. REGULATORY REFORM.

Title II of the Communications Act of 1934 (47 U.S.C. 201 et seq.), as amended by this Act, is further amended by adding at the end the following new section:

"SEC. 230. TELECOMMUNICATIONS COMPETITION.

"(a) REMOVAL OF BARRIERS TO ENTRY.—Subject to the provisions of section 301 of this Act, at such time as the regulations required by section 201A of this Act have been implemented, or 2 years after the date of enactment

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of this section, whichever is earlier, no State or local statute or regulation, or other State or local legal requirement, shall prohibit or have the effect of prohibiting the ability of any entity to provide interstate or intrastate telecommunications services. No State or local governmental entity may unreasonably discriminate among telecommunications carriers.

"(b) PROVISION OF TELECOMMUNICATIONS SERVICES BY OTHER UTILITIES.—Notwithstanding any other provision of law and subject to the regulatory safeguards imposed by an appropriate regulatory agency, an electric, gas, water, or steam utility may provide telecommunications services.

"(c) REGULATORY AUTHORITY.—Nothing in this section shall affect the ability of State or local officials to impose, on a competitively neutral basis, requirements necessary to preserve and advance universal service, protect the public safety and welfare, ensure the continued quality of telecommunications services, and safeguard the rights of consumers.

"(d) OBLIGATIONS OF TELECOMMUNICATIONS CARRIERS.—To the extent that they provide telecommunications services, telecommunications carriers shall be deemed common carriers under this Act. The Commission shall prescribe regulations to require each telecommuni-

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cations carrier, upon bona fide request, to provide to any telecommunications equipment manufacturer or any entity seeking to provide telecommunications services or information services, on reasonable terms and conditions—

"(1) interconnection to the carrier's telecommunications facilities at any technically and economically feasible point within the carrier's network;

"(2) nondiscriminatory access to any of the carrier's telecommunications facilities and information necessary to the transmission and routing of any telecommunications service or information service and the interoperability of both carriers' networks;

"(3) nondiscriminatory access, where technically and economically feasible, to the poles, ducts, conduits, and rights of way owned or controlled by the carrier, and nondiscriminatory rates for such access;

"(4) nondiscriminatory access to the network functions of the carrier's telecommunications network, which shall be offered on an unbundled basis, and

"(5) telecommunications services and network functions without any restrictions on the resale or sharing of those services and functions.

The States may prescribe regulations implementing paragraphs (1) through (5) for intrastate services so long as

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such regulations are not inconsistent with those prescribed by the Commission.

"(c) CONSUMER INFORMATION.—As competition for telecommunications services develops, the Commission and State regulatory authorities shall take action to ensure that consumers are given the information necessary to make informed choices among their telecommunications alternatives.

"(f) TELECOMMUNICATIONS NUMBER PORTABILITY.—The Commission shall prescribe regulations to ensure that—

"(1) telecommunications number portability shall be available, upon request, as soon as technically feasible, and

"(2) an impartial entity shall administer telecommunications numbering and make such numbers available on an equitable basis.

"(g) RECIPROCAL COMPENSATION AGREEMENTS.—Telecommunications carriers shall compensate each other on a reciprocal and equivalent basis for termination of telecommunications services on each other's networks.

"(h) REGULATORY FLEXIBILITY FOR COMPETITIVE SERVICES.—

"(1) REGULATORY FLEXIBILITY.—In the event that a telecommunications carrier does not have

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market power in any or some of its telecommunications services in any or some of its geographic markets, the Commission may streamline any regulation or forbear from applying any provision of this title (except for sections 201, 201A, 202, and 208) to such a telecommunications carrier or service only if the Commission determines that—

"(A) full application of such regulation or provision is unnecessary in order to ensure that the charges, practices, classifications, or regulations for or in connection with that service are just and reasonable and are not unjustly or unreasonably discriminatory;

"(B) full application of such regulation or provision is unnecessary to achieve the goals of this Act; and

"(C) such action is consistent with the public interest and the protection of consumers.

Any finding by the Commission under section 332 that a provision of title II is inapplicable to a commercial mobile service or a provider of commercial mobile services shall be deemed also to be a determination under this paragraph that the requirements of subparagraphs (A), (B), and (C) of this paragraph are satisfied.

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"(2) PRICING FLEXIBILITY.—The Commission shall and the States are encouraged to permit telecommunications carriers to have pricing flexibility in service or geographic markets that are found to be competitive. In implementing this subsection, the Commission and the States shall ensure that rates for basic telephone service and for services that are not competitive remain just and reasonable and that universal service is preserved and advanced.

"(i) RULES FOR FOREIGN OWNERSHIP.—The provisions of section 310(b) shall not apply to any lawful foreign ownership in a telecommunications carrier prior to February 1, 1994, if that carrier was not regulated as a common carrier prior to the date of enactment of this section and is deemed to be a common carrier under this Act.".

SEC. 303. IMPLEMENTING REGULATIONS.

The Commission shall, within 12 months after the date of enactment of this Act, issue regulations to implement this title. Such regulations shall take effect within 6 months after their issuance, except that the Commission may extend such effective date for up to 24 additional months for any small carrier providing telecommunications service in rural areas, upon a showing by the car-

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rier that compliance would not be technically and economically feasible without additional time.

TITLE IV—AUTHORIZED ACTIVITIES OF BELL OPERATING COMPANIES

Subtitle A—Telecommunications Equipment Research and Manufacturing Competition

SEC. 401. SHORT TITLE.

This subtitle may be cited as the "Telecommunications Equipment Research and Manufacturing Competition Act of 1994".

SEC. 402. FINDINGS.

The Congress finds that the continued economic growth and the international competitiveness of American industry would be assisted by permitting the Bell operating 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. 403. AMENDMENT TO COMMUNICATIONS ACT OF 1934.

Title II of the Communications Act of 1934 (47 U.S.C. 201 et seq.), as amended by this Act, is further amended by adding at the end the following new section:

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"SEC. 231. REGULATION OF MANUFACTURING BY BELL OPERATING COMPANIES.

"(a) AUTHORIZATION.—Subject to the requirements of this section and the regulations prescribed thereunder, a Bell operating company, through an affiliate of that company, notwithstanding any restrictions 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 operating company may engage, may manufacture and provide telecommunications equipment and manufacture customer premises equipment, except that neither a Bell operating company nor any of its affiliates may engage in such manufacturing in conjunction with a Bell operating company not so affiliated or any of its affiliates.

"(b) REQUIREMENT FOR SEPARATE AFFILIATE.—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 operating company.

"(c) MANUFACTURING REGULATIONS.—The Commission shall prescribe regulations to ensure tha.—

"(1)(A) such manufacturing affiliate shall maintain books, records, and accounts separate from its affiliated Bell operating company, that identify

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all transactions between the manufacturing affiliate and its affiliated Bell operating company;

"(B) the Commission and the State commissions that exercise regulatory authority over any Bell operating company affiliated with such manufacturing affiliate shall have access to the books, records, and accounts required to be prepared under subparagraph (A); and

"(C) such manufacturing affiliate shall, even if it 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 the State commissions that exercise regulatory authority over any Bell operating company affiliated with such manufacturing affiliate, and make such statements available for public inspection;

"(2) consistent with the provisions of this section, neither a Bell operating company nor any of its nonmanufacturing affiliates shall perform services, advertising, installation, production, or maintenance operations for a manufacturing affiliate, except that institutional advertising, of a type not related to specific telecommunications equipment, carried out by

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the Bell operating company or its affiliates shall be permitted if each party pays its pro rata share;

"(3)(A) such manufacturing affiliate shall conduct all of its manufacturing within the United States and, except as otherwise provided in this paragraph, all component parts of customer premises equipment manufactured by such affiliate, and all component parts of telecommunications equipment manufactured by such affiliate, shall have been manufactured within the United States;

"(B) such affiliate may use component parts manufactured outside the United States if—

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

"(ii) for the aggregate of telecommunications equipment and customer premises equipment manufactured and sold in the United States by such affiliate in any calendar year, the cost of the components manufactured outside the United States contained in the equipment does not exceed 40 percent of the sales revenue derived from such equipment;

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"(C) any such affiliate that uses component parts manufactured outside the United States in the manufacture of telecommunications equipment and customer premises equipment within the United States shall—

"(i) certify to the Commission that a good faith effort was made to obtain equivalent parts manufactured within the United States at reasonable prices, terms, and conditions, which certification shall be filed on a quarterly basis with the Commission and list component parts, by type, manufactured outside the United States, and

"(ii) certify to the Commission on an annual basis that for the aggregate of telecommunications equipment and customer premises equipment manufactured and sold in the United States by such affiliate in the previous calendar year, the cost of the components manufactured outside the United States contained in such equipment did not exceed the percentage specified in subparagraph (B)(ii) or adjusted in accordance with subparagraph (G);

"(D)(i) if the Commission determines, after reviewing the certification required in subparagraph

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~~(C)(i), that such affiliate failed to make the good faith effort required in subparagraph (B)(i) or, after reviewing the certification required in subparagraph (C)(ii), that such affiliate has exceeded the percentage specified in subparagraph (B)(ii), the Commission may impose penalties or forfeitures as provided for in title V of this Act; and~~

~~"(ii) any supplier claiming to be damaged because a manufacturing affiliate failed to make the good faith effort required in subparagraph (B)(i) may make complaint to the Commission as provided for in section 208 of this Act, or may bring suit for the recovery of actual damages for which such supplier claims such affiliate may be liable under the provisions of this Act in any district court of the United States of competent jurisdiction;~~

~~"(E) the Commission, in consultation with the Secretary of Commerce, shall, on an annual basis, determine the cost of component parts manufactured outside the United States contained in all telecommunications equipment and customer premises equipment sold in the United States as a percentage of the revenues from sales of such equipment in the previous calendar year;~~

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"(F) a manufacturing affiliate may use intellectual property created outside the United States in the manufacture of telecommunications equipment and customer premises equipment in the United States, and

"(G) the Commission may not waive or alter the requirements of this subsection, except that the Commission, on an annual basis, shall adjust the percentage specified in subparagraph (B)(ii) to the percentage determined by the Commission, in consultation with the Secretary of Commerce, as directed in subparagraph (E);

"(4) no more than 90 percent of the equity of such manufacturing affiliate shall be owned by its affiliated Bell operating company and any affiliates of that Bell operating 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 Bell operating company's telecommunications service business;

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

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

"(8) such manufacturing affiliate shall make available, without discrimination or self-preference as to price, delivery, terms, or conditions, to all regulated local telephone exchange carriers, for use with the public telecommunications network, any telecommunications equipment, including software integral to such telecommunications equipment, including upgrades, manufactured by such affiliate 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 operating company affiliated with such manufacturing affiliate or any of the requested local

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exchange telephone carrier affiliates of such Bell company, any telecommunications equipment, including software integral to such telecommunications equipment, including upgrades, manufactured for use with the public telecommunications network by such purchasing carrier or by any entity or organization with which such purchasing carrier is affiliated;

"(9)(A) such manufacturing affiliate shall not discontinue or restrict sales to other regulated local telephone exchange carriers of any telecommunications equipment, including software integral to such telecommunications equipment, including upgrades, that such affiliate manufactures for sale as long as there is reasonable demand for the equipment by such carriers, except that such sales may be discontinued or restricted if such manufacturing affiliate demonstrates to the Commission that it is not making a profit, under a marginal cost standard implemented by the Commission, on the sale of such equipment;

"(B) in reaching a determination as to the existence of reasonable demand as referred to in subparagraph (A), the Commission shall within 60 days consider—

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"(i) whether the continued manufacture of the equipment will be profitable;

"(ii) whether the equipment is functionally or technologically obsolete;

"(iii) whether the components necessary to manufacture the equipment continue to be available;

"(iv) whether alternatives to the equipment are available in the market; and

"(v) such other factors as the Commission deems necessary and proper;

"(10) Bell operating companies shall, consistent with the antitrust laws, engage in joint network planning and design with other regulated local telephone exchange carriers operating in the same area of interest, except that no participant in such planning shall delay the introduction of new technology or the deployment of facilities to provide telecommunications services, and agreement with such other carriers shall not be required as a prerequisite for such introduction or deployment; and

"(11) Bell operating companies shall provide, to other regulated local telephone exchange carriers operating in the same area of interest, timely information on the planned deployment of telecommuni-

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cations equipment, including software integral to such telecommunications equipment, including upgrades.

"(d) TELEPHONE EXCHANGE SERVICE REGULATIONS.—

"(1) IN GENERAL.—The Commission shall prescribe regulations to require that each Bell operating 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 Bell company to report promptly to the Commission any material changes or planned changes to such protocols and requirements, and the schedule for implementation of such changes or planned changes.

"(2) DISCLOSURE RESTRICTION.—A Bell operating company shall not disclose to any of its affiliates any information required to be filed under paragraph (1) unless that information is immediately so filed.

"(3) COMPETITORS' ACCESS TO INFORMATION.—The Commission may prescribe such additional regulations under this subsection as may be necessary to ensure that manufacturers in competi-

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tion with a Bell operating company's manufacturing affiliate have ready and equal access to the information required for such competition that such Bell company makes available to its manufacturing affiliate.

"(c) REQUIREMENTS FOR BELL OPERATING COMPANIES WITH MANUFACTURING AFFILIATE.—The Commission shall prescribe regulations requiring that any Bell operating 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 operating 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) COLLABORATION WITH OTHER MANUFACTURERS.—A Bell operating company and its affiliates may engage in close collaboration with any manufacturer of customer premises equipment or telecommunications equip-

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ment during the design and development of hardware, software, or combinations thereof relating to such equipment, consistent with subsection (c)(2).

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

"(h) ADMINISTRATION AND ENFORCEMENT.—

"(1) COMMISSION AUTHORITY.—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 operating company as the Commission has in administering and enforcing the provisions of this title with respect to any common carrier subject to this Act.

"(2) CIVIL ACTIONS BY INJURED CARRIERS.—Any regulated local telephone exchange carrier injured by an act or omission of a Bell operating company or its manufacturing affiliate which violates the requirements of paragraph (8) or (9) of subsection (c), or the Commission's regulations implementing such paragraphs, may initiate an action in a district court of the United States to recover the full amount

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of damages sustained in consequence of any such violation and obtain such orders from the court as are necessary to terminate existing violations and to prevent future violations; or such regulated local telephone exchange carrier may seek relief from the Commission pursuant to sections 206 through 209.

"(i) EFFECTIVE DATES; DEADLINE.—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) EFFECT ON PREEXISTING MANUFACTURING AUTHORITY.—Nothing in this section shall prohibit any Bell operating company from engaging, directly or through any affiliate, in any manufacturing activity in which any Bell operating company or affiliate was authorized to engage on the date of enactment of this section.

"(k) ANNUAL AUDIT.—

"(1) IN GENERAL.—A Bell operating company that manufactures or provides telecommunications equipment or manufactures customer premises

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~~equipment through an affiliate shall obtain and pay for an annual audit conducted by an independent auditor selected by and working at the direction of the State commission of each State in which such Bell company provides local exchange service, to determine whether such Bell company has complied with this section and the regulations promulgated under this section, and particularly whether such Bell company has complied with the separate accounting requirements under subsection (c)(1).~~

~~"(2) SUBMISSION OF AUDIT RESULTS.—The auditor described in paragraph (1) shall submit the results of such audit to the Commission and to the State commission of each State in which such Bell company provides telephone exchange service. Any party may submit comments on the final audit report.~~

~~"(3) PROCEDURES APPLICABLE TO AUDIT.—The audit required under paragraph (1) shall be conducted in accordance with procedures established by regulation by the State commission of the State in which such Bell company provides local exchange service, including requirements that—~~

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"(A) the independent auditors performing such audits are rotated to ensure their independence; and

"(B) each audit submitted to the Commission and to the State commission is certified by the auditor responsible for conducting the audit.

"(4) COMMISSION REVIEW.—The Commission shall periodically review and analyze the audits submitted to it under this subsection, and shall provide to the Congress every 2 years—

"(A) a report of its findings on the compliance of the Bell operating companies with this section and the regulations promulgated thereunder; and

"(B) an analysis of the impact of such regulations on the affordability of local telephone exchange service.

"(5) ACCESS TO ACCOUNTS AND RECORDS.—For purposes of conducting audits and reviews under this subsection, an independent auditor, the Commission, and the State commission shall have access to the financial accounts and records of each Bell operating company and those of its affiliates (including affiliates described in paragraphs (6) and

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~~(7) of subsection (c)) necessary to verify transactions conducted with such Bell operating company that are relevant to the specific activities permitted under this section and that are necessary to the State's regulation of telephone rates. Each State commission shall implement appropriate procedures to ensure the protection of any proprietary information submitted to it under this section.~~

~~"(l) DEFINITIONS.—As used in this section:~~

~~"(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 operating company. Such term includes any organization or entity (A) in which a Bell operating company and any of its affiliates have an equity interest of greater than 10 percent, or a management interest of greater than 10 percent, or (B) in which a Bell operating company and any of its affiliates have any other significant financial interest.~~

~~"(2) The term 'Bell operating 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.~~

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"(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 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.

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"(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.".

SEC. 404. INCREASED PENALTY FOR RECORDKEEPING VIOLATIONS.

Section 220(d) of the Communications Act of 1934 (47 U.S.C. 220(d)) is amended by striking "$6,000" and inserting in lieu thereof "$16,000".

SEC. 405. APPLICATION OF ANTITRUST LAWS.

Nothing in this subtitle shall be deemed to alter the application of Federal and State antitrust laws as interpreted by the respective courts.

Subtitle B—Regulation of Alarm Services and Electronic Publishing by Bell Operating Companies

SEC. 451. REGULATION OF ENTRY INTO ALARM MONITORING SERVICES.

(a) AMENDMENT.—Title II of the Communications Act of 1934 (47 U.S.C. 201 et seq.), as amended by this

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Act, is further amended by adding at the end the following new section:

"SEC. 232. REGULATION OF ENTRY INTO ALARM MONITORING SERVICES.

"(a) IN GENERAL.—Except as provided in subsection (c), no Bell operating company, or any affiliate of that company, shall provide alarm monitoring services for the protection of life, safety, or property. A Bell operating company may transport alarm monitoring service signals but on a common carrier basis only.

"(b) AUTHORITY TO PETITION.—Beginning 5½ years from the date of enactment of this section, a Bell operating company or any affiliate of that company may petition the Commission to seek permission to provide alarm monitoring services for the protection of life, safety, or property.

"(c) AUTHORITY TO PERMIT BELL OPERATING COMPANIES TO PROVIDE SERVICES.—Beginning 6 years from the date of enactment of this section, the Commission shall have the authority to permit a Bell operating company to provide alarm monitoring services for the protection of life, safety, or property, except that the Commission shall not grant such permission until—

"(1) the Department of Justice finds that there is no substantial possibility that such Bell company

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or its affiliates could use monopoly power to impede competition in the market such Bell company seeks to enter; and

"(2) the Commission finds that the provision of alarm monitoring services by the Bell operating company is in the public interest and that the Commission has the capability to effectively enforce any requirements, limitations, or conditions placed upon the Bell operating company in the provision of alarm monitoring services for the protection of life, safety, or property, including the regulations it has prescribed pursuant to subsection (d).

"(d) REGULATIONS REQUIRED.—Not later than 6 years after the date of enactment of this section, the Commission shall prescribe regulations—

"(1) to establish such requirements, limitations, or conditions as are (A) necessary and appropriate in the public interest with respect to the provision of alarm monitoring services by Bell operating companies and their affiliates, and (B) effective at such time as a Bell operating company or any of its affiliates is authorized to provide alarm monitoring services;

"(2) to prohibit Bell operating companies and their affiliates, at that or any earlier time after the

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date of enactment of this section, from recording in any fashion the occurrence or the contents of calls received by providers of alarm monitoring services for the purposes of marketing such services on behalf of the Bell operating company, any of its affiliates, or any other entity, and

"(3) to establish procedures for the receipt and review of complaints concerning violations by such companies of such regulations, or of any other provision of this Act or the regulations thereunder, that result in material financial harm to a provider of alarm monitoring services.

"(c) EXPEDITED CONSIDERATION OF COMPLAINTS.—The procedures established under subsection (d)(3) shall ensure that the Commission will make a final determination with respect to any complaint described in such subsection within 120 days after receipt of the complaint. If the complaint contains an appropriate showing that the alleged violation occurred, as determined by the Commission in accordance with such regulations, the Commission shall, within 60 days after receipt of the complaint, issue a cease and desist order to prevent the Bell operating company and its affiliates from continuing to engage in such violation pending such final determination.

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"(f) REMEDIES.—The Commission may use any remedy available under title V of this Act to terminate and punish violations described in subsection (d)(2). Such remedies may include, if the Commission determines that such violation was willful or repeated, ordering the Bell operating company to cease offering alarm monitoring services.

"(g) DEFINITIONS.—As used in this section:

"(1) the term 'alarm monitoring services' means services that detect threats to life, safety, or property, by burglary, fire, vandalism, bodily injury, or other emergency, through the use of devices that transmit signals to a central point in a customer's residence, place of business, or other fixed premises which—

"(A) retransmits such signals to a remote monitoring center by means of telephone exchange service facilities, and

"(B) serves to alert persons at the monitoring center of the need to inform police, fire, rescue, or other security or public safety personnel of the threat at such premises.

Such term does not include medical monitoring devices attached to individuals for the automatic surveillance of ongoing medical conditions.

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"(2) The term 'Bell operating company' has the meaning given that term in section 233 of this Act.

"(3) 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 equivalent thereof) of more than 50 percent.".

SEC. 452. REGULATION OF ELECTRONIC PUBLISHING.

Title II of the Communications Act of 1934 (47 U.S.C. 201 et seq.), as amended by this Act, is further amended by adding at the end the following new section:

"SEC. 233. REGULATION OF ELECTRONIC PUBLISHING.

"(a) IN GENERAL.—(1) A Bell operating company and any affiliate shall not engage in the provision of electronic publishing that is disseminated by means of such Bell operating company's or any of its affiliates' basic telephone service.

"(2) Nothing in this section shall prohibit a separated affiliate or electronic publishing joint venture from engaging in the provision of electronic publishing or any other lawful service in any area.

"(3) Nothing in this section shall prohibit a Bell operating company or affiliate from engaging in the provision of any lawful service other than electronic publishing

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in any area or from engaging in the provision of electronic publishing that is not disseminated by means of such Bell operating company's or any of its affiliates' basic telephone service.

"(b) SEPARATED AFFILIATE OR ELECTRONIC PUBLISHING JOINT VENTURE REQUIREMENTS.—A separated affiliate or electronic publishing joint venture shall—

"(1) maintain books, records, and accounts that are separate from those of the Bell operating company and from any affiliate and which record in accordance with generally accepted accounting principles all transactions, whether direct or indirect, with the Bell operating company;

"(2) not incur debt in a manner that would permit a creditor upon default to have recourse to the assets of the Bell operating company;

"(3) prepare financial statements that are not consolidated with those of the Bell operating company or any affiliate, provided that consolidated statements may also be prepared;

"(4) file with the Commission annual reports in a form substantially equivalent to the Form 10–K referenced at 17 CFR 240.310 as that section and form are in effect on the date of enactment;

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"(5) after 1 year from the effective date of this section, not hire as corporate officers sales and marketing management personnel whose responsibilities at the separated affiliate or electronic publishing joint venture will include the geographic area where the Bell operating company provides basic telephone service, or network operations personnel whose responsibilities at the separated affiliate or electronic publishing joint venture would require dealing directly with the Bell operating company, any person who was employed by the Bell operating company during the year preceding their date of hire, provided that this requirement shall not apply to persons subject to a collective bargaining agreement that gives such persons rights to be employed by a separated affiliate or electronic publishing joint venture of the Bell operating company;

"(6) not provide any wireline telephone exchange service in any telephone exchange area where a Bell operating company with which it is under common ownership or control provides basic telephone exchange service except on a resale basis;

"(7) not use the name, trademarks, or service marks of an existing Bell operating company except for names or service marks that are or were used in

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~~common with the entity that owns or controls the Bell operating company;~~

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

~~"(A) must be conducted by an independent entity which is subject to professional, legal, and ethical obligations for the purpose of determining compliance during the preceding calendar year with any provision of this section that imposes a requirement on such separated affiliate or electronic publishing joint venture; and~~

~~"(B) must be maintained by the separated affiliate for a period of 5 years subject to review by any unlawful authority; and~~

~~"(9) within 90 days of receiving a review described in paragraph (8), file a report of such exceptions and any corrective action with the Commission and allow any person to inspect and copy such report subject to reasonable safeguards to protect any proprietary information contained in such report from being used for purposes other than to enforce or pursue remedies under this section.~~

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"(c) BELL OPERATING COMPANY REQUIREMENTS.—A Bell operating company under common ownership or control with a separated affiliate or electronic publishing joint venture shall—

"(1) not provide a separated affiliate any facilities, services, or basic telephone service information unless it makes such facilities, services, or information available to unaffiliated entities upon request and on the same terms and conditions;

"(2) carry out transactions with a separated affiliate in a manner equivalent to the manner that unrelated parties would carry out independent transactions and not based upon the affiliation;

"(3) carry out transactions with a separate affiliate, which involve the transfer of personnel, assets, or anything of value, pursuant to written contracts or tariffs that are filed with the Commission and made publicly available;

"(4) carry out transactions with a separated affiliate in a manner that is auditable in accordance with generally accepted accounting principles;

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

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

"(7) except for—

"(A) instances where Commission or State regulations permit in-arrears payment for tariffed telecommunications services; or

"(B) the investment by an affiliate of dividends or profits derived from a Bell operating company;

not provide debt or equity financing directly or indirectly to a separated affiliate;

"(8) comply fully with all applicable Commission and State cost allocation and other accounting rules;

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

"(A) must be conducted by an independent entity which is subject to professional, legal, and ethical obligations for the purpose of determining compliance during the preceding calendar year with any provision of this section that imposes a requirement on such Bell operating company; and

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"(B) must be maintained by the Bell operating company for a period of 5 years subject to review by any lawful authority;

"(10) within 90 days of receiving a review described in paragraph (9), file a report of such exceptions and any corrective action with the Commission and allow any person to inspect and copy such report subject to reasonable safeguards to protect any proprietary information contained in such report from being used for purposes other than to enforce or pursue remedies under this section;

"(11) if it provides facilities or services for telecommunication, transmission, billing and collection, or physical collocation to any electronic publisher, including a separated affiliate, for use with or in connection with the provision of electronic publishing that is disseminated by means of such Bell operating company's or any of its affiliates' basic telephone service, provide to all other electronic publishers the same type of facilities and services on request, on the same terms and conditions or as required by the Commission or a State, and unbundled and individually tariffed to the same extent as provided to such publisher;

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"~~(12) provide network access and interconnections for basic telephone service to electronic publishers at prices that are regulated so long as the prices for these services are subject to regulation;~~

"~~(13) if prices for network access and interconnection for basic telephone service are no longer subject to regulation, provide electronic publishers such services on the same terms and conditions as a separated affiliate receives such services;~~

"~~(14) if any basic telephone service used by electronic publishers ceases to require a tariff, provide electronic publishers with such service on the same terms and conditions as a separated affiliate receives such service;~~

"~~(15) provide reasonable advance notification at the same time and on the same terms to all affected electronic publishers of information relating to changes in basic telephone service network design and technical standards which would affect the provision of electronic publishing;~~

"~~(16) not directly or indirectly provide anything of monetary value to a separated affiliate unless in exchange for consideration at least equal to the greater of its net book cost or fair market value, ex-~~

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cept the investment by an affiliate of dividends or profits derived from a Bell operating company;

"(17) not discriminate in the presentation or provision of any gateway for electronic publishing services or any electronic directory of information services, which is provided over such Bell operating company's basic telephone service;

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

"(19) not own any property in common with a separated affiliate;

"(20) not perform hiring or training of personnel performed on behalf of a separated affiliate;

"(21) not perform the purchasing, installation, or maintenance of equipment on its behalf of a separated affiliate, except for telephone service that it provides under tariff or contract subject to the provisions of this section; and

"(22) not perform research and development on behalf of a separated affiliate.

"(d) CUSTOMER PROPRIETARY NETWORK INFORMATION.—A Bell operating company or any affiliate shall not provide to any electronic publisher, including a separated affiliate or electronic publishing joint venture, customer proprietary network information for use with or in connec-

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tion with the provision of electronic publishing that is disseminated by means of such Bell operating company's or any of its affiliates' basic telephone service that is not made available by the Bell operating company or affiliate to all electronic publishers on the same terms and conditions.

"(e) COMPLIANCE WITH SAFEGUARDS.—A Bell operating company, affiliate or its separated affiliate is prohibited from acting in concert with another Bell operating company or any entity in order to knowingly and willfully violate or evade the requirements of this section.

"(f) TELEPHONE OPERATING COMPANY DIVIDENDS.—Nothing in this section shall prohibit an affiliate from investing dividends derived from a Bell operating company in its separated affiliate and subsections (i) and (j) of this section shall not apply to any such investment.

"(g) JOINT MARKETING, AND SO FORTH.—Except as provided in subsection (h)—

"(1) a Bell operating company shall not carry out any promotion, marketing, sales, or advertising for or in conjunction with a separated affiliate; and

"(2) a Bell operating company shall not carry out any promotion, marketing, sales, or advertising or in conjunction with an affiliate that is related to the provision of electronic publishing.

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"(h) PERMISSIBLE JOINT ACTIVITIES.—

"(1) JOINT TELEMARKETING.—A Bell operating company may provide inbound telemarketing or referral services related to the provision of electronic publishing for a separated affiliate, electronic publishing joint venture, affiliate, or unaffiliated electronic publisher, provided that if such services are provided to a separated affiliate, electronic publishing joint venture, or affiliate, such services shall be made available to all electronic publishers on request, on nondiscriminatory terms, at compensatory prices, and subject to regulations of the Commission to ensure that the Bell operating company's method of providing telemarketing or referral and its price structure do not competitively disadvantage any electronic publishers regardless of size, including those which do not use the Bell operating company's telemarketing services.

"(2) TEAMING ARRANGEMENTS.—A Bell operating company may engage in nondiscriminatory teaming or business arrangements to engage in electronic publishing with any separated affiliate or with any other electronic publisher provided that the Bell operating company only provides facilities, services, and basic telephone service information as author-

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ized by this section and provided that the Bell operating company own such teaming or business arrangement.

"(3) ELECTRONIC PUBLISHING JOINT VENTURES.—A Bell operating company or affiliate may participate on a nonexclusive basis in electronic publishing joint ventures with entities that are not any Bell operating company, affiliate, or separated affiliate to provide electronic publishing services, provided that the Bell operating company or affiliate has not more than a 50 percent direct or indirect equity interest (or the equivalent thereof) or the right to more than 50 percent of the gross revenues under a revenue sharing or royalty agreement in any electronic publishing joint venture. Officers and employees of a Bell operating company or affiliate participating in an electronic publishing joint venture may not have more than 50 percent of the voting control over the electronic publishing joint venture. In the case of joint ventures with small, local electronic publishers, the Commission for good cause shown may authorize the Bell operating company or affiliate to have a larger equity interest, revenue share, or voting control but not to exceed 80 percent. A Bell operating company participating in an elec-

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tronic publishing joint venture may provide promotion, marketing, sales, or advertising personnel and services to such joint venture.

"(i) TRANSACTIONS RELATED TO THE PROVISION OF ELECTRONIC PUBLISHING BETWEEN A TELEPHONE OPERATING COMPANY AND ANY AFFILIATE.—

"(1) Any provision of facilities, services, or basic telephone service information or any transfer of assets, personnel, or anything of commercial or competitive value from a Bell operating company to any affiliate related to the provision of electronic publishing shall be—

"(A) recorded in the books and records of each entity;

"(B) auditable in accordance with generally accepted accounting principles; and

"(C) pursuant to written contracts or tariffs filed with the Commission or a State and made publicly available.

"(2) Any transfer of assets directly related to the provision of electronic publishing from a Bell operating company to an affiliate shall be valued at the greater of net book cost or fair market value. Any transfer of assets related to the provision of electronic publishing from an affiliate to the Bell operat-

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ing company shall be valued at the lesser of net book cost or fair market value.

"(3) A Bell operating company shall not provide an affiliate any facilities, services, or basic telephone service information related to the provision of electronic publishing, which such affiliate then directly or indirectly provides to a separated affiliate, and which is not made available to unaffiliated companies on the same terms and conditions.

"(j) TRANSACTIONS RELATED TO THE PROVISION OF ELECTRONIC PUBLISHING BETWEEN AN AFFILIATE AND A SEPARATED AFFILIATE.—

"(1) Any facilities, services, or basic telephone service information provided or any assets, personnel, or anything of commercial or competitive value transferred, from a Bell operating company to any affiliate as described in subsection (i) and then provided or transferred to a separated affiliate shall be—

"(A) recorded in the books and records of each entity;

"(B) auditable in accordance with generally accepted accounting principles; and

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"(C) pursuant to written contracts or tariffs filed with the Commission or a State and made publicly available.

"(2) Any transfer of assets directly related to the provision of electronic publishing from a Bell operating company to any affiliate as described in subsection (i) and then transferred to a separated affiliate shall be valued at the greater of net book cost or fair market value. Any transfer of assets related to the provision of electronic publishing from a separated affiliate to any affiliate and then transferred to the Bell operating company as described in subsection (i) shall be valued at the lesser of net book cost or fair market value.

"(3) An affiliate shall not provide a separated affiliate any facilities, services, or basic telephone service information related to the provision of electronic publishing, which were provided to such affiliate directly of indirectly by a Bell operating company, and which is not made available to unaffiliated companies on the same terms and conditions.

"(k) OTHER ELECTRONIC PUBLISHERS.—Except as provided in subsection (h)(2)—

"(1) a bell operating company shall not have any officers, employees, property, or facilities in

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common with any entity whose principal business is publishing of which a part is electronic publishing;

"(2) no officer or employee of a Bell operating company shall serve as a director of any entity whose principal business is publishing of which a part is electronic publishing;

"(3) for the purposes of paragraphs (1) and (2), a Bell operating company or an affiliate that owns an electronic publishing joint venture shall not be deemed to be engaged in the electronic publishing business solely because of such ownership;

"(4) a Bell operating company shall not carry out—

"(A) any marketing or sales for any entity that engages in electronic publishing; or

"(B) any hiring of personnel, purchasing, or production, for any entity that engages in electronic publishing; and

"(5) the Bell operating company shall not provide any facilities, services, or basic telephone service information to any entity that engages in electronic publishing, for use with or in connection with the provision of electronic publishing that is disseminated by means of such Bell operating company's or any of its affiliates' basic telephone service, unless,

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

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

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

"(n) PRIVATE RIGHT OF ACTION.—

"(1) Any person claiming that any act or practice of any Bell operating company, affiliate, or separated affiliate constitutes a violation of this section may file a complaint with the Commission or bring suit as provided in section 207 of this Act, and such Bell operating company, affiliate, or separated affiliate shall be liable as provided in section 206 of this Act. *Provided, however,* That damages may not be awarded for a violation that is discovered by a compliance review as required by subsection (b)(8) or (c)(9) of this section and corrected within 90 days.

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"(2) In addition to the provisions of paragraph (1), any person claiming that any act or practice of any Bell operating company, affiliate, or separated affiliate constitutes a violation of this section may make application to the Commission for an order to cease and desist such violation or may make application in any district court of the United States of competent jurisdiction for an order enjoining such acts or practices or for an order compelling compliance with such requirement.

"(o) ANTITRUST LAWS.—Nothing in this section shall be construed to modify, impair, or supersede the applicability of any of the antitrust laws.

"(p) DEFINITIONS.—As used in this section:

"(1) The term 'affiliate' means any entity that, directly or indirectly, owns or controls, is owned or controlled by, or is under common ownership or control with, a Bell operating company. Such term shall not include a separated affiliate.

"(2) the term 'basic telephone service' means wireline telephone exchange service provided by a Bell operating company in a telephone exchange area, except—

"(A) a competitive wireline telephone exchange service provided in a telephone exchange

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area where another entity provides a wireline telephone exchange service that was provided on January 1, 1984, and

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

"(3) The term 'basic telephone service information' means network and customer information of a Bell operating company and other information acquired by a Bell operating company as a result of its engaging in the provision of basic telephone service.

"(4) The term 'control' has the meaning that it has in 17 CFR 240.12b–2, the regulations promulgated by the Securities and Exchange Commission pursuant to the Securities Exchange Act of 1934 (15 U.S.C. 78a et seq.) or any successor provision to such section.

"(5) The term 'customer proprietary network information' means—

"(A) information which—

"(i) relates to the quantity, technical configuration, type, destination, and amount of use of telephone exchange serv-

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~~ice or interexchange telephone service subscribed to by any customer of a Bell operating company; and~~

~~"(ii) is available to the Bell operating company by virtue of the telephone company-customer relationship; and~~

~~"(B) information contained in the bills for telephone exchange service or interexchange telephone service received by a customer of a Bell operating company.~~

~~"(6)(A) The term 'electronic publishing' means the dissemination, provision, publication, or sale by a provider or publisher to an unaffiliated entity or person using a Bell operating company's local exchange facility of any information which the provider or publisher has or has caused to be originated, authored, compiled, collected, or edited or in which the provider or publisher has direct or indirect financial or proprietary interest, including but not limited to the following:~~

~~"(i) News or entertainment.~~

~~"(ii) Business, financial, legal, consumer, or credit material.~~

~~"(iii) Editorials.~~

~~"(iv) Columns.~~

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"(v) Sports reporting.

"(vi) Features.

"(vi) Advertising.

"(viii) Photos or images.

"(ix) Archival or research material.

"(x) Legal notices or public records.

"(xi) Scientific, educational, instructional, technical, professional, trade, or other literary materials.

"(xii) Other like or similar information.

"(B) The term 'electronic publishing' shall not include the following network services.

"(i) Information access as that term is defined by the Modification of Final Judgment.

"(ii) The transmission of information as a common carrier.

"(iii) The transmission of information as part of a gateway to an information service that does not involve the generation or alteration of the content of information, including data transmission, address translation, protocol conversion, billing management, introductory information content, and navigational systems that enable users to access electronic publishing

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~~services, which do not affect the presentation of such electronic publishing services to users.~~

~~"(iv) Voice storage and retrieval services, including voice messaging and electronic mail services.~~

~~"(v) Level 2 gateway services as those services are defined by the Commission's Second Report and Order, Recommendation to Congress and Second Further Notice of Proposed Rulemaking in CC Docket No. 87-266 dated August 14, 1992.~~

~~"(vi) Data processing services that do not involve the generation or alteration of the content of information.~~

~~"(vii) Transaction processing systems that do not involve the generation or alteration of the content of information.~~

~~"(viii) Electronic billing or advertising of a Bell operating company's regulated telecommunications services.~~

~~"(ix) Language translation.~~

~~"(x) Conversion of data from one format to another.~~

~~"(xi) The provision of information necessary for the management, control, or oper-~~

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ation of a telephone company telecommunications system.

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

"(xiii) Caller identification services.

"(xiv) Repair and provisioning databases for telephone company operations.

"(xv) Credit card and billing validation for telephone company operations.

"(xvi) 911–E and other emergency assistance databases.

"(xvii) Any other network service of a type that is like or similar to these network services and that does not involve the generation or alteration of the content of information.

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

"(C) The term 'electronic publishing' also shall not include—

"(i) full motion video entertainment on demand; and

"(ii) video programming as defined in section 602 of this Act.

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"(7) The term 'electronic publishing joint venture' means a joint venture owned by a Bell operating company or affiliate that engages in the provision of electronic publishing which is disseminated by means of such Bell operating company's or any of its affiliates' basic telephone service.

"(8) The term 'entity' means any organization, and includes corporations, partnerships, sole proprietorships, associations, and joint ventures.

"(9) The term 'inbound telemarketing' means the marketing of property, goods, or services by telephone to a customer or potential customer who initiated the call.

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

"(11) The term 'separated affiliate' means a corporation under common ownership or control with a Bell operating company that does not own or control a Bell operating company and is not owned or controlled by a Bell operating company and that engages in the provision of electronic publishing which

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

"(12) The term 'Bell operating company' means the corporations subject to the Modification of Final Judgment and listed in Appendix A thereof, or any entity owned or controlled by such corporation, or any successor or assign of such corporation, but does not include an electronic publishing joint venture owned by such corporation or entity.".

Subtitle C—Information Services

SEC. 401. PROVISION OF INFORMATION SERVICES.

Title II of the Communications Act of 1934 (47 U.S.C. 201 et seq.), as amended by this Act, is further amended by adding at the end the following new section:

"SEC. 234. PROVISION OF INFORMATION SERVICES.

"(a) PROVISION OF GATEWAY SERVICES.—Unless expressly provided elsewhere in this Act, and Bell operating company or affiliate thereof that offers a gateway service shall make such service available concurrently to all of its subscribers under nondiscriminatory rates, terms, and conditions, and shall offer gateway service functions to all providers of information services on nondiscriminatory rates, terms, and conditions.

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"(b) PREVENTION OF CROSS-SUBSIDIES.—In addition to regulations on cross-subsidization that are prescribed under other provisions of this Act, the Commission shall prescribe cost allocation regulations to prevent any Bell operating company or affiliate that offers services that have market power from using revenues from such services to subsidize competitive information services.

"(c) RESTRICTION ON STATE REGULATION.—Notwithstanding section 2(b) of this Act, a State may not regulate the rates, terms, or conditions for the offering of information services, except as provided in title VI.

"(d) DEFINITIONS.—As used in this section:

"(1) The term 'Bell operating company' has the meaning given that term under section 231.

"(2) The term 'gateway service' means an information service that, at the request of the provider of an electronic publishing service or other information service, provides a subscriber with access to such electronic publishing service or other information service, utilizing the following functions: data transmission, address translation, billing information, protocol conversion, and introductory information content.

"(3) The term 'affiliate' has the meaning given that term under section 236 of this Act.".

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Subtitle D—InterLATA Telecommunications Services

SEC. 401. INTERLATA TELECOMMUNICATIONS SERVICES.

Title II of the Communications Act of 1934 (47 U.S.C. 201 et seq.), as amended by this Act, is further amended by adding at the end the following new section:

"SEC. 235. INTERLATA TELECOMMUNICATIONS SERVICES.

"(a) AUTHORITY.—Notwithstanding any restriction or obligation imposed before the date of enactment of this section pursuant to section II(D) of the Modification of Final Judgment, a Bell operating company may engage in the provision of interLATA telecommunications services subject to the requirements of this section and any regulations prescribed thereunder. No Bell operating company or affiliate of a Bell operating company shall engage in the provision of interLATA telecommunications services, except as provided in this section.

"(b) CURRENTLY AUTHORIZED ACTIVITIES.—Subsection (a) shall not prohibit a Bell operating company from engaging, at any time after the date of enactment of this section, in any activity as 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 such order was entered on or before such date of enactment.

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"(c) PETITION FOR AUTHORITY.—

"(1) IN GENERAL.—A Bell operating company or its affiliate may petition the Commission for authority to provide interLATA telecommunications services. The petition shall describe with particularity the nature and scope of each proposed interLATA telecommunications service, and of each product market or service market, and each geographic market, for which authorization is sought.

"(2) REQUIRED SHOWING FOR IN-MARKET SERVICES.—The Commission may, after consultation with the Attorney General, and on the record after opportunity for a hearing in which the public has an opportunity to participate, grant a petition for authority to offer an interLATA telecommunications service to be originated, terminated, or otherwise provided in any area in which the petitioner or its affiliate provides telephone exchange or exchange access services, only if—

"(A) the showing required by paragraph (3) is made;

"(B) all the regulations required by section 230 have been prescribed by the Commission, and each relevant State certifies and the Commission finds that the petitioning Bell operating

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company or its affiliate is providing telephone exchange and exchange access service in the relevant telephone exchange or exchange access market in full compliance with such regulations; and

"(C) the Commission finds, after receiving factual evidence submitted by the State, that there is actual and demonstrable competition to the Bell operating company's telephone exchange and exchange access services in each relevant area, based on the requirement that actual and demonstrable competition exists when telephone exchange and exchange access services—

"(i) are available from at least one provider that is unaffiliated with the petitioning Bell operating company or its affiliates;

"(ii) offered predominantly over facilities not owned or controlled by the Bell operating company or its affiliates and are comparable in geographic range, function, quality, and price to the service offered by the petitioning Bell operating company or its affiliate; and

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~~"(iii) subscribed to by a significant number of persons in each relevant area.~~

~~"(3) REQUIRED SHOWING FOR OUT-OF-MARKET SERVICES.—The Commission may, after consultation with the Attorney General, and on the record after opportunity for a hearing in which the public has an opportunity to participate, grant authority to a petitioning Bell operating company or its affiliate to provide interLATA telecommunications services not described in paragraph (2), upon a showing by the petitioner that there is no substantial possibility that the Bell operating company or its affiliates could use market power in a telephone exchange and exchange access service market to impede competition in the interLATA telecommunications services market that the petitioner seeks to enter.~~

~~"(4) INTERLATA TELECOMMUNICATIONS SERVICE SAFEGUARDS.—~~

~~"(A) SEPARATE SUBSIDIARY; FULFILLMENT OF CERTAIN REQUESTS.—Other than interLATA services 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 before the date of the enactment of this section,~~

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a Bell operating company or an affiliate thereof providing interLATA services authorized under this subsection shall do so through a separate subsidiary as specified in section 226. Such separate subsidiary shall—

"(i) fulfill any requests from an unaffiliated entity for exchange access service within a period no longer than that in which it provides such exchange access service to itself or to its affiliates;

"(ii) fulfill any such requests with exchange access service of a quality that meets or exceeds the quality of exchange access services provided by the Bell operating company or its affiliates to itself or its affiliate; and

"(iii) provide exchange access at rates to all interLATA carrier at rates that are not unreasonably discriminatory.

"(B) COMMISSION ACTION ON COMPLAINTS.—With respect to any complaint brought under section 208 alleging a violation of this section or the regulations implementing it, the Commission shall issue a final order within 1 year after such complaint is filed.

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"(d) ADDITIONAL INTERLATA AUTHORITY ASSOCIATED WITH CABLE TELEVISION SERVICE.—

"(1) AUTHORITY.—Notwithstanding subsection (c), a Bell operating company or its affiliate may—

"(A) own and operate receive-only antennas, satellite master antenna television facilities, and satellite earth stations, solely for the purpose of providing cable service;

"(B) own and operate interLATA distribution facilities solely for the purpose of providing cable service; and

"(C) engage in interLATA telecommunications service for the purpose of one-way transmission of video and audio programming solely for cable service.

"(2) RESTRICTION.—A Bell operating company may own and operate the antennas, stations, and facilities described in paragraph (1)(A) and (B) only through one or more affiliates that are totally separate from the Bell operating company's local exchange company.

"(e) ADDITIONAL AUTHORITY TO PROVIDE INTERLATA SERVICES RELATING TO CELLULAR MOBILE RADIO SERVICES.—

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"(1) AUTHORITY.—A Bell operating company or its cellular affiliate may provide the interLATA services authorized under this section solely as necessary to provide cellular mobile radio services.

"(2) INTERSYSTEM HANDOFF.—A Bell operating company or its cellular affiliate may provide intersystem handoff, across LATA boundaries, of cellular mobile radio transmissions between adjacent cellular systems, including the provision of such transmission facilities as are necessary to allow the continuation of calls in progress without interruption or degradation of service due to the movement of the mobile telephone unit or the characteristics of radio propagation.

"(3) AUTOMATIC CALL DELIVERY.—A Bell operating company or its cellular affiliate may provide the routing of cellular transmissions between its cellular system and a cellular system located in another LATA, for purposes of completing a call to one of its out-of-region cellular customers.

"(4) USE OF LEASED FACILITIES.—Facilities necessary for intersystem handoff across LATA boundaries or interLATA routing of cellular transmissions, as permitted under paragraphs (2) and (3), shall be leased by a Bell operating company or

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its cellular affiliate from a carrier (other than a Bell operating company or its affiliate) authorized to provide interLATA telecommunications.

"(5) EQUAL ACCESS AND PRESUBSCRIPTION.—Notwithstanding any restriction or obligation imposed pursuant to the Modification of Final Judgment before the date of enactment of this section, the Commission shall prescribe uniform equal access and long distance presubscription requirements for providers of all cellular and two-way wireless services.

"(d) DEFINITIONS.—As used in this section:

"(1) The term 'LATA' means the local access and transport areas as defined in United States v. Western Electric Co., 569 F.Supp. 990 (United States District Court, District of Columbia) and subsequent judicial orders relating thereto.

"(2) the term 'cable service' has the meaning given that term under section 602.".

SEC. 402. JURISDICTION.

Section 2(b) of the Communications Act of 1934 (47 U.S.C. 152) is amended by striking "section 332" and inserting in lieu thereof "sections 220, 230, 234, 235, 237, and 332".

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TITLE V—REGULATORY PARITY BETWEEN TELEPHONE AND CABLE COMPANIES

SEC. 501. OWNERSHIP AND CONTROL OF CABLE TELEVISION SYSTEMS AND TELEPHONE COMPANIES.

Section 613(b) of the Communications Act of 1934 (47 U.S.C. 533(b)) is amended to read as follows:

"(b)(1)(A) No local exchange carrier, subject in whole or in part to title II of this Act, nor any affiliate of such carrier, owned by, operated by, controlled by, or under common control with such carrier, may—

"(i) purchase or otherwise acquire, directly or indirectly, more than a 5 percent financial interest, any management interest, or any other interest, in any cable system that is providing service within the carrier's telephone exchange service area and is owned by an unaffiliated person; or

"(ii) enter into any joint venture or partnership with a cable operator to provide video programming to subscribers within such telephone exchange service area.

"(B) A local exchange carrier shall not provide video programming directly to subscribers in its telephone exchange service area unless—

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"(i) such video programming is provided through a separate subsidiary as set forth in section 236; and

"(ii) the Commission finds that the local exchange carrier offers service in full compliance with the regulations prescribed under section 230 in the geographic area in which it seeks to provide video programming.

"(C) A local exchange carrier that provides video programming directly to subscribers is a cable operator as defined in section 602.

"(D) a local exchange carrier shall not engage in practices prohibited by the Commission or by a State (including but not limited to the improper assignment of costs) that subsidize directly or indirectly its video programming operations.

"(E) Subparagraphs (A) and (B) shall not apply to a local exchange carrier to the extent that such carrier provides telephone exchange service in an area to which an exemption applies under section 63.58 of title 47, Code of Federal Regulations (as in effect on the date of enactment of the Communications Act of 1994).

"(F) Upon a showing that a local exchange carrier has no market power in its telephone service area, the

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Commission shall exempt the carrier from the provisions of subparagraphs (B) and (D).

"(2)(A) A cable operator shall not provide telecommunications services directly to subscribers in its cable service area unless such telecommunications services are provided through a separate subsidiary.

"(B) No cable operator, nor any affiliate of such cable operator, owned by, operated by, controlled by, or under common ownership with such cable operator, may—

"(i) purchase or otherwise acquire, directly or indirectly, more than a 5 percent financial interest, any management interest, or any other interest, in any local exchange carrier that is providing local exchange service within the cable operator's service area; or

"(ii) enter into any joint venture or partnership with such local exchange carrier, unless—

"(I) the joint venture or partnership advances the objectives of local competition by promoting or increasing telecommunications competition over facilities separate from the local exchange carrier's facilities in the local exchange carrier's service area; and

"(II) the local exchange carrier's interest in such competing telecommunications services

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provider does not retard the competing provider's incentives to compete.

"(C) A cable operator shall not engage in practices prohibited by the Commission or by a State (including but not limited to the improper assignment of costs) that subsidize directly or indirectly its telecommunications services.

"(D) Upon a showing that a cable operator has no market power in its cable service area, the Commission shall exempt the cable operator from the provisions of subparagraphs (A), (B), and (C).".

SEC. 502. CONSUMER AND COMPETITIVE SAFEGUARDS.

Title II of the Communications Act of 1934 (47 U.S.C. 201 et seq.), as amended by this Act, is further amended by adding at the end the following new section:

"SEC 234. CONSUMER AND COMPETITIVE SAFEGUARDS.

"(a) SEPARATE SUBSIDIARY.—

"(1) IN GENERAL.—Any subsidiary required by section 235 or 613(b)(1) shall, at a minimum, be separated from a local exchange carrier, in accordance with the requirements of this subsection and the regulations prescribed by the Commission to carry out this subsection.

"(2) TRANSACTION REQUIREMENTS.—Any transaction between such a subsidiary and any local

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exchange carrier and any other affiliate of the carrier shall not be based upon any preference or discrimination in favor of the subsidiary arising out of the subsidiary's affiliation with the carrier.

"(3) SEPARATE OPERATION AND PROPERTY.—A subsidiary required by this subsection may not enter into any joint venture activities or partnership with a local exchange carrier or any affiliate of such carrier.

"(4) SEPARATE COMMERCIAL ACTIVITIES.—A subsidiary required by this subsection shall carry out its marketing and sales directly and separate from any local exchange carrier or its affiliate.

"(5) BOOKS, RECORDS, AND ACCOUNTS.—Any subsidiary required by this subsection shall maintain books, records, and accounts in a manner prescribed by the Commission which shall be separate from the books, records, and accounts maintained by any local exchange carrier or any affiliates of such carrier.

"(6) PROVISION OF SERVICES AND INFORMATION.—A local exchange carrier may not provide any services or information to a subsidiary required by this subsection unless such services or information are made available to others on the same terms and conditions.

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"(7) PREVENTION OF CROSS-SUBSIDIES.—Any local exchange carrier required to maintain a subsidiary under this subsection shall establish and administer, in accordance with the requirements of this subsection and the regulations prescribed thereunder, a cost allocation system that prohibits any cost of providing competitive services from being subsidized by revenue from telephone exchange services. The cost allocation system shall employ a formula that ensures that—

"(A) the rates for telephone exchange services are no greater than they would have been in the absence of such investment in competitive services (taking into account any decline in the real costs of providing such telephone exchange services); and

"(B) competitive services bear a reasonable share of the joint and common costs of facilities used to provide telephone exchange and competitive services.

"(8) ASSETS.—The Commission shall, by regulation, ensure that the economic risks associated with the provision of competitive services by a local exchange carrier or an affiliate thereof (including any increases in the carrier's cost of capital that

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occur as a result of the provision of such services) are not borne by customers of telephone exchange services in the event of a business loss or failure. Investments or other expenditures assigned to competitive services shall not be reassigned to telephone exchange service or telephone exchange access service.

"(g) DEBT.—Any local exchange carrier, which is required to be or is structurally separate from an affiliate engaged in the provision of telephone exchange services, shall not obtain credit under any arrangement that would—

"(A) permit a creditor, upon default, to have recourse to the assets of the local exchange carrier, or

"(B) induce a creditor to rely on the tangible or intangible assets of the local exchange carrier in extending credit.

"(h) DEFINITIONS.—As used in this section, the term 'affiliate' means any organization or entity that, directly or indirectly, owns or controls, or is owned or controlled by, or is under common ownership or control with, a local exchange carrier. For purposes of this subsection, the terms 'own', 'owned', and 'ownership' mean a direct or indirect equity interest (or equivalent thereof) of more than 5 percent of an organization or entity, or the right to more

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than 5 percent of the gross revenues of an organization or entity under a revenue sharing or royalty agreement, or any substantial management or financial interest.''.

TITLE VI—CUSTOMER CONTROL OVER INFORMATION

SEC. 601. CUSTOMER INFORMATION PROTECTIONS.

Title II of the Communications Act of 1934 (47 U.S.C. 201 et seq.), as amended by this Act, is further amended by adding at the end the following new section:

''SEC. 227. CUSTOMER INFORMATION REQUIREMENTS.

''(a) CUSTOMER PROPRIETARY NETWORK INFORMATION.—A local exchange carrier—

''(1) shall not, except as required by law or upon the affirmative request of the customer to which the information relates—

''(A) use customer proprietary network information in the providing of any service other than (i) telephone exchange service or telephone toll service, or (ii) a service necessary to or used in the provision of telephone exchange service or telephone toll service;

''(B) use customer proprietary network information in the identification or solicitation of potential customers for any service other than

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the service from which such information is derived;

"(C) use such information in their provision of customer premises equipment; or

"(D) disclose such information to any affiliate of such common carrier or any other person that is not an employee of such carrier;

"(2) shall disclose such information, upon affirmative written request by the customer, to any person designated by the customer;

"(3) shall, whenever such common carrier provides any aggregate information based on customer proprietary network information or any data base or other compilation of customer proprietary information to any personnel of such common carrier, or any affiliate of such common carrier, that are engaged in providing any service that is not necessary to the provision of telephone exchange service, or that are engaged in the provision of customer premises equipment, or to any other person that is not an employee or affiliate of such carrier, notify the Commission of the availability of such aggregate or compiled information and shall provide such aggregate or compiled information on reasonable terms

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and conditions to any other service or equipment provider upon reasonable request therefor; and

"(4) shall not discriminate between affiliated and unaffiliated service or equipment providers in providing access to, or in the use and disclosure of, individual and aggregate or compiled information made available consistent with this subsection.

"(b) RULE OF CONSTRUCTION.—This section shall not be construed to prohibit the disclosure of customer proprietary network information as necessary—

"(1) to render, bill, and collect for telephone exchange service or telephone toll service;

"(2) to render, bill, and collect for any other telecommunications service that the customer has requested;

"(3) to protect the rights or property of the carrier; or

"(4) to protect users of any of those services and other carriers from fraudulent, abusive, or unlawful use of or subscription to such service.

"(c) EXEMPTION PERMITTED.—The Commission may, by rule, exempt from the requirements of subsection (a) local exchange carriers that do not have 1,000,000 aggregate nationwide lines installed if the Commission determines that such exemption is in the public interest or if

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compliance with the requirements would impose an undue economic burden on the carrier.

"(d) DUTY TO PROVIDE SUBSCRIBER LIST INFORMATION.—Notwithstanding subsections (a), (b), and (c), a local exchange carrier that provides subscriber list information to any affiliated or unaffiliated service provider or person shall provide subscriber list information on a timely and unbundled basis, under nondiscriminatory and reasonable rates, terms, and conditions, to any person upon reasonable request.

"(e) AUTOMATIC NUMBER IDENTIFICATION SERVICES.—

"(1) CONTRACT REQUIREMENTS.—Any common carrier or affiliate of a common carrier providing automatic number identification services to any person shall provide such services under a contract or tariff containing telephone subscriber information requirements that comply with this subsection. Such requirements shall—

"(A) permit such person to use the telephone number and billing information provided pursuant to the automatic number identification service for billing and collection, routing, screening, and completion of the originating telephone subscriber's call or transaction, or for

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services directly related to the originating telephone subscriber's call or transaction;

"(B) prohibit such person from reusing or selling the telephone number or billing information provided pursuant to the automatic number identification service without first orally (i) notifying the originating telephone subscriber and (ii) extending to such subscriber the option to limit or prohibit such reuse or sale; and

"(C) prohibit such person from disclosing, except as permitted by subparagraphs (A) and (B), any information derived from the automatic number identification service for any purpose other than—

"(i) performing the services or transactions that are the subject of the originating telephone subscriber's call;

"(ii) ensuring network performance, security, and the effectiveness of call delivery;

"(iii) compiling, using, and disclosing aggregate information; and

"(iv) complying with applicable law or legal process.

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"(2) EXCEPTION FOR ESTABLISHED CUSTOMERS.—The customer information requirements imposed under paragraph (1) shall not prevent a person to which automatic number identification services are provided from using—

"(A) the telephone number and billing information provided pursuant to such service, and

"(B) any information derived from the automatic number identification service, or from the analysis of the characteristics of a telecommunications transmission,

to offer, to any telephone subscriber with which such person has an established customer relationship, a product or service that is directly related to the products or service previously acquired by that customer from such person.

"(3) ENFORCEMENT.—(A) Each common carrier shall receive and transmit to the Commission complaints concerning violations of the telephone subscriber information requirements imposed under paragraph (1). Each common carrier shall submit to the Commission, in such form as the Commission may require by regulation, reports on actions taken by the carrier to comply with this section.

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"(B) The Commission may, by rule or order, direct the termination of automatic number identification services to any person who has violated the telephone subscriber information requirements imposed under paragraph (1). For purposes of section 503(b)(1)(B), violations of such requirements shall be considered to be a violation of a provision of this Act.

"(4) EFFECTIVE DATE.—(A) Except as provided in subparagraph (B), the requirements of this subsection shall apply to any automatic number identification service provided on or after one year after the date of enactment of this subsection.

"(B) In the case of any automatic number identification service provided under a contract entered into, or tariff taking effect, more than 90 days after the date of enactment of this subsection, the requirements of this subsection shall apply to any automatic number identification service provided pursuant to such contract or tariff.

"(f) DEFINITIONS.—As used in this section:

"(1) The term 'customer proprietary network information' means—

"(A) information which (i) relates to the quantity, technical configuration, type, destina-

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tion; and amount of use of telephone exchange service or interexchange telephone service subscribed to by any customer of a telephone operating company; and (ii) is available to the telephone operating company by virtue of the telephone company-customer relationship;

"(B) information contained in the bills for telephone exchange service or interexchange telephone service received by a customer of a telephone operating company; and

"(C) such other information concerning the customer as is (i) available to the telephone operating company by virtue of the customer's use of the company's services; and (ii) specified as within the definition of such term by such rules as the Commission shall prescribe consistent with the public interest;

except that such term does not include subscriber list information.

"(2) The term 'subscriber information' means any information—

"(A) identifying the names of subscribers of a local exchange carrier and such subscribers' telephone numbers, addresses, or advertising classifications, or any combination of such

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names, numbers, addresses, or classifications; and

"(B) that the carrier or an affiliate has published or accepted for future publication.

"(3) The term 'aggregate information' means collective data that relates to a group or category of services or customers, from which individual customer identities or characteristics have been removed.

"(4) the term 'automatic number identification' means an access signaling protocol in common use by common carriers that uses an identifying signal associated with the use of a subscriber's telephone to provide billing information or other information to the local exchange carrier and to any other interconnecting carriers.

"(g) PROCEEDING REQUIRED.—Within 6 months after the date of enactment of this section, the Commission shall commence a proceeding—

"(1) to examine the impact of the integration into interconnected communications networks of wireless telephone, cable, satellite, and other technologies on the privacy rights and remedies of the consumers of those technologies;

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"(2) to examine the impact that the globalization of such integrated communications networks has on the international dissemination of consumer information and the privacy rights and remedies to protect consumers;

"(3) to propose changes in the Commission's regulations to ensure that the effect on consumer privacy rights is considered in the introduction of new telecommunications services and that the protection of such privacy rights is incorporated as necessary in the design of such services or the rules regulating such services;

"(4) to propose changes in the Commission's regulations as necessary to correct any defects identified pursuant to paragraph (1) in such rights and remedies; and

"(5) to prepare recommendations to the Congress for any legislative changes required to correct such defects.".

TITLE VII—MEDIA DIVERSITY

SEC. 701. REMOVAL OF BROADCAST STATION OWNERSHIP RESTRICTIONS.

Within one year after the date of enactment of this Act, the Commission shall, after a notice and comment proceeding, modify or remove such national and local own-

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ership rules on radio and television broadcast stations as are necessary to ensure that broadcasters are able to compete fairly with other media providers while ensuring that the public receives information from a diversity of media sources

SEC. 702. REVIEW OF STATUTORY OWNERSHIP RESTRICTION.

Within one year after the date of enactment of this Act, the Commission shall review the ownership restriction in section 613(a)(1) and report to Congress whether or not such restriction continues to serve the public interest.

703. REVIEW OF VIDEO NON-DUPLICATION AND SYNDICATED EXCLUSIVITY RULES.

Within one year after the date of enactment of this Act, the Commission shall complete a notice and comment proceeding to consider the applicability of the Commission's rules regarding network non-duplication protection and syndicated exclusivity protection to other multichannel video programming providers.

SEC. 704. BROADCASTER PROVISION OF ADDITIONAL SERVICES.

The Commission shall, after a notice and comment proceeding, prescribe regulations to permit broadcasters to make use of the broadcast spectrum that they are licensed to use, for services that are related to the program-

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~~ming services which they are authorized to provide. To the extent that the broadcast licensee provides commercial services using broadcast spectrum, the Commission shall be authorized to collect from each licensee an amount equivalent to the amount that would have been paid if the license to provide such service has been subjected to competitive bidding under section 309(j) of the Communications Act of 1934 (47 U.S.C. 309(j)). Such amounts shall be collected and distributed pursuant to such section 309(j). Nothing shall be construed as relieving a broadcasting station from its obligation to serve the public interest, convenience, and necessity.~~

SECTION 1. SHORT TITLES; TABLE OF CONTENTS.

(a) SHORT TITLE OF ACT.—This Act may be cited as the "Communications Act of 1994".

(b) SHORT TITLE OF SUBTITLE A OF TITLE IV.—Subtitle A of title IV may be cited as the "Telecommunications Equipment Research and Manufacturing Competition Act of 1994".

(c) TABLE OF CONTENTS.—

Sec. 1. Short titles; table of contents.
Sec. 2. Findings.
Sec. 3. Effect on other law.

TITLE I—PROTECTION AND ADVANCEMENT OF UNIVERSAL SERVICE

Sec. 101. National policy goals.
Sec. 102. Universal service protection and advancement.
Sec. 103. Public rights-of-way.
Sec. 104. Public access.

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TITLE II—TELECOMMUNICATIONS

Sec. 201. Infrastructure investment.

TITLE III—REGULATORY REFORM

Sec. 301. Definitions.
Sec. 302. Regulatory reform.
Sec. 303. Implementing regulations.
Sec. 304. State and local taxation of direct broadcast satellite services.
Sec. 305. Pole attachments.
Sec. 306. Carrier of last resort.
Sec. 307. Additional requirements for certain carriers in Alaska.

TITLE IV—AUTHORIZED ACTIVITIES OF BELL COMPANIES

Subtitle A—Telecommunications Equipment Research and Manufacturing Competition

Sec. 401. Findings.
Sec. 402. Amendment to Communications Act of 1934.
Sec. 403. Increased penalty for recordkeeping violations.
Sec. 404. Application of antitrust laws.

Subtitle B—Regulation of Alarm Services and Electronic Publishing by Bell Operating Companies

Sec. 421. Regulation of entry into alarm monitoring services.
Sec. 422. Regulation of electronic publishing.

Subtitle C—Information Services and Payphone Services

Sec. 431. Provision of information services.
Sec. 432. Provision of payphone services.

Subtitle D—InterLATA Telecommunications Services

Sec. 441. InterLATA telecommunications services.
Sec. 442. Jurisdiction.

TITLE V—REGULATORY PARITY AMONG PROVIDERS OF CABLE SERVICE

Sec. 501. Provision of cable service by local exchange carriers and provision of telecommunications services by cable operators.
Sec. 502. Common carrier video platform.
Sec. 503. Jurisdiction of franchising authority.

TITLE VI—CUSTOMER CONTROL OVER INFORMATION

Sec. 601. Customer information protection.

TITLE VII—MEDIA DIVERSITY

Sec. 701. Review of broadcast rules.
Sec. 702. Television broadcaster provision of additional services.
Sec. 703. Video programming accessibility.

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TITLE VIII—OBSCENE, HARASSING, AND WRONGFUL UTILIZATION OF TELECOMMUNICATIONS FACILITIES

Sec. 801. Obscene or harassing use of telecommunications facilities under the Communications Act of 1934.
Sec. 802. Obscene programming on cable television.
Sec. 803. Broadcasting obscene language on radio.
Sec. 804. Interception and disclosure of electronic communications.
Sec. 805. Additional prohibition on billing for toll-free telephone calls.
Sec. 806. Scrambling of cable channels for nonsubscribers.
Sec. 807. Cable operator refusal to carry certain programs.

TITLE IX—ADVANCED TELECOMMUNICATIONS NETWORK CAPABILITY

Sec. 901. Advanced telecommunications network capability.

SEC. 2. FINDINGS.

The Congress makes the following findings:

(1) Congress has not passed comprehensive changes to the Communications Act of 1934 since that Act was originally passed.

(2) Congress must pass comprehensive communications legislation to promote the development and growth of the national information superhighway.

(3) Changes in the telecommunications marketplace have made some of the provisions of the Communications Act of 1934 obsolete, unnecessary, or inimical to advances in communications technologies and services.

(4) Competition has emerged in many services that were previously thought to be natural monopolies, but the Communications Act of 1934 requires all carriers to be regulated as if they were monopolies.

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(5) As communications markets change, government must ensure that the public interest, convenience, and necessity are preserved.

(6) The public interest requires that universal service is protected and advanced, that new telecommunications technologies are deployed rapidly and equitably, and that access by schools, hospitals, public broadcasters, libraries, and museums to advanced telecommunications services is assisted.

(7) Access to telecommunications services is fundamental to safety of life and participation in a democratic society.

(8) Telecommunications networks make substantial use of public rights of way in real property and in spectrum frequencies, and carriers that make use of such public rights of way have an obligation to provide preferential rates to entities that provide significant public benefits.

(9) Advanced telecommunications services can enhance the quality of life and promote economic development and international competitiveness.

(10) Telecommunications infrastructure development is particularly crucial to the continued economic development of rural areas that may lack an

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adequate industrial or service base for continued development.

(11) Advancements in the Nation's telecommunications infrastructure will enhance the public welfare by helping to speed the delivery of new services, such as distance learning, remote medical sensing, and distribution of health information.

(12) Infrastructure advancement can be assisted by joint planning and infrastructure sharing by carriers and other providers of network facilities and services providing communications services.

(13) Increased competition in telecommunications services can, if subject to appropriate safeguards, encourage infrastructure development and have beneficial effects on the price, universal availability, variety, and quality of telecommunications services.

(14) The emergence of competition in telecommunications services has already contributed, and can be expected to continue contributing, to the modernization of the infrastructure.

(15) Competition in the long distance industry and the communications equipment market has brought about lower prices and higher quality services.

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(16) Competition for local communications services has already begun to benefit the public; competitive access providers have deployed thousands of miles of optical fiber in their local networks; local exchange carriers have been prompted by competition to accelerate the installation of optical fiber in their own networks.

(17) Electric utilities, satellite carriers, and others are prepared to enter the local telephone market over the next few years.

(18) A diversity of telecommunications carriers enhances network reliability by providing redundant capacity, thereby lessening the impact of any network failure.

(19) Competition must proceed under rules that protect consumers and are fair to all telecommunications carriers.

(20) All telecommunications carriers, including competitors to the telephone companies, should contribute to universal service and should make their networks available for interconnection by others.

(21) Removal of all State and local barriers to entry into the telecommunications services market and provision of interconnection are warranted after

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mechanisms to protect universal service and rules are established to ensure that competition develops.

(22) Increasing the availability of interconnection and interoperability among the facilities of telecommunications carriers will help stimulate the development of fair competition among providers.

(23) The portability of telecommunications numbers will eliminate a significant advantage held by traditional telephone companies over competitors in the provision of telecommunications services.

(24) Unreasonable restrictions on resale and sharing of telecommunications networks retard the growth of competition and restrict the diversity of services available to the public.

(25) Additional regulatory measures are needed to allow consumers in rural markets and noncompetitive markets the opportunity to benefit from high-quality telecommunications capabilities.

(26) Regulatory flexibility for existing providers of telephone exchange service is necessary to allow them to respond to competition.

(27) The Federal Communications Commission (referred to elsewhere in this Act as the "Commission") and the States must have the flexibility to ad-

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just their regulations of each provider of telecommunications services to serve the public interest.

(28) If the efforts of the private sector fail, the Commission should take steps to ensure network reliability and the development of network standards.

(29) Access to switched, digital telecommunications service for all segments of the population promotes the core First Amendment goal of diverse information sources by enabling individuals and organizations alike to publish and otherwise make information available in electronic form.

(30) The national welfare will be enhanced if community newspapers are provided ease of entry into the operation of information services disseminated through electronic means primarily to customers in the localities served by such newspapers at rates that are not higher, on a perunit basis, than the rates charged for such services to any other electronic publisher.

(31) A clear national mandate is needed for full participation in access to telecommunications networks and services by individuals with disabilities.

(32) The obligations of telecommunications carriers include the duty to furnish telecommunications services which are designed to be fully accessible to in-

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dividuals with disabilities in accordance with such standards as the Commission may prescribe.

(33) Permitting the Bell operating companies to enter the manufacturing market will stimulate greater research and development, create more jobs, and enhance our international competitiveness.

(34) The Bell operating companies should not be permitted to enter the market for other long distance services until they have eliminated the barriers to competition and interconnection.

(35) Safeguards are necessary to ensure that the Bell operating companies do not abuse their market power over local telephone service to discriminate against competitors in the markets for electronic publishing, alarm services, and other information services.

(36) Amending the legal barriers to the provision of video programming by telephone companies in their service areas will encourage competition to existing cable television service providers and encourage telephone companies to upgrade their telecommunications facilities to enable them to deliver video programming, as long as telephone companies and cable companies are prohibited from buying or joint ven-

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turing with each other in their service areas (except for certain rural areas).

(37) As communications technologies and services proliferate, consumers must be given the right to control information concerning their use of those technologies and services.

(38) As competition in the media increases, the Commission should reexamine the need for national and local ownership limits on broadcast stations, consistent with the need to maintain diversity of information sources.

SEC. 3. EFFECT ON OTHER LAW.

(a) ANTITRUST LAWS.—Except as provided in subsection (b), nothing in this Act shall be construed to modify, impair, or supersede the applicability of any antitrust law.

(b) MODIFICATION OF FINAL JUDGMENT.—This Act shall supersede the Modification of Final Judgment to the extent that it is inconsistent with this Act.

TITLE I—PROTECTION AND ADVANCEMENT OF UNIVERSAL SERVICE

SEC. 101. NATIONAL POLICY GOALS.

Section 1 of the Communications Act of 1934 (47 U.S.C. 151) is amended by inserting "(a)" before "For the purpose of" and by adding at the end the following new subsection:

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"(b) The primary objective of United States national and international communications policy shall be to protect the public interest. The public interest shall include the following:

"(1) To ensure that every person has access to reasonably evolving telecommunications services at just, reasonable, and affordable rates taking into account advances in telecommunications and information technology.

"(2) To promote the development and widespread availability of new technologies and advanced telecommunications and information services to all persons regardless of location or disability.

"(3) To ensure that consumers have access to diverse sources of information.

"(4) To promote learning, education, and knowledge.

"(5) To ensure reasonably comparable services at reasonably comparable rates for consumers in urban and rural areas.

"(6) To allow each individual the opportunity to contribute to the free flow of ideas and information through telecommunications and information services.

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"(7) To maximize the contribution of communications and information technologies and services to economic welfare and quality of life.

"(8) To protect each individual's right to control the use of information concerning his or her use of telecommunications services.

"(9) To provide secure and reliable services for Federal, State, and local government emergency response.

"(10) To promote democracy.

"(11) To make available so far as possible, to all the people of the United States, regardless of race, color, national origin, income, residence in a rural or urban area, or disability, high capacity two-way communications networks capable of enabling users to originate and receive affordable and accessible high quality voice, data, graphics, video, and other types of telecommunications services.".

SEC. 102. UNIVERSAL SERVICE PROTECTION AND ADVANCEMENT.

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

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"SEC. 201A. UNIVERSAL SERVICE PROTECTION AND ADVANCEMENT.

"(a) UNIVERSAL SERVICE PRINCIPLES.—The Joint Board and the Commission shall base policies for the preservation and advancement of universal service on the following principles:

"(1) Quality services are to be provided at just, reasonable, and affordable rates.

"(2) Access to advanced telecommunications and information services should be provided in all regions of the Nation.

"(3) Consumers in rural and high cost areas should have access to telecommunications and information services, including interexchange services, reasonably comparable to those services provided in urban areas.

"(4) Consumers in rural and high cost areas should have access to telecommunications and information services at rates that are reasonably comparable to rates charged for similar services in urban areas.

'(5) Citizens in rural and high cost areas should have access to the benefits of advanced telecommunications and information services for health care, education, economic development, and other public purposes.

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"(6) There should be a coordinated Federal-State universal service system to preserve and advance universal service.

"(7) Consumers should be permitted to exercise choice among telecommunications carriers offering universal service.

"(8) Consumers of universal service should have the right to control the use of information concerning their individual use of such service.

"(b) DEFINITION.—Universal service is an evolving package of services which includes any telecommunications and information services which the Commission, based on recommendations from the public, Congress, and the Federal-State Joint Board periodically convened under section 102 of the Communications Act of 1994, and taking into account advances in telecommunications and information technologies and services, determines should be provided at just, reasonable, and affordable rates to all Americans, including those in rural and high-cost areas and those with disabilities, to enable them to participate effectively in the economic, academic, medical, and democratic processes of the Nation. At a minimum, universal service shall include access to any telecommunications and information services that the Commission determines have, through the operation

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of market choices by customers, been subscribed to by a substantial majority of residential customers.

"(c) ALL TELECOMMUNICATIONS PROVIDERS CONTRIBUTE.—Every telecommunications carrier engaged in intrastate, interstate, or foreign communication by wire or radio shall contribute to the preservation and advancement of universal service. The Commission may, by rule, require any other telecommunications provider to contribute to the preservation and advancement of universal service, if the public interest so requires. Such contributions shall be in the manner determined by the Commission, after referral to the Joint Board periodically convened under section 102 of the Communications Act of 1994, and shall be on an equitable and non-discriminatory basis. The Commission and the States shall, through the Universal Service Fund established under subsection (d), collect only the amount of contributions needed to meet the amount of support payments reasonably necessary to preserve and advance universal service, as defined by the Commission under subsection (b).

"(d) UNIVERSAL SERVICE FUND.—The Commission shall establish within 18 months after the date of enactment of the Communications Act of 1994, after referral to the Federal-State Joint Board convened under section 102 of that Act, a Universal Service Fund, controlled by an independent administrator, which shall have specific and pre-

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dictable Federal and State mechanisms to provide adequate and sustainable support for maintaining and advancing universal service. The Fund shall be the primary repository of universal service contributions, and shall be responsible for the collection of universal service contributions and the distribution of support payments, based on rules established by the Commission and the States to implement this section.

"(e) FEDERAL-STATE PARTNERSHIP.—A State may adopt regulations to provide for additional definitions, mechanisms, and standards to preserve and advance universal service within such State, and to implement any Joint Board recommendation made under section 102 of the Communications Act of 1994, provided that such State regulations are not inconsistent, or are modified to be made not inconsistent, within one year after the effective date of regulations prescribed by the Commission to implement this section.

"(f) ELIGIBILITY FOR UNIVERSAL SERVICE SUPPORT.—Only telecommunications carriers which are designated as a carrier of last resort under section 214(d) shall be eligible to receive support payments from the Universal Service Fund established under this section. The Commission, after referral to the Joint Board periodically convened under section 102 of the Communications Act of 1994, shall establish appropriate regulatory mechanisms to ensure that

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support payments accurately reflect the amount reasonably necessary to preserve and advance universal service.

"(g) RATE ADJUSTMENTS.—The Commission shall, after referral to the Joint Board established under section 102 of the Communications Act of 1994, establish guidelines to be implemented by the States to allow for rate adjustments by existing providers of universal service necessary to implement the universal service rules approved by the Commission pursuant to this section. Such guidelines shall provide for—

"(1) the development and approval of transition plans for up to 2 years, or 4 years in the case of small telecommunications carriers;

"(2) compensation for services not included in the definition of universal service by the Commission, but required under State law; and

"(3) expedited implementation by States of any changes required by this section.

"(h) INTEREXCHANGE SERVICE.—The Commission shall ensure that the rates charged by providers of interexchange telecommunications service to consumers in rural and high cost areas are maintained at levels no higher than those charged by each such provider to its consumers in urban areas.

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"(i) SUBSIDY OF COMPETITIVE SERVICES PROHIBITED.—Telecommunications carriers shall not be permitted to subsidize competitive services from revenues obtained from services that are not competitive. The Commission, after referral to the Joint Board established under section 102 of the Communications Act of 1994, shall establish cost allocation rules and guidelines to ensure that services included in the definition of universal service bear no more than a reasonable share (and may, in the public interest, bear less than or none of such share) of the joint and common costs of facilities used to provide such services.

"(j) EFFECTIVE DATE.—The provisions of subsections (c), (d), (e), (f), and (g) of this section shall take effect 18 months after the date of enactment of the Communications Act of 1994.".

(b) FEDERAL-STATE JOINT BOARD ON UNIVERSAL SERVICE.—

(1) Within one month of the date of enactment of this Act, the Commission shall institute and refer to a Federal-State Joint Board under section 410(c) of the Communications Act of 1934 a proceeding to recommend rules regarding the implementation of section 201A of that Act, including the definition of universal service. Such Joint Board shall, after notice and public comment, make its recommendations to

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the Commission no later than nine months after the date of enactment of this Act.

(2) The Commission shall periodically, but no less than once every 6 years, institute and refer to a Federal-State Joint Board under section 410(c) of the Communications Act of 1934 a proceeding to review the implementation of section 201A of that Act and to make new recommendations within 9 months of the date such Joint Board convened, if necessary, with respect to any modifications or additions that may be needed. As part of any such proceeding the Joint Board shall review the definition of, and adequacy of support for, universal service and shall evaluate the extent to which universal service has been protected and advanced.

(c) COMMISSION ACTION.—The Commission shall initiate a single proceeding to implement recommendations from the initial Joint Board required by subsection (b) and shall complete such proceeding within 18 months of the date of enactment of this Act. Thereafter, the Commission shall complete any proceeding to implement recommendations from any further Joint Board required under subsection (b) within 9 months of receiving such recommendations.

(d) SEPARATIONS RULES.—Nothing in the amendments made by this Act to the Communications Act of 1934

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shall affect the Commission's separations rules for local exchange or interexchange carriers in effect on the date of enactment of this Act.

(e) CONFORMING AMENDMENT.—Section 332(c)(1)(A) of the Communications Act of 1934 (47 U.S.C. 332(c)(1)(A)) is amended by inserting "201A, 201B, 201C" after "section 201,".

SEC. 103. PUBLIC RIGHTS-OF-WAY.

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

"SEC. 201B. PUBLIC RIGHTS-OF-WAY.

"(a) REQUIREMENT FOR RESERVED CAPACITY.—Within 2 years after the enactment of the Communications Act of 1994, the Commission shall promulgate regulations to require owners and operators of telecommunications networks to reserve, for public uses, up to 5 percent of the capacity on such networks used for the delivery of information services, for use by eligible entities at incremental cost based rates for the delivery of information services to the general public. The capacity shall be reserved in exchange for the use of public rights-of-way accorded telecommunications networks. The capacity shall be allocated pursuant to regulations promulgated by the Commission and State authorities. The owner or operator of any affected telecommuni-

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cations network shall have no control over, and no liability for, the communications content of such capacity.

"(b) RESERVATION OF CAPACITY.—

"(1) AMOUNT OF CAPACITY TO BE RESERVED.—The Commission shall determine on the record, after notice and opportunity for comment, the appropriate amount of capacity to be reserved on each telecommunications network. In making such a determination, the Commission shall consider the type of technology used by the network, barriers to accessing the network, existing set-aside requirements for broadcast spectrum, existing requirements under sections 335, 611, and 615, the public's right to receive adequate compensation for use of public rights-of-way, and such other factors as the Commission considers appropriate.

"(2) TEMPORARY REDUCTIONS.—If the Commission determines that any portion of the amount of capacity that a telecommunications network is required to reserve under this section will go unused, the Commission may temporarily reduce the reserved amount by such unused portion. During the period when the reserved capacity of a telecommunications network is temporarily reduced, an eligible entity described in subsection (c) may request use of any of the portion

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by which such reserved capacity was reduced and the Commission shall act promptly upon such request.

"(3) QUALITY.—The quality of telecommunications capacity reserved for public uses under this section shall be equivalent to the best quality of available capacity of the affected telecommunications network in all respects, including accessibility, channel positioning, interconnection access rights, network capabilities, and such other factors as the Commission considers appropriate.

"(4) ESTABLISHMENT OF RATES FOR ELIGIBLE ENTITIES ON OPEN SYSTEMS.—If the Commission determines on the record after notice and opportunity for comment that a telecommunications network has clearly sufficient open architecture, capacity, and nondiscriminatory access terms to ensure access by eligible entities described in subsection (c), the Commission shall determine that the obligation to reserve a certain amount of capacity imposed under this subsection is not applicable. This paragraph shall not affect the requirement to make capacity available to eligible entities at incremental cost based rates.

"(c) ALLOCATION OF CAPACITY.—

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"(1) ELIGIBLE ENTITIES.—The following entities are eligible for access to the capacity reserved under this section:

"(A) Elementary and secondary schools as defined in section 1471 of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 2891), and institutions of higher education as defined in section 1201 of the Higher Education Act of 1965 (20 U.S.C. 2891).

"(B) Public telecommunications entities.

"(C) Public and nonprofit libraries.

"(D) Nonprofit organizations described in section 501(c)(3) of the Internal Revenue Code of 1986 that are formed for the purpose of providing nondiscriminatory public access to noncommercial educational, informational, cultural, civic, or charitable services.

"(2) TERMS AND CONDITIONS OF ACCESS.—Such eligible entities shall have access to such capacity for the provision of educational, informational, cultural, civic, or charitable services directly to the general public. Telecommunications capacity allocated pursuant to this section shall not be sold, resold, or otherwise transferred in consideration for money or any other thing of value.

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"(3) ALLOCATION.—The Commission and the States shall determine appropriate mechanisms and guidelines for allocating such capacity.

"(d) DEFINITIONS.—As used in this section:

"(1) The term 'telecommunications network' means any group of facilities that has been granted the right to occupy any public right-of-way and that is used to transmit or carry information services, including video services, to the general public, and that provides the consumer or end-user the opportunity to choose from a range of information services that are available contemporaneously to the general public. Neither terrestrial radio or television broadcast stations licensed under title III, nor cable systems subject to sections 611 and 615, shall be considered to be telecommunications networks.

"(2) The term 'public right-of-way' means any right-of-way, including use of the electromagnetic spectrum, that is held or otherwise controlled by Federal, State, or local governments on behalf of the general public, and is used in the transmission or carriage of telecommunications.

"(3) The term 'incremental cost based rates' means the lowest rate that is consistent with the long run incremental cost or out-of-pocket cost, whichever

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is lower, of telecommunications networks in offering technically similar commercial services. These rates shall be no more than the directly attributable cost of the service, and in no event shall they contain a contribution to coverage of the joint or common costs of the provider.".

SEC. 104. PUBLIC ACCESS.

(a) AMENDMENT OF COMMUNICATIONS ACT.—Title II of the Communications Act of 1934 (47 U.S.C. 201 et seq.), as amended by this Act, is further amended by inserting after section 201B the following new section:

"SEC. 201C. PUBLIC ACCESS.

"(a) PUBLIC FACILITIES.—

"(1) A telecommunications carrier designated as a carrier of last resort under section 214(d) shall, upon a bona fide request, provide universal service to any public or non-profit—

"(A) elementary and secondary school, as defined in section 1471 of the Elementary and Secondary Education Act (20 U.S.C. 1141);

"(B) library;

"(C) health care facility;

"(D) museum (including a zoo or aquarium);

"(E) public broadcast station; and

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any member of such other classes of public institutional telecommunications users as the Commission may identify, based on the public interest, that contribute in a significant way to the public's quality of life.

"(2) The Commission may, in the public interest, provide for separate definitions of universal service under subsection 201A(c) for application only to those public institutional telecommunications users to which this section applies.

"(3) The Commission shall include the amount of support payments reasonably necessary to provide universal service to public institutional telecommunications users to which this section applies in the universal service support mechanisms required under section 201A.

"(b) ADVANCED SERVICES.—The Commission shall establish rules—

"(1) to enhance, to the extent technically feasible and economically reasonable, the availability of advanced telecommunications and information services to all public and non-profit elementary and secondary school classrooms, health care facilities, libraries, museums (including zoos and aquariums), public broadcasi stations, and any other class of public in-

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stitutional telecommunications users identified by the Commission under subsection (a);

"(2) to require preferential rates under subsection (c);

"(3) to ensure that appropriate functional requirements or performance standards, or both, including interoperability standards, are established for telecommunications carriers that connect such public institutional telecommunications users with the public switched network;

"(4) to define the circumstances under which a telecommunications carrier may be required to connect its network to such public institutional telecommunications users; and

"(5) to address such other matters as the Commission may determine.

"(c) PREFERENTIAL RATES.—Notwithstanding sections 202 and 230, the rules promulgated under subsection (b) shall require telecommunications carriers to offer specific telecommunications and information services, including advanced services, at a preferential rate to some or all of the public institutional telecommunications users to which this section applies.

"(d) RESTRICTION.—Public institutional telecommunications users receiving universal service or services

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at a preferential rate under this section shall be prohibited from reselling such service, or from aggregating telecommunications services under section 226.".

(b) EFFECTIVE DATE.—The amendments made by subsection (a) shall take effect 2 years after the date of enactment of this Act.

(c) RULEMAKING.—The Commission shall complete and rulemaking and prescribe regulations to implement the provisions of sections 201B and 201C of the Communications Act of 1934 within 2 years after the date of enactment of this Act.

TITLE II—TELECOMMUNICATIONS INVESTMENT

SEC. 201. INFRASTRUCTURE INVESTMENT.

(a) IN GENERAL.—Title II of the Communications Act of 1934 (47 U.S.C. 201 et seq.) is amended by inserting after section 228 the following new section:

"SEC. 229. INFRASTRUCTURE INVESTMENT.

"(a) RURAL MARKETS AND NONCOMPETITIVE MARKETS.—To the extent possible, consumers in rural markets and noncompetitive markets shall have access to high quality interoperable telecommunications network facilities and capabilities which—

"(1) provide subscribers with sufficient interactive bi-directional network capacity to allow access

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to information services that provide a combination of voice, data, image, and video; and

"(2) are widely available at just, reasonable, affordable, and nondiscriminatory rates.

"(b) FULL EFFECTUATION.—The Commission shall have the authority to pre-empt any State or local statute or regulation, or other State or local legal requirement, except as provided in section 230(k), that prevents the full effectuation of the goal set forth in subsection (a).

"(c) TELECOMMUNICATIONS NETWORK STANDARDS AND PLANNING.—

"(1) TELECOMMUNICATIONS NETWORK STANDARDS.—

"(A) INTERCONNECTION AND INTEROPERABILITY STANDARDS.—The Commission shall encourage telecommunications carriers and telecommunications equipment manufacturers to develop standards to ensure interconnection, interoperability, and reliability of telecommunications networks.

"(B) INDUSTRY ASSISTANCE.—The Commission shall, when necessary, establish deadlines, create incentives, or use other mechanisms to assist the industry to develop and implement such standards.

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"(C) COMMISSION AUTHORITY TO ESTABLISH STANDARDS.—The Commission may, after notice and opportunity for comment, establish standards only if industry participants fail to reach agreement.

"(2) NETWORK PLANNING.—

"(A) REGULATIONS ON JOINT ACTION.—The Commission shall prescribe regulations that permit joint telecommunications network planning, design, and implementation among all telecommunications carriers, cable television companies, railroads, and electric, gas, water, and other utilities in the same geographic area.

"(B) INFORMATION DISCLOSURE PROCEDURES.—The Commission and the States shall prescribe regulations establishing procedures to ensure that—

"(i) telecommunications carriers on reasonable request make available timely information to other such carriers, information service providers, other infrastructure providers, and other users in the same geographic area about the deployment of telecommunications equipment, including software integral to such telecommunications

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equipment, including upgrades that will materially affect the ability of a telecommunications carrier, information service provider, infrastructure provider, or other user to interconnect or interoperate in the same geographic area;

"(ii) telecommunications carriers are not required to share information required under clause (i) with anyone, including carriers with whom they directly compete, except as may be necessary to meet the interconnection and interoperability requirements set forth in this paragraph; and

"(iii) the recipient of any information described in clause (i) uses it only for its own interconnection and interoperability.

"(C) DEFINITION OF INFRASTRUCTURE PROVIDERS.—For purposes of this section, the term 'infrastructure provider' means any entity, such as a railroad, electric, gas, water, or other utility, that builds and maintains an infrastructure and makes it available by lease or other arrangement to one or more telecommunications carriers, but which is not itself a telecommunications carrier.

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"(3) INFRASTRUCTURE SHARING.—

"(A) REGULATIONS REQUIRED.—The Commission shall prescribe, within one year after the date of enactment of the Communications Act of 1994, regulations that require local exchange carriers that were subject to Part 69 of the Commission's rules on or before that date to make available to any qualifying carrier such public switched network infrastructure, technology, information, and telecommunications facilities and functions as may be requested by such qualifying carrier for the purpose of enabling such qualifying carrier to provide telecommunications services, or to provide access to information services, in the service area in which such qualifying carrier has requested and obtained designation as a carrier of last resort under section 214(d).

"(B) QUALIFYING CARRIER.—For the purposes of this paragraph, the term 'qualifying carrier' means a telecommunications carrier which—

"(i) lacks economies of scale or scope, as determined in accordance with regulations prescribed by the Commission pursuant to this paragraph; and

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"(ii) is a common carrier which offers telephone exchange service, telephone exchange access service, and any other service that is within the definition of universal service, to all consumers without preference throughout the service area for which such carrier has been designated as a carrier of last resort under section 214(d).

"(C) TERMS AND CONDITIONS OF REGULATIONS.—The regulations prescribed by the Commission pursuant to this paragraph shall—

"(i) not require a local exchange carrier to which this paragraph applies to take any action that is economically unreasonable or that is contrary to the public interest;

"(ii) permit, but shall not require, the joint ownership or operation of public switched network infrastructure and services by or among such local exchange carrier and a qualifying carrier;

"(iii) ensure that such local exchange carrier shall not be treated by the Commission or any State commission as a common carrier for hire or as offering common car-

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rier services with respect to any infrastructure, technology, information, facilities, or functions made available to a qualifying carrier in accordance with regulations issued pursuant to this paragraph;

"(iv) ensure that such local exchange carrier makes such infrastructure, technology, information, facilities, or functions available to a qualifying carrier on just and reasonable terms and conditions that permits such qualifying carrier to fully benefit from the economies of scale and scope of such local exchange carrier, as determined in accordance with guidelines prescribed by the Commission in regulations issued pursuant to this paragraph;

"(v) establish conditions that promote cooperation between local exchange carriers to which this paragraph applies and qualifying carriers;

"(vi) not require a local exchange carrier to which this paragraph applies to engage in any infrastructure sharing agreement for any services or access which are to be provided or offered to consumers by the

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qualifying carrier in such local exchange carrier's telephone exchange service area; and

"(vii) require that such local exchange carrier file with the Commission or State commission, for public inspection, any tariffs, contracts, or other arrangements showing the rates, terms and conditions under which such carrier is making available public switched network infrastructure and functions under this paragraph.

"(D) INFORMATION CONCERNING DEPLOYMENT OF NEW SERVICES AND EQUIPMENT.—A local exchange carrier to which this paragraph applies that has entered into an infrastructure sharing agreement under this paragraph shall provide to each party to such agreement timely information on the planned deployment of telecommunications services and equipment, including any software or upgrades of software integral to the use or operation of such telecommunications equipment.

"(d) DISABILITY ACCESS.—

"(1) NETWORK SERVICES.—Telecommunications carriers shall ensure that advances in network serv-

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ices deployed by them are accessible and usable by individuals with disabilities, including individuals with functional limitations of hearing, vision, movement, manipulation, speech, or interpretation of information, unless the cost of making the services accessible and usable would result in an undue burden or adverse competitive impact. The carriers shall seek to permit the use of both standard and special equipment, and seek to minimize the need of individuals to acquire additional devices beyond those used by the general public to obtain such access.

"(2) INQUIRY.—The Commission shall, within 2 years after the date of enactment of the Communications Act of 1994, complete an inquiry into policies, practices, and regulations which address the access needs of individuals with speech disabilities, including those who use electronic speechmaking devices and those who use telephone relay services. The inquiry will develop recommendations for more effective ways to incorporate current specialized consumer product equipment devices into the nation's telecommunications infrastructure in addition to addressing the speech-to-speech translation needs of individuals with significant voice disabilities.

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"(3) COMPATIBILITY.—Whenever an undue burden or adverse competitive impact would result from the requirements in paragraphs (1) and (2), the manufacturer that designs, develops, or fabricates the equipment or network service shall ensure that such equipment or service is compatible with existing peripheral devices or specialized customer premises equipment commonly used by persons with disabilities to achieve access, unless doing so would result in an undue burden or adverse competitive impact.

"(4) DEFINITIONS.—As used in this section:

"(A) UNDUE BURDEN.—The term 'undue burden' means significant difficulty or expense. In determining whether the activity necessary to comply with the requirements of paragraphs (1), (2), and (3) would result in an undue burden, the factors to be considered include—

"(i) the nature and cost of the activity;

"(ii) the impact on the operation of the facility involved in the manufacture of the equipment or the deployment of the network service;

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"(iii) the financial resources of the telecommunications equipment manufacturer or telecommunications carrier;

"(iv) the financial resources of the manufacturing affiliate of a Bell operating company in the case of manufacturing of equipment, as long as applicable regulatory rules prohibit cross-subsidization of equipment manufacturing with revenues from regulated telecommunications service or when the manufacturing activities are conducted in a separate subsidiary; and

"(v) the type of operations of the telecommunications equipment manufacturer or telecommunications carrier.

"(B) ADVERSE COMPETITIVE IMPACT.—In determining whether the activity necessary to comply with the requirements of paragraphs (1), (2), and (3) would result in adverse competitive impact, the following factors shall be considered:

"(i) Whether such activity would raise the cost of the equipment or network service in question beyond the level at which there would be sufficient consumer demand by the

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general population to make the equipment or network service profitable.

"(ii) Whether such activity would, with respect to the equipment or network service in question, put the telecommunications equipment manufacturer or telecommunications carrier at a competitive disadvantage. This factor may be considered so long as competing telecommunications equipment manufacturers and telecommunications carriers are not held to the same obligation with respect to access by persons with disabilities.

"(C) ACTIVITY.—For the purposes of this paragraph, the term 'activity' includes—

"(i) the research, design, development, deployment, and fabrication activities necessary to comply with the requirements of this section; and

"(ii) the acquisition of the related materials and equipment components.

"(5) COORDINATION IN DEVELOPING REGULATIONS.—Throughout the process of developing regulations required by this paragraph, the Commission shall coordinate and consult with representatives of

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individuals with disabilities and interested equipment and service providers to ensure their concerns and interests are given full consideration in such process.

"(6) EFFECTIVE DATE.—The regulations required by this subsection shall become effective 18 months after the date of enactment of the Communications Act of 1994.

"(e) ANNUAL SURVEY.—The Commission shall collect information regarding the deployment of technologies on a State-by-State basis and make such information available to the public.

"(f) COST ALLOCATION REGULATIONS.—Notwithstanding any other time period, the Commission shall within 6 months adopt regulations, consistent with the need to protect universal service, to allocate a local exchange carrier's costs of deploying broadband telecommunications facilities between local exchange service and competitive services.

"(g) NONDISCRIMINATORY ACCESS.—In considering any application under section 214, the Commission shall ensure that access to such applicant's telecommunications services is not denied to any group of potential subscribers because of their race, gender, national origin, income, age, or residence in a rural or high-cost area.".

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(b) NETWORK PLANNING AND INFRASTRUCTURE SHARING RULES.—The Commission shall complete a rulemaking proceeding and adopt rules to implement sections 229(c) (2) and (3) of the Communications Act of 1934 within 1 year after the date of enactment of this Act.

(c) DISABILITY ACCESS RULES.—The Commission shall complete a rulemaking proceeding and adopt rules to implement section 229(d) of the Communications Act of 1934 within 2 years after the date of enactment of this Act.

TITLE III—REGULATORY REFORM

SEC. 301. DEFINITIONS.

Section 3 of the Communications Act of 1934 (47 U.S.C. 153) is amended by adding at the end the following new subsections:

"(hh) 'Local exchange carrier' means a provider of telephone exchange service that the Commission determines has market power. Such term does not include a person engaged in the provision of a commercial mobile service under section 332(c), except to the extent that the Commission finds that such service as provided by such person in a State is a replacement for a substantial portion of the wireline telephone exchange service within such State.

"(ii) 'Telecommunications' means the transmission, between or among points specified by the user, of information of the user's choosing, including voice, data, image,

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graphics, or video. without change in the form or content of the information, as sent and received, by means of elec'romagnetic transmission, with or without benefit of any closed transmission medium.

"(jj) 'Telecommunications service' means the direct offering of telecommunications for profit to the general public or to such classes of users as to be effectively available to the general public regardless of the facilities used to transmit such telecommunications services. Such term does not include information services or cable services as defined under section 602.

"(kk) 'Telecommunications carrier' means any provider of telecommunications services, except that such term does not include hotels, motels, hospitals, and other aggregators of telecommunications services.

"(ll) 'Telecommunications number portability' means the ability of users of telecommunications services to retain, at the same location, existing telecommunications numbers without impairment of quality, reliability, or convenience when switching from one telecommunications carrier to another.

"(mm) 'Information service' means the offering of services which employ computer processing applications that act on the format, content, code, protocol, or similar aspects of the subscriber's transmitted information, provide the sub-

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scriber additional, different, or restructured information, or involve subscriber interaction with stored information.

"(nn) 'Rural telephone company' means a telecommunications carrier operating entity to the extent that such entity provides telephone exchange service, including access service subject to part 69 of the Commission's rules (47 C.F.R. 69.1 et seq.), to—

"(1) any service area that does not include either—

"(A) any incorporated place of 10,000 inhabitants or more, or any part thereof, based on the most recent population statistics of the Bureau of the Census; or

"(B) any territory, incorporated or unincorporated, included in an urbanized area, as defined by the Bureau of the Census as of August 10, 1993; or

"(2) fewer than 100,000 access lines within a State.

"(oo) 'Service area' means a geographic area established by the Commission and the States for the purpose of determining universal service obligations and support mechanisms. In establishing a service area, the Commission and the States shall at a minimum consider—

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"(1) the principles and requirements of section 201A;

"(2) the nature of Federal and State universal service support mechanisms;

"(3) the historic area of service by a company and the economics of such company's operations; and

"(4) the interest of consumers and competition in such area.

In the case of an area served by a rural telephone company, 'service area' shall mean such company's 'study area' unless and until the Commission and the States, after taking into account recommendations of a Federal-State Joint Board instituted under section 410(c), establish a different definition of service area for such company.".

SEC. 302. REGULATORY REFORM.

(a) AMENDMENT OF COMMUNICATIONS ACT.—Title II of the Communications Act of 1934 (47 U.S.C. 201 et seq.) is amended by inserting after section 229 the following new section:

"SEC. 230. TELECOMMUNICATIONS COMPETITION.

"(a) REMOVAL OF BARRIERS TO ENTRY.—

"(1) Except as provided in subsection (k), one year after the date of enactment of the Communications Act of 1994, no State or local statute or regulation, or other State or local legal requirement, may

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prohibit or have the effect of prohibiting the ability of any entity to provide any interstate or intrastate telecommunications services.

"(2) No local government may, after 1 year after the date of enactment of the Communications Act of 1994, impose or collect any franchise, license, permit, or right-of-way fee or any assessment, rental, or any other charge or equivalent thereof as a condition for operating in the locality or for obtaining access to, occupying, or crossing public rights-of-way from any telecommunications carrier that distinguishes between or among telecommunications carriers, including the local exchange carrier. For purposes of this paragraph, a franchise, license, permit, or right-of-way fee or an assessment, rental, or any other charge or equivalent thereof does not include any imposition of general applicability which does not distinguish between or among telecommunications carriers, or any tax.

"(3) Nothing in this subsection shall affect the application of section 332(c)(3) to commercial mobile services providers.

"(4) If, after notice and an opportunity for public comment, the Commission determines that a State or local government has permitted or imposed any

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statute, regulation, or legal requirement that violates or is inconsistent with this subsection, the Commission shall immediately preempt the enforcement of such statute, regulation, or legal requirement to the extent necessary to correct such violation or inconsistency.

"(5) Nothing in this section restricts the ability of any State or local government entity to make its telecommunications facilities available to carriers so long as making such facilities available is not a telecommunications service.

"(b) REGULATORY AUTHORITY.—Nothing in this section shall affect the ability of State officials to impose, on a competitively neutral basis and consistent with section 201A, requirements necessary to preserve and advance universal service, protect the public safety and welfare, ensure the continued quality of telecommunications services, and safeguard the rights of consumers.

"(c) OBLIGATIONS OF TELECOMMUNICATIONS CARRIERS.—

"(1) To the extent that they provide telecommunications services, telecommunications carriers shall be deemed common carriers under this Act. The Commission shall prescribe regulations consistent with its determinations under subsection (g)(1) to re-

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quire all telecommunications carriers, upon bona fide request, to provide to any provider of telecommunications equipment or any entity seeking to provide telecommunications services or information services, on reasonable terms and conditions and at rates that are just and reasonable and not unjustly or unreasonably discriminatory—

"(A) interconnection to the carrier's telecommunications facilities and services at any technically and economically feasible point within the carrier's network;

"(B) nondiscriminatory access on an unbundled basis where technically and economically feasible to any of the carrier's telecommunications facilities and information, including databases and signaling, necessary to the transmission and routing of any telecommunications service or information service and the interoperability of both carriers' networks;

"(C) nondiscriminatory access, where technically and economically feasible, to the poles, ducts, conduits, and rights of way owned or controlled by the carrier;

"(D) nondiscriminatory access where technically and economically feasible to the network

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functions and services of the carrier's telecommunications network, which shall be offered on an unbundled basis;

"(E) telecommunications services and network functions on an unbundled basis without any unreasonable conditions or restrictions on the resale or sharing of those services or functions, including both origination and termination of telecommunications services (for purposes of this subparagraph, it shall not be deemed an unreasonable condition for a telecommunications carrier, consistent with the Commission's rules and State regulations, to limit the resale of services included in the definition of universal service to another telecommunications carrier who intends to resell that service to a category of customers different from the category of customers being offered that universal service by such carrier, nor shall it be deemed unreasonable to provide services included in the definition of universal service to another telecommunications carrier for resale at rates which reflect the actual cost of providing such services, exclusive of any universal service support re-

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ceived by such carrier in accordance with regulations promulgated under section 201A);

"(F) local dialing parity, as soon as technically and economically feasible, in a manner that permits consumers to be able to dial the same number of digits when using any telecommunications carrier providing telephone exchange service or exchange access service through resale in a market, and in a manner that permits all such carriers to have nondiscriminatory access to telephone numbers, operator services, directory assistance, directory listing, and no unreasonable dialing delays; and

"(G) telecommunications number portability, as administered by an impartial entity, as soon as technically and economically feasible.

"(2) A State may not, with respect to the provision of any intrastate telecommunications service, impose upon any telecommunications carrier any regulatory requirement concerning the provision of intrastate services inconsistent with the requirements imposed by the Commission on such carrier with respect to the provision of interstate services. Nothing in this subsection precludes a State from imposing requirements on a carrier for intrastate services that are nec-

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essary to further competition for local exchange or exchange access services, including intraLATA toll dialing parity, as long as the State's actions are not inconsistent with the Commission's regulations.

"(d) CONSUMER INFORMATION.—As competition for telecommunications services develops, the Commission and State regulatory authorities shall ensure that consumers are given the information necessary to make informed choices among their telecommunications alternatives. Any telecommunications carrier that provides billing and collection for any information service shall display any charges for information services in a part of the subscriber's bill that is separate from charges for telecommunications services.

"(e) PRESUBSCRIPTION AND BALLOTING.—The Commission shall prescribe regulations to ensure that consumers, as soon as practicable, have the opportunity to select their local exchange carrier by means of a balloting and presubscription process, and that all carriers providing any such service in each market bear a reasonable share of the costs of their respective balloting processes.

"(f) COMPENSATION AGREEMENTS.—The Commission and the States shall adopt regulations to ensure that telecommunications carriers compensate each other for termination of telecommunications services on each other's networks.

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"(g) REGULATORY FLEXIBILITY IN COMPETITIVE MARKETS.—

"(1) REGULATORY FLEXIBILITY.—The Commission may forbear from applying any regulation or any provision of this title (except for sections 201, 201A, 201B, 201C, 202, 208, and 230(c)(1)(G)) to a telecommunications carrier or service, or class of carriers or services, in any or some of its or their geographic markets only if the Commission determines that—

"(A) enforcement of such regulation or provision is not necessary to ensure that the charges, practices, classifications, or regulations by, for, or in connection with that carrier or service are just and reasonable and are not unjustly or unreasonably discriminatory;

"(B) enforcement of such regulation or provision is not necessary for the protection of consumers; and

"(C) forbearance from applying such regulation or provision is consistent with the public interest.

In making the determination under subparagraph (C), the Commission shall consider whether forbearance from enforcing the regulation or provision will

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promote competitive market conditions, including the extent to which such forbearance will enhance competition among providers of telecommunications services. If the Commission determines that such forbearance will promote competition among providers of telecommunications services, that determination may be the basis for a Commission finding that forbearance is in the public interest.

"(2) COMMERCIAL MOBILE SERVICES.—Nothing in this subsection shall affect any determination by the Commission under section 332 that a provision of title II is inapplicable to a provider of commercial mobile services.

"(3) PRICING FLEXIBILITY.—Consistent with sections 201(b) and 202(a), the Commission and the States shall permit telecommunications carriers to have pricing flexibility in service or geographic markets that are found to be competitive. In implementing this subsection, the Commission and the States shall ensure that rates for universal service and for services that are not competitive remain just, reasonable, affordable, and not unjustly or unreasonably discriminatory and that universal service is preserved and advanced.

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"(h) RULES FOR FOREIGN OWNERSHIP.—The Commission, upon a petition for waiver filed within 6 months after the date of enactment of the Communications Act of 1994, may waive the application of section 310(b) to any foreign ownership that lawfully existed before August, 1, 1994, of any provider of a telecommunications service that will be treated as a common carrier solely as a result of the enactment of the Communications Act of 1994, but only upon the following conditions:

"(1) The extent of foreign ownership interest shall not be increased above the extent which existed on August, 1, 1994.

"(2) Such waiver shall not permit the subsequent transfer of ownership to any other person in violation of section 310(b).

"(i) COLLOCATION.—In the exercise of its authority under this subsection, the Commission may require carriers to provide for actual collocation of equipment necessary for interconnection at the premises of any carrier, if the Commission finds actual collocation to be in the public interest.

"(j) MULTI-UNIT BUILDING.—No person owning, leasing, controlling, or managing a multi-unit building shall forbid or unreasonably restrict any occupant, tenant, or lessee of such building from receiving telecommunications services from any provider of its choice, who is duly certified

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by or otherwise authorized by the State regulatory agency of relevant jurisdiction. The owner of such multi-unit building may require from any such telecommunications carrier just and reasonable compensation for purposes of accessing the building to serve any occupant, tenant, or lessee or for the use of building facilities, provided that such compensation is just and reasonable and does not discriminate between or among providers of telecommunications services or charge any telecommunications service provider greater compensation than that imposed, if any, on the local exchange carrier. Nothing in this subsection shall affect the ability of a person owning, leasing, controlling, or managing a multi-unit building to impose, on a competitively neutral basis, requirements necessary to protect the safety and security of the property and the safety and convenience of other persons.

"(k) RURAL MARKETS.—

"(1) STATE APPROVAL REQUIRED.—The Commission shall, within one year after the date of enactment of the Communications Act of 1994, promulgate regulations to require that any entity (other than an entity to which section 332(c) applies) seeking to provide telephone exchange service in an area served by a rural telephone company after such date of enactment must first obtain approval from the appropriate

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State commission for the purpose of ensuring compliance with any statutes or regulations, if any, adopted by such State under paragraph (2). Such State commission shall approve an application for permission to provide such service only if the application is consistent with regulations issued by the Commission under this subsection. A State commission shall take action to approve or disapprove any application within 180 days of receiving such application.

"(2) STATE OVERSIGHT.—The Commission shall, within one year after the date of enactment of the Communications Act of 1994, promulgate regulations to permit State oversight of rural markets. The Commission's regulations shall not permit States to waive or modify any requirements of the other subsections of this section, but shall permit States to adopt statutes or regulations that are no more restrictive than—

"(A) to require an enforceable commitment by each applicant to offer universal service comparable to that offered by the rural telephone company currently providing service in that service area, and to make such service available within 24 months of the approval date to all consumers throughout that service area on a common carrier basis, either using the appli-

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cant's facilities or through resale under subsection (c) of services using another carrier's facilities (including the facilities of the rural telephone company), and subject to the same terms, conditions, and rate structure requirements as those applicable to the rural telephone company currently providing universal service;

"(B) to require that approval by the State commission under paragraph (1) be based on sufficient written public findings and conclusions to demonstrate that such approval is in the public interest and that there will not be a significant adverse impact on users of telecommunications services or on the provision of universal service;

"(C) to encourage the development and deployment of advanced telecommunications and information infrastructure and services in rural areas; or

"(D) to protect the public safety and welfare, ensure the continued quality of telecommunications and information services, or safeguard the rights of consumers.

"(3) PRE-EMPTION.—Upon a proper showing, the Commission may pre-empt any State statute or

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regulation that the Commission finds to be inconsistent with the Commission's regulations implementing this subsection, or an arbitrary or unreasonably discriminatory application of such statute or regulation. The Commission shall act upon any bona fide petition filed under this subsection within 180 days of receiving such petition. Pending such action, the Commission may, in the public interest, suspend or modify application of any statute or regulation to which the petition applies.

"(4) VIDEO PROGRAMMING.—Notwithstanding section 613(b)(1), and unless authorized to provide video programming directly to subscribers under section 613(b)(3) or (b)(4), a rural telephone company may not, after the date of enactment of the Communications Act of 1994, provide video programming directly to subscribers in such rural telephone company's service area, or obtain a controlling interest under section 613(b)(5) in a cable operator providing cable service in such rural telephone company's service area, unless—

"(A) the State has not imposed, or ceases to impose, any conditions authorized under this subsection on any entity's ability to provide tele-

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phone exchange service in such rural telephone company's service area;

"(B) such rural telephone company successfully petitions the State to waive any conditions on any entity's ability to provide telephone exchange service in such rural telephone company's service area; or

"(C) an entity unaffiliated with such rural telephone company obtains approval from the State to provide telephone exchange service in such rural telephone company's service area.

"(l) WAIVERS AND MODIFICATIONS.—

"(1) RURAL TELEPHONE COMPANIES.—The Commission shall, upon petition or on the Commission's own initiative, modify the requirements of subsections (c) and (e) for a rural telephone company or companies to the extent that the Commission determines that such requirements would result in unfair competition, impose a significant adverse economic impact on users of telecommunications services, be technically infeasible, or otherwise not be in the public interest. The Commission shall act upon any petition filed under this paragraph within 180 days of receiving such petition. Pending such action, the Commission may suspend enforcement of the regulation or

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regulations to which the petition applies with respect to the petitioning carrier or carriers.

"(2) CERTAIN OTHER CARRIERS.—Upon a proper showing by a telecommunications carrier or carriers, the Commission may waive or modify the requirements of subsections (c) and (e) for that carrier or carriers if each such carrier has, in the aggregate nationwide, fewer than 2 percent of the Nation's subscriber lines installed, to the extent that the Commission determines that such requirements would result in unfair competition, impose a significant adverse economic impact on users of telecommunications services, be technically infeasible, or otherwise not be in the public interest. The Commission shall act upon any petition filed under this paragraph within 180 days of receiving such petition. Pending such action, the Commission may suspend enforcement of the regulation or regulations to which the petition applies with respect to the petitioning carrier or carriers.

"(m) SPACE SEGMENT CAPACITY.—Nothing in this Act prohibits the Commission from continuing to determine whether the provision of space segment capacity by satellite systems to providers of commercial mobile services shall be treated as common carriage.".

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(b) PARTICIPATION BY REGISTERED UTILITY HOLDING COMPANIES IN PROVIDING TELECOMMUNICATIONS SERVICES.—

(1) IN GENERAL.—Title I of the Public Utility Holding Company Act of 1935 (15 U.S.C. 79a et seq.) is amended—

(A) by redesignating sections 34 and 35 as 35 and 36, respectively; and

(B) by inserting after section 33 the following new section:

"SEC. 34. PARTICIPATION IN PROVISION OF TELECOMMUNICATIONS SERVICES.

"(a) EXEMPTION OF COMMUNICATIONS ENTITIES FROM APPLICABILITY OF ACT.—A communications entity shall be exempt from all provisions of this Act, whether or not it is a subsidiary company, an affiliate, or an associate company of a holding company.

"(b) OWNERSHIP OF COMMUNICATIONS ENTITIES BY REGISTERED HOLDING COMPANIES.—Notwithstanding any provision of this Act, a registered holding company shall be permitted to acquire and hold the securities or an interest in the business of one or more communications entities without the need to apply for or receive approval from the Commission.

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"(c) CONTINUING JURISDICTION OF THE COMMISSION.—

"(1) IN GENERAL.—The issuance of securities by a registered holding company for purposes of financing the acquisition of a communications entity, the guarantee of securities of a communications entity by a registered holding company and the creation or maintenance of other relationships in addition to that described in subsection (b) between a communications entity and a registered holding company, its affiliates and associate companies, shall remain subject to the jurisdiction of the Commission under the terms of this Act and applicable Federal law.

"(2) BOOKS AND MARKETING.—A communications entity which is an associate company of a registered holding company shall—

"(A) maintain books, records, and accounts separate from the registered holding company which identify all transactions with the registered holding company and its other associate companies and provide access to such books, records, and accounts to State commissions and the Federal Energy Regulatory Commission under the same terms and procedures as pro-

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vided in section 201(g) of the Federal Power Act; and

"(B) carry out directly (or through any company that is not an associate company of the communications entity) its own promotion, except that institutional advertising carried out by the registered holding company or its associate companies shall be permitted so long as each party bears its fair share of the costs of such advertising.

"(3) Notwithstanding paragraph (2)(B), a registered holding company or an associate company thereof may provide inbound telemarketing or referral service related to the provision of telecommunications services, information services or other services set forth in or subject to the Communications Act of 1934, or products or services related thereto, by a communications entity which is an associate company of such registered holding company.

"(4) Notwithstanding paragraph (2)(B), a registered holding company or an associate company thereof (other than a communications entity) may petition the Federal Communications Commission for permission to market directly telecommunications services, information services, or other services set

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forth in or subject to the Communications Act of 1934, or products or services related thereto, provided by an associate company which is a communications entity upon a showing that a cable operator or other entity directly or indirectly provides telecommunications services and markets such services jointly with video programming services in the geographic region covered by the petition. The registered holding company or associate company thereof shall specify the geographic region covered by the petition. Any such petition shall be granted or denied within 180 days.

"(d) INDEPENDENT AUDIT AUTHORITY FOR STATE COMMISSIONS.—Any State commission with jurisdiction over a public utility company that is an associate company of a registered holding company and that transacts business with a communications entity which is an associate company of such public utility company, may request that such communications entity have performed, no more frequently than on an annual basis, an independent audit of transactions between such jurisdictional public utility and such communications entity. Upon such request from a State commission, the communications entity shall select an independent auditor and bear the costs of performing such an audit. The audit report shall be provided to the State commission within 6 months of the audit request.

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"(e) ASSUMPTION OF LIABILITIES.—Any public utility company that is an associate company of a registered holding company and that is subject to the jurisdiction of a State commission with respect to its retail electric or gas rates shall not include in rates any cost associated with the issuance of any security by the public utility for the purpose of financing the acquisition, or for the purposes of financing the ownership or operation, of a communications entity without the express approval of the State commission. Any public utility company that is an associate company of a registered holding company and that is subject to the jurisdiction of a State commission with respect to its retail electric or gas rates shall not include in rates any cost associated with the assumption of any obligation or liability as guarantor, endorser, surety, or otherwise by the public utility in respect of any security of a communications entity without the express approval of the State commission.

"(f) PLEDGING OR ENCUMBERING UTILITY ASSETS.—Any public utility company that is an associate company of a registered holding company and that is subject to the jurisdiction of a State commission with respect to its retail electric or gas rates may not include in rates any cost associated with the pledge or encumbering of any utility assets of the public utility or utility assets of any subsidiary there-

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of for the benefit of an associate communications entity without the express approval of the State commission.

"(g) PROHIBITION ON CROSS SUBSIDIZATION.—The Federal Communications Commission shall prescribe regulations that prohibit a communications entity that is an associate company of a registered holding company from providing telecommunications services, information services, or other services set forth in or subject to the Communications Act of 1934, or products or services related thereto to any associate company thereof unless the terms under which the communications entity offers such services or products are comparable to those offered to the public, having due regard to any differences in type, quality, or quantity of service, or, if no such comparability exists, then on the basis of the fair allocation of the cost of providing such services or products.

"(h) APPLICABILITY OF TELECOMMUNICATIONS REGULATION.—Nothing in this section shall affect the authority of the Federal Communications Commission under the Communications Act of 1934, or the authority of State commissions under State laws concerning the provision of telecommunications services, to regulate the activities of communication entities.

"(i) DEFINITIONS.—For purposes of this section:

"(1) COMMUNICATIONS ENTITY.—

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"(A) IN GENERAL.—The term 'communications entity' means any person determined by the Commission to be engaged, whether through ownership of facilities, in the provision of services, or otherwise, directly (or indirectly through ownership of securities or any other interest) and exclusively in the business, wheresoever located, of providing telecommunications services, information services, or other products or services set forth in or subject to the Communications Act of 1934 (47 U.S.C. 151 et seq.), or products or services related or incidental thereto, including energy and demand-side management services (but not the manufacturing of devices or products except to the extent such devices or products relate to the provision of electric or gas service, and energy and demand-side management services).

"(B) COMMISSION DETERMINATION.—No person shall be deemed to be a communications entity under this section unless such person has applied to the Commission for a determination under this paragraph. A person applying in good faith for such a determination shall be deemed a communications entity under this section, with all of the exemptions provided by this

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section, until the Commission makes such a determination. The Commission shall make such determination within 60 days of its receipt of such application. Not later than 12 months after the date of enactment of the Communications Act of 1994, the Commission shall promulgate regulations to establish expeditious procedures for the implementation of this paragraph. Applications for determination filed after the effective date of such rules shall be subject thereto.

"(2) TELECOMMUNICATIONS SERVICE AND INFORMATION SERVICE.—The terms 'telecommunications service' and 'information service' have the meanings given such terms under the Communications Act of 1934.".

(2) AUTHORITY TO DISALLOW RECOVERY OF CERTAIN COSTS UNDER FEDERAL POWER ACT.—Section 318 of the Federal Power Act (16 U.S.C. 825q) is amended—

(A) by inserting "(a)" after "SEC. 318."; and

(B) by adding at the end thereof the following:

"(b)(1) The Commission shall have the authority to disallow recovery in jurisdictional rates of any costs in-

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curred by a public utility pursuant to a transaction that has been authorized under section 13(b) of the Public Utility Holding Company Act of 1935, including costs allocated to such public utility in accordance with paragraph (d), if the Commission determines that the recovery of such costs is unjust, unreasonable, or unduly preferential or discriminatory under sections 205 or 206 of this Act.

"(2) Nothing in the Public Utility Holding Company Act of 1935, or any actions taken thereunder, shall prevent a State commission from exercising its jurisdiction to the extent otherwise authorized under applicable law with respect to the recovery by a public utility in its retail rates of costs incurred by such public utility pursuant to a transaction authorized by the Securities and Exchange Commission under section 13(b) between an associate company and such public utility, including costs allocated to such public utility in accordance with paragraph (d).

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

"(d)(1) In any proceeding of the Commission to consider the recovery of costs, the Commission shall give substantial deference to an allocation of charges for services,

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construction work, or goods among associate companies under section 13 of the Public Utility Holding Company Act of 1935, whether made by rule, regulation, or order of the Securities and Exchange Commission prior to or following the enactment of the Communications Act of 1994.

"(2) If the Commission pursuant to paragraph (1) establishes an allocation of charges that differs from an allocation established by the Securities and Exchange Commission with respect to the same charges, the allocation established by the Federal Energy Regulatory Commission shall be effective 12 months from the date of the order of the Federal Energy Regulatory Commission establishing such allocation, and binding on the Securities and Exchange Commission as of that date.

"(e) An allocation of charges for services, construction work, or goods among associate companies under section 13 of the Public Utility Holding Company Act of 1935, whether made by rule, regulation, or order of the Securities and Exchange Commission prior to or following enactment of the Communications Act of 1994, shall prevent a State Commission from using a different allocation with respect to the assignment of costs to any associate company.

"(f) Subsection (b) shall not apply—

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"(1) to any cost incurred and recovered prior to July 15, 1994, whether or not subject to refund or adjustment; or

"(2) to any uncontested settlement approved by the Commission or a State Commission prior to the date of enactment of the Communications Act of 1994.".

(3) IMPACT ON OTHER MATTER.—The enactment of this subsection shall in no way affect Federal Energy Regulatory Commission Docket No. FA89–28.

(4) SAVINGS PROVISION.—Section 318(b) of the Federal Power Act (16 U.S.C. 825q(b)) shall not apply to any cost incurred and recovered prior to the date of enactment of this Act pursuant to a contract or other arrangement for the sale of fuel from Windsor Coal Company or Central Ohio Coal Company which has been the subject of a determination by the Securities and Exchange Commission prior to the date of enactment of this Act, or any cost prudently incurred after that date pursuant to such a contract or other such arrangement before January 1, 2001.

(c) CERTAIN BROADCASTS.—Section 1307(a)(2) of title 18, United States Code, is amended by striking out "that is authorized" and all that follows and inserting "which is broadcast by a radio or television station licensed

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to a location in a State in which such activities are authorized or not otherwise prohibited.".

SEC. 303. IMPLEMENTING REGULATIONS.

(a) The Commission shall, within 1 year after the date of enactment of this Act, complete a proceeding to issue regulations to implement the amendments made by this title.

(b) Section 303 of the Communications Act of 1934 (47 U.S.C. 303) is amended by adding at the end thereof the following new subsection:

"(v) Have exclusive jurisdiction to regulate the provision of direct broadcast satellite services.".

SEC. 304. STATE AND LOCAL TAXATION OF DIRECT BROADCAST SATELLITE SERVICES.

(a) AUTHORITY TO IMPOSE TAXES AND FEES ON DIRECT BROADCAST SATELLITE SERVICES.—

(1) IN GENERAL.—A State may require a direct broadcast satellite service provider who is subject to the personal jurisdiction of the State to collect and remit a State sales tax, a local sales tax, or both, with respect to direct broadcast satellite services, if—

(A) the destination of such services is in the State, and

(B) in a State in which both State and local sales taxes are imposed, the State, in accordance with the requirements of this section—

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(i) requires the collection and remittance of any applicable local sales taxes with respect to direct broadcast satellite services, and

(ii) collects and administers the local sales taxes with respect to direct broadcast satellite services, except in those local taxing jurisdictions described in paragraph (2)(A).

(2) LOCAL TAXING JURISDICTION.—

(A) A State that exercises authority under this section may require a direct broadcast satellite service provider to collect and remit local sales taxes to the local taxing jurisdiction if—

(i) as of the effective date of this section, the local taxing jurisdiction imposes and administers a local sales tax separate from the sales tax imposed by the State, or

(ii) after the effective date of this section, a local jurisdiction that does not impose any local sales taxes as of the effective date of this section is authorized to impose a local sales tax.

(B) If, after the effective date of this section, a local jurisdiction is authorized to administer a local sales tax that the State is administering as

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of the effective date of this section, the State shall continue to collect and remit the local sales tax authorized under this section in accordance with paragraph (1)(B)(ii).

(3) DISTRIBUTION OF LOCAL SALES TAXES.—A State shall distribute the local sales tax collected under the authority granted by this section to local jurisdictions in accordance with the requirements provided by State law governing the distribution of local sales taxes.

(b) STATE AND LOCAL LAW; NONDISCRIMINATION.—

(1) STATE AND LOCAL LAW.—A State may require a direct broadcast satellite service provider to collect and remit State and local sales taxes with respect to direct broadcast satellite services only where the applicable law of the State or local taxing jurisdiction imposes a sales tax.

(2) NONDISCRIMINATION.—Except as otherwise provided in this section, a State that exercises authority under this section shall allow to direct broadcast satellite service providers exemptions or other exceptions to State and local sales taxes that the State or local taxing jurisdiction allows under similar circumstances to persons located within the State or local taxing jurisdiction.

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(c) EXEMPTION.—

(1) EXEMPTION OF OTHER LOCAL TAX OR FEE FOR SERVICES.—A direct broadcast satellite service provider and its representatives for the sale or distribution of direct broadcast satellite services shall be exempt from collecting and remitting any other local tax or fee (as defined by subsection (d)(9)) imposed on direct broadcast satellite services in any local taxing jurisdiction in which, during the 1-year period ending on September 30 of the calendar year preceding the calendar year in which the provision of direct broadcast satellite services occurs, the direct broadcast satellite service provider does not own or hold any interest in property or maintain an office, and limits its business activities to no more than—

(A) providing direct broadcast satellite services to subscribers in the local taxing jurisdiction, and the billing for and collection of the fees for such services occur outside the local taxing jurisdiction; and

(B) soliciting and placing orders for the sale of direct broadcast satellite services through contractual arrangements with, and on the premises of, retail outlets and establishments, which orders are filled and billed for from a

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point outside the local taxing jurisdiction, regardless of where the subscriber makes an initial payment for an initial subscription.

(2) NO OTHER EFFECT.—Except as provided herein, this section does not affect the authority of any State or local taxing jurisdiction of any State otherwise to adopt, apply, and administer any tax or method of taxation.

(d) DEFINITIONS.—For purposes of this section:

(1) COMPENSATING USE TAX.—The term "compensating use tax" means a tax imposed on or incident to the use or consumption of direct broadcast satellite services within a State or a local jurisdiction or other area of a State.

(2) DESTINATION.—The term "destination" means the State or local jurisdiction to which the direct broadcast satellite service is delivered for viewing or other activity to which the service is directed.

(3) DIRECT BROADCAST SATELLITE SERVICE PROVIDER.—The term "direct broadcast satellite service provider" means a licensee for a Ku-band satellite system under part 100 of title 47, Code of Federal Regulations, who provides direct broadcast satellite services.

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(4) DIRECT BROADCAST SATELLITE SERVICES.—The term "direct broadcast satellite services" means the distribution or broadcasting of programming or services by satellite directly to the subscriber's premises without the use of ground receiving or distribution equipment, except at the subscriber's premises, or used in the initial uplink process to the direct broadcast satellite.

(5) LOCAL TAXING JURISDICTION.—The term "local taxing jurisdiction" means any municipality, city, county, township, parish, transportation district, or assessment jurisdiction, or any other political subdivision with the authority to impose a tax or fee.

(6) LOCAL SALES TAX.—The term "local sales tax" means a sales or compensating use tax imposed by a local taxing jurisdiction, whether administered by the State or the local taxing jurisdiction.

(7) SALES TAX.—The term "sales tax" means a tax, including a compensating use tax, that is—

(A) imposed on or incident to the sale, purchase, consumption, distribution, or other use of direct satellite broadcast services as may be defined or specified under the law imposing such tax, and

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(B) measured by the amount of the sales price, cost, charge, or gross receipts, or other value of or for the services.

(8) STATE.—Notwithstanding any provision to the contrary in this section, the term "State" means any of the several States of the United States, the District of Columbia, the Commonwealth of Puerto Rico, and any territory or possession of the United States.

(9) OTHER LOCAL TAX OR FEE.—The term "other local tax or fee" means any local tax or fee that is not a sales tax, as defined in paragraph (6) or (7), including such locally imposed taxes and fees as an intangible tax, income tax, business license tax, utility tax, privilege tax, gross receipts tax, excise tax, franchise fees, telecommunications tax, or other tax, license, or fee.

(e) EFFECTIVE DATE.—This section shall take effect on June 1, 1994.

SEC. 305. POLE ATTACHMENTS.

Section 224 of the Communications Act of 1934 (47 U.S.C. 224) is amended as follows—

(1) by inserting "or provider of telecommunications service" in subsection (a)(4) after "system";

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(2) by striking "cable television services" in subsection (c)(2)(B) and inserting "the services offered via such attachments";

(3) by redesignating paragraph (2) of subsection (d) as paragraph (4); and

(4) by striking out so much of subsection (d) as precedes paragraph (4) (as redesignated) and inserting the following:

"(d)(1) For purposes of subsection (b) of this section, the Commission shall, no later than 1 year after the date of enactment of the Communications Act of 1994, prescribe regulations for ensuring that utilities charge just and reasonable and nondiscriminatory rates for pole attachments provided to all providers of telecommunications services, including such attachments used by cable television systems to provide telecommunications services (as defined in section 3(jj) of this Act). The regulations shall—

"(A) recognize that the entire pole, duct, conduit, or right-of-way, other than the usable space, is of equal benefit to all attachments to the pole, duct, conduit, or right-of-way and therefore apportion the cost of space, other than the usable space, equally among all such attachments,

"(B) recognize that the usable space is of proportional benefit to all entities attached to the pole, duct,

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conduit, or right-of-way and therefore apportion the cost of the usable space according to the percentage of usable space required for each entity, and

"(C) allow for reasonable terms and conditions relating to health, safety, and the provision of reliable utility service.

"(2) The final regulations prescribed by the Commission under paragraph (1) shall not apply to a pole attachment used by a cable television system solely to provide cable services as defined in section 602(6) of this Act. The rates for pole attachments used for such purposes shall assure a utility the recovery of not less than the additional costs of providing pole attachments, nor more than an amount determined by multiplying—

"(A) the percentage of total usable space, or the percentage of the total duct, conduit, or right-of-way capacity occupied by the pole attachment, by

"(B) the sum of the operating expenses and actual capital costs of the utility attributable to the entire pole, duct, conduit, or right-of-way.

"(3) For all providers of telecommunications services except members of the exchange carrier association established under 47 C.F.R. 69.601 as of December 31, 1993, upon enactment of the Communications Act of 1994 and until the Commission promulgates its final regulations

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under paragraph (1), the rate formula contained in any joint use pole attachment agreement between the electric utility and the largest local exchange carrier having such a joint use agreement in the utility's service area in effect on January 1, 1994, shall also apply to the pole attachments in the utility's service area. If no such joint use agreement containing a rate formula exists, then the pole attachment rate shall be the rate applicable under paragraph (2) to the cable television systems which solely provide cable service as defined in section 602(6) of this Act. Disputes concerning the applicability of a joint use agreement shall be resolved by the Commission or the States, as appropriate.".

SEC. 306. CARRIER OF LAST RESORT.

Section 214(d) of the Communications Act of 1934 (47 U.S.C. 214(d)) is amended by inserting "(1)" before "The Commission" and by adding at the end the following new paragraphs:

> *"(2) If one or more common carriers provide telecommunications service to a geographic area, and no common carrier will provide universal service to an unserved community or any portion thereof that requests such service within such area, or to a public institutional telecommunications user which makes a bona fide request under section 201C, then the Com-*

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mission shall determine which common carrier serving that area is best able to provide universal service to the requesting unserved community or portion thereof, or the requesting public institutional telecommunications user, and shall designate such common carrier as a carrier of last resort for that unserved community, portion thereof, or user.

"(3) In order to be designated as a carrier of last resort eligible for universal service support payments under section 201A, a common carrier must agree to provide, either through its own facilities or through resale of services using another carrier's facilities, the services encompassed within the definition of universal service to any community or portion thereof which requests such service, and to any public institutional telecommunications user which makes a bona fide request, within the applicable service area. Such services must be offered at nondiscriminatory rates established by the Commission throughout such service area, and such carrier must advertise the availability of such services and the applicable nondiscriminatory rates throughout such service area using media of general distribution. More than one common carrier may be designated as a carrier of last resort for a specific service area, provided that any additional

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common carrier seeking carrier of last resort designation agrees to provide, either through its own facilities or through resale of services using another carrier's facilities, the services encompassed within the definition of universal service to any community or portion thereof which requests such service, and to any public institutional telecommunications user which makes a bona fide request, within the same service area as the first common carrier designated as a carrier of last resort for such service area under this paragraph. Such services must be offered at nondiscriminatory rates established by the Commission throughout such service area, and any such additional carrier of last resort must advertise the availability of such services and the applicable nondiscriminatory rates throughout such service area using media of general distribution.

"(4) A common carrier designated by the Commission as the carrier of last resort under paragraphs (2) or (3) that refuses to provide universal service within a reasonable period to such requesting unserved community, portion thereof, or user shall forfeit to the United States a fine of up to $10,000 for each day that such carrier refuses to provide such service. In establishing a reasonable period, the Com-

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