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103D CONGRESS
2d Session
HOUSE OF REPRESENTATIVES
REPT. 103–559
Part 1

ANTITRUST AND COMMUNICATIONS REFORM ACT OF 1994

JUNE 24, 1994.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

Mr. DINGELL, from the Committee on Energy and Commerce, submitted the following

REPORT

together with

ADDITIONAL VIEWS

[To accompany H.R. 3626, which on November 22, 1993, was referred jointly to the Committee on the Judiciary and the Committee on Energy and Commerce]

[Including cost estimate of the Congressional Budget Office]

The Committee on Energy and Commerce, to whom was referred the bill (H.R. 3626) to supersede the Modification of Final Judgment entered August 24, 1982, in the antitrust action styled United States v. Western Electric, Civil Action No. 82–0192, United States District Court for the District of Columbia; to amend the Communications Act of 1934 to regulate the manufacturing of Bell operating companies, and for other purposes, having considered the same, report favorably thereon with an amendment and recommend that the bill as amended do pass.

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GOVERNMENT DOCUMENTS COLL

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The amendment is as follows:

Strike out all after the enacting clause and insert in lieu thereof the following:

SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

(a) SHORT TITLE.—This Act may be cited as the "Antitrust and Communications Reform Act of 1994".

(b) TABLE OF CONTENTS.—

Sec. 1. Short title; table of contents.

TITLE I—SUPERSESSION OF THE MODIFICATION OF FINAL JUDGMENT

Sec. 101. Authorization for Bell operating company to enter competitive lines of business.
Sec. 102. Authorization as prerequisite.
Sec. 103. Limitations on manufacturing and providing equipment.
Sec. 104. Anticompetitive tying arrangements.
Sec. 105. Enforcement.
Sec. 106. Definitions.
Sec. 107. Relationship to other laws.
Sec. 108. Amendment to definition of antitrust laws appearing in the Clayton Act.

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

Sec. 201. Regulation of manufacturing by Bell operating companies.
Sec. 202. Regulation of entry into alarm monitoring services.
Sec. 203. Regulation of electronic publishing.
Sec. 204. Privacy of customer information.

TITLE III—FEDERAL COMMUNICATIONS COMMISSION RESOURCES

Sec. 301. Authorization of appropriations.

TITLE I—SUPERSESSION OF THE MODIFICATION OF FINAL JUDGMENT

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

(a) APPLICATION.—

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

(A) to provide alarm monitoring services, or

(B) to provide interexchange telecommunications services.

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

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

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

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

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

(iii) providing, through transmission facilities owned by such company, interstate interexchange telecommunications services that originate and terminate in exchange areas in which the Bell operating company, or an affiliate (as of November 21, 1993) of such company that

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is a Bell operating company, provided telephone exchange service on November 21, 1993,

(B) except to the extent that an earlier date is available under subparagraph (A), the date that occurs 18 months after the date of the enactment of this Act, with respect to providing interexchange telecommunications services through the acquisition and resale of telecommunications services,

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

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

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

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

(b) SEPARATE DETERMINATIONS BY THE ATTORNEY GENERAL AND THE FEDERAL COMMUNICATIONS COMMISSION.—

(1) COMMENT PERIOD.—Not later than 45 days after an application is published under subsection (a)(4), interested persons may submit written comments to the Attorney General, to the Federal Communications Commission, or to both regarding the application. Submitted comments shall be available to the public.

(2) INTERAGENCY CONSULTATION.—Before making their respective determinations under paragraph (3), the Attorney General and the Federal Communications Commission shall consult with each other regarding the application involved.

(3) DETERMINATIONS.—(A) After the time for comment under paragraph (1) has expired, but not later than 180 days after receiving an application made under subsection (a)(1), the Attorney General and the Federal Communications Commission each shall issue separately a written determination, on the record after an opportunity for a hearing, with respect to granting the authorization for which the Bell operating company has applied.

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

(C) Any person who might be injured in its business or property as a result of the approval of the authorization requested shall be permitted to participate as a party in the proceeding on which the determination is based.

(D)(i) The Attorney General shall approve the granting of the authorization requested in the application only to the extent that the Attorney General finds that there is no substantial possibility that such company or its affiliates could use monopoly power to impede competition in the market such company seeks to enter. The Attorney General shall deny the remainder of the requested authorization.

(ii) The Federal Communications Commission shall approve the granting of the requested authorization only to the extent that the Commission finds that granting the requested authorization is consistent with the public interest, convenience, and necessity. The Commission shall deny the remainder of the requested authorization.

(iii) Notwithstanding clauses (i) and (ii), within 180 days after the date of the enactment of this Act, the Attorney General and the Federal Communications Commission shall each prescribe regulations to establish procedures and criteria for the expedited determination and approval of applications to provide interexchange telecommunications services that are incidental to the provision of another service which the Bell operating company may lawfully provide (and that are not described in section 102(c)). In prescribing such regulations, the Attorney General and the Commission shall consult for the purpose of avoiding inconsistencies in such regulations.

(E) In making a determination under subparagraph (D)(ii) regarding the public interest, convenience, and necessity, the Commission shall take into account—

(i) the probability that granting the requested authorization will secure reduced rates for consumers of the services that are the subject of the application, especially residential subscribers,

(ii) whether granting the requested authorization will result in increases in rates for consumers of exchange service,

(iii) the extent to which granting the requested authorization will expedite the delivery of new services and products to consumers,

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(iv) the extent to which the Commission's regulations or other laws and regulations will preclude the applicant from engaging in predatory pricing or other coercive economic practices with respect to the services that are the subject of the application,

(v) the extent to which granting the requested authorization would permit collusive acts or practices between or among Bell operating companies that are not affiliates of each other,

(vi) whether granting the requested authorization will result, directly or indirectly, in increasing concentration among providers of the service that is the subject of the application to such an extent that consumers will not be protected from rates that are unjust or unreasonable or that are unjustly or unreasonably discriminatory, and

(vii) in the case of an application to provide alarm monitoring services, whether the Commission has the capability to enforce effectively the regulations established pursuant to section 230 of the Communications Act of 1934 as added by this Act.

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

(4) PUBLICATION.—Not later than 10 days after issuing a determination under paragraph (3), the Attorney General or the Federal Communications Commission, as the case may be, shall publish in the Federal Register a brief description of the determination.

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

(6) AUTHORIZATION GRANTED.—A requested authorization is granted to the extent that—

(A)(i) both the Attorney General and the Federal Communications Commission approve under paragraph (3) the granting of the authorization, and

(ii) neither of their approvals is vacated or reversed as a result of judicial review authorized by subsection (c), or

(B) as a result of such judicial review of either or both determinations, both the Attorney General and the Federal Communications Commission approve the granting of the requested authorization.

(c) JUDICIAL REVIEW.—

(1) CIVIL ACTION.—Not later than 45 days after a determination by the Attorney General or the Federal Communications Commission is published under subsection (b)(4), the Bell operating company that applied to the Attorney General and the Federal Communications Commission under subsection (a), or any person who might be injured in its business or property as a result of the determination regarding such company's engaging in the activity described in such company's application, may commence an action in the United States Court of Appeals for the District of Columbia Circuit against the Attorney General or the Federal Communications Commission, as the case may be, for judicial review of the determination regarding the application.

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

(3) CONSOLIDATION OF ACTIONS.—The court shall consolidate for review all civil actions commenced under this subsection with respect to the application.

(4) JUDGMENT.—(A) The court shall enter a judgment after reviewing the determination in accordance with section 706 of title 5 of the United States Code.

(B) A judgment—

(i) affirming any part of the determination that approves granting all or part of the requested authorization, or

(ii) reversing any part of the determination that denies all or part of the requested authorization,

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

SEC. 102. AUTHORIZATION AS PREREQUISITE.

(a) PREREQUISITE.—Until a Bell operating company is so authorized in accordance with section 101, it shall be unlawful for such company, directly or through an affiliate, to engage in an activity described in section 101(a)(1).

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(b) GENERAL EXCEPTIONS.—Except in regard to the provision of alarm monitoring services, subsection (a) shall not prohibit a Bell operating company or an affiliate of a Bell operating company from engaging, at any time after the date of the enactment of this Act—

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

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

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

(2) in providing interexchange telecommunications services on an intrastate basis if (A) after the date of enactment of this Act, such telecommunications have been approved by, or are authorized under the laws of, the State involved, and public notice of the availability of such authority has occurred at least 60 days before the offering of such interexchange telecommunications services, and (B) the Bell operating company is required by regulations prescribed by the Commission and the State, for the services subject to their respective jurisdictions, to pay a nondiscriminatory access charge to the local exchange carrier (including itself) that provides the Bell operating company with telephone exchange access,

(3) in providing interexchange telecommunications services through the purchase and resale of telecommunications services obtained from a person who is not an affiliate of such company if—

(A) such interexchange telecommunications services originate in any State that, after the date of the enactment of this Act, approves or authorizes persons that are not affiliates of such company to provide intraexchange toll telecommunications services in such a manner that customers in such State have the ability to route automatically, without the use of any access code, their intraexchange toll telecommunications to the telecommunications services provider of the customer's designation from among 2 or more telecommunications services providers (including such company), and

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

(i) such company gives public notice of the availability of such approval or authorization, and

(ii) the Attorney General fails to commence a civil action to enjoin such company from so providing such interexchange telecommunications services, or

(4) in any activity in which the Bell operating company or affiliate was authorized to engage on the date of enactment of this Act, except (A) as specifically provided in this Act with respect to alarm monitoring and electronic publishing, or (B) as provided in any order of the United States District Court for the District of Columbia that grants only temporary authority.

(c) EXCEPTIONS FOR INCIDENTAL SERVICES.—Subsection (a) shall not prohibit a Bell operating company or an affiliate of a Bell operating company, at any time after the date of the enactment of this Act—

(1) from providing cable service (as such term is defined in section 602 of the Communications Act of 1934 (47 U.S.C. 522)) to subscribers,

(2) from offering a telecommunications service between exchange areas within a cable system franchise area in a State within which the Bell operating company is not, on the date of enactment of this Act, a provider of telephone exchange service,

(3) from offering commercial mobile services within the meaning of section 332(d)(1) of the Communications Act of 1934 (47 U.S.C. 332(d)(1)),

(4) from offering a service that permits a customer located in one exchange area to retrieve stored information from, or file information for storage in, another exchange area, or

(5) from providing signalling integral to the internal operation of telephone exchange service networks.

SEC. 103. LIMITATIONS ON MANUFACTURING AND PROVIDING EQUIPMENT.

(a) AUTHORIZATION FOR ENTRY.—

(1) REQUIRED CONDITIONS.—It shall be unlawful for a Bell operating company, directly or through an affiliated enterprise, to manufacture or provide telecommunications equipment, or to manufacture customer premises equipment, unless—

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(A) such company submits to the Attorney General, at any time after the date of the enactment of this Act, the notification described in paragraph (2) and such additional material and information described in such paragraph as the Attorney General may request, and complies with the waiting period specified in paragraph (3), and

(B)(i) before the expiration of the waiting period specified in paragraph (3), the Attorney General notifies such company that for purposes of this subsection the Attorney General does not intend to commence such civil action, or

(ii) the Attorney General has not, by the expiration of such waiting period, commenced a civil action to enjoin such company from engaging in the activity described in such notification.

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

(3) WAITING PERIOD.—The waiting period referred to in paragraph (1) is the 1-year period beginning on the date the notification required by such paragraph is received by the Attorney General.

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

(b) EXCEPTION FOR PREVIOUSLY AUTHORIZED ACTIVITIES.—Subsection (a) shall not prohibit a Bell operating company from engaging, at any time after the date of the enactment of this Act—

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

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

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

(2) in any activity in which the Bell operating company or affiliate was authorized to engage on the date of enactment of this Act, except (A) as specifically provided in this Act with respect to alarm monitoring and electronic publishing, or (B) as provided in any order of the United States District Court for the District of Columbia that grants only temporary authority.

SEC. 104. ANTICOMPETITIVE TYING ARRANGEMENTS.

A Bell operating company with monopoly power in any exchange service market shall not tie (directly or indirectly) in any relevant market the sale of any product or service to the provision of any telecommunications service, if the effect of such tying may be to substantially lessen competition, or to tend to create a monopoly, in any line of commerce.

SEC. 105. ENFORCEMENT.

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

(b) CRIMINAL LIABILITY.—Whoever knowingly engages or knowingly attempts to engage in an activity that is prohibited by section 102, 103, or 104 shall be guilty of a felony, and on conviction thereof, shall be punished to the same extent as a person is punished upon conviction of a violation of section 1 of the Sherman Act (15 U.S.C. 1).

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

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

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

The court may award under this section, pursuant to a motion by such person promptly made, simple interest on actual damages for the period beginning on the date of service of such person's pleading setting forth a claim under this Act and

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ending on the date of judgment, or for any shorter period therein, if the court finds that the award of such interest for such period is just in the circumstances.

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

(e) JURISDICTION.—(1) Subject to paragraph (2), the courts of the United States shall have exclusive jurisdiction to make determinations with respect to a duty, claim, or right arising under this Act, other than determinations authorized to be made by the Attorney General and the Federal Communications Commission under section 101(b)(3).

(2) The United States Court of Appeals for the District of Columbia shall have exclusive jurisdiction to review determinations made under section 101(b)(3).

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

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

SEC. 106. DEFINITIONS.

For purposes of this title:

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

(2) ALARM MONITORING SERVICES.—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 transmission facilities of a Bell operating company or its affiliates, and

(B) serves to alert persons at the monitoring center of the need to inform customers or other persons, or 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.

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

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

(A) Bell Telephone Company of Nevada, Illinois Bell Telephone Company, Indiana Bell Telephone Company, Incorporated, Michigan Bell Telephone Company, New England Telephone and Telegraph Company, New Jersey Bell Telephone Company, New York Telephone Company, U S West Communications Company, South Central Bell Telephone Company, Southern Bell Telephone and Telegraph Company, Southwestern Bell Telephone Company, The Bell Telephone Company of Pennsylvania, The Chesapeake and Potomac Telephone Company, The Chesapeake and Potomac Telephone Company of Maryland, The Chesapeake and Potomac Telephone Company of Virginia, The Chesapeake and Potomac Telephone Company of West Virginia, The Diamond State Telephone Company, The Ohio Bell Telephone Company, The Pacific Telephone and Telegraph Company, or Wisconsin Telephone Company, or

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

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

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

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

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

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

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

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

(10) INTEREXCHANGE TELECOMMUNICATIONS SERVICES.—The term "interexchange telecommunications services" means a telecommunications service between a point located in an exchange area and a point located outside such exchange area. Such term does not include alarm monitoring services or electronic publishing.

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

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

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

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

(15) TELECOMMUNICATIONS SERVICE.—The term "telecommunications service" means the offering for hire of transmission facilities or of telecommunications by means of such facilities. Such term does not include alarm monitoring services or electronic publishing.

(16) TRANSMISSION FACILITIES.—The term "transmission facilities" means equipment (including wire, cable, microwave, satellite, and fiber-optics) that transmits information by electromagnetic means or that directly supports such transmission, but does not include customer premises equipment.

SEC. 107. RELATIONSHIP TO OTHER LAWS.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Subsection (a) of the first section of the Clayton Act (15 U.S.C. 12(a)) is amended by inserting "title I of the Antitrust and Communications Reform Act of 1994;" after "thirteen;".

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

SEC. 201. REGULATION OF MANUFACTURING BY BELL OPERATING COMPANIES.

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

"SEC. 229. REGULATION OF MANUFACTURING BY BELL OPERATING COMPANIES.

"(a) GENERAL AUTHORITY.—Subject to the requirements of this section and the regulations prescribed thereunder, but notwithstanding any restriction or obligation imposed before the date of enactment of this section pursuant to the Modification of Final Judgment on the lines of business in which a Bell operating company may engage, a Bell operating company, through an affiliate of that company, may manufacture and provide telecommunications equipment and manufacture customer premises equipment.

"(b) SEPARATE MANUFACTURING AFFILIATE.—Any manufacturing or provision authorized under subsection (a) shall be conducted only through an affiliate that is separate from any Bell operating company.

"(c) COMMISSION REGULATION OF MANUFACTURING AFFILIATE.—

"(1) REGULATIONS REQUIRED.—The Commission shall prescribe regulations to ensure that Bell operating companies and their affiliates comply with the requirements of this section.

"(2) BOOKS, RECORDS, ACCOUNTS.—A manufacturing affiliate required by subsection (b) shall—

"(A) maintain books, records, and accounts that are separate from the books, records, and accounts of its affiliated Bell operating company and that identify all financial transactions between the manufacturing affiliate and its affiliated Bell operating company, and

"(B) even if such manufacturing affiliate is not a publicly held corporation, prepare financial statements which are in compliance with financial reporting requirements under the Federal securities laws for publicly held corporations, file such statements with the Commission, and make such statements available for public inspection.

"(3) IN-KIND BENEFITS TO AFFILIATE.—Consistent with the provisions of this section, neither a Bell operating company nor any of its nonmanufacturing af-

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filiates shall perform sales, advertising, installation, production, or maintenance operations for a manufacturing affiliate, except that—

"(A) a Bell operating company and its nonmanufacturing affiliates may sell, advertise, install, and maintain telecommunications equipment and customer premises equipment after acquiring such equipment from their manufacturing affiliate; and

"(B) institutional advertising, of a type not related to specific telecommunications equipment, carried out by the Bell operating company or its affiliates, shall be permitted.

"(4) DOMESTIC MANUFACTURING REQUIRED.—

"(A) GENERAL RULE.—A manufacturing affiliate required by subsection (b) 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) EXCEPTION.—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, the cost of the components manufactured outside the United States contained in all such equipment does not exceed 40 percent of the sales revenue derived in any calendar year from such equipment.

"(C) CERTIFICATION REQUIRED.—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 such affiliate complied with the requirements of subparagraph (B)(ii), as adjusted in accordance with subparagraph (G).

"(D) REMEDIES FOR FAILURES.—(i) If the Commission determines, after reviewing the certification required in subparagraph (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.

"(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) ANNUAL REPORT.—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.

"(F) USE OF INTELLECTUAL PROPERTY IN MANUFACTURE.—Notwithstanding subparagraph (A), 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. A component manufactured using such intellectual property shall not be treated for purposes of subparagraph (B)(ii) as a component manufactured outside the United States solely on the basis of the use of such intellectual property.

"(G) RESTRICTIONS ON COMMISSION AUTHORITY.—The Commission may not waive or alter the requirements of this paragraph, except that the Com-

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mission, 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, pursuant to subparagraph (E).

"(5) INSULATION OF RATE PAYERS FROM MANUFACTURING AFFILIATE DEBT.—Any debt incurred by any such manufacturing affiliate may not be issued by its affiliated Bell operating company 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.

"(6) RELATION TO OTHER AFFILIATES.—A manufacturing affiliate required by subsection (b) shall not be required to operate separately from the other affiliates of its affiliated Bell operating company, but 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 (except for purposes of subsection (c)(3)) and shall comply with the requirements of this section.

"(7) AVAILABILITY OF EQUIPMENT TO OTHER CARRIERS.—A manufacturing affiliate required by subsection (b) shall make available, without discrimination or preference as to price, delivery, terms, or conditions, to any common carrier any telecommunications equipment that is used in the provision of telephone exchange service and that is manufactured by such affiliate only if such purchasing carrier—

"(A) does not manufacture telecommunications equipment, and does not have an affiliated telecommunications equipment manufacturing entity; or

"(B) agrees to make available, to the Bell operating company affiliated with such manufacturing affiliate or any common carrier affiliate of such Bell operating company, any telecommunications equipment that is used in the provision of telephone exchange service and that is manufactured by such purchasing carrier or by any entity or organization with which such purchasing carrier is affiliated.

"(8) SALES PRACTICES OF MANUFACTURING AFFILIATES.—

"(A) PROHIBITION OF DISCONTINUATION OF EQUIPMENT FOR WHICH THERE IS REASONABLE DEMAND.—A manufacturing affiliate required by subsection (b) shall not discontinue or restrict sales to a common carrier of any telecommunications equipment that is used in the provision of telephone exchange service and 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 by regulation, on the sale of such equipment.

"(B) DETERMINATIONS OF REASONABLE DEMAND.—Within 60 days after receipt of an application under subparagraph (A), the Commission shall reach a determination as to the existence of reasonable demand for purposes of such subparagraph. In making such determination the Commission shall consider—

"(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.

"(9) JOINT PLANNING OBLIGATIONS.—Each Bell operating company shall, consistent with the antitrust laws, engage in joint network planning and design with other contiguous common carriers providing telephone exchange service, but agreement with such other carriers shall not be required as a prerequisite for the introduction or deployment of services pursuant to such joint network planning and design.

"(d) INFORMATION REQUIREMENTS.—

"(1) FILING OF INFORMATION ON PROTOCOLS AND TECHNICAL REQUIREMENTS.—Each Bell operating company shall, in accordance with regulations prescribed by the Commission, 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. Each such company shall report promptly to the Commission any material changes or planned

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changes to such protocols and requirements, and the schedule for implementation of such changes or planned changes.

"(2) FILING AS PREREQUISITE TO DISCLOSURE TO AFFILIATE.—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 filed promptly, as required by regulation by the Commission.

"(3) ACCESS BY COMPETITORS TO INFORMATION.—The Commission may prescribe such additional regulations under this subsection as may be necessary to ensure that manufacturers in competition with a Bell operating company's manufacturing affiliate have access to the information with respect to the protocols and technical requirements for connection with and use of its telephone exchange service facilities required for such competition that such company makes available to its manufacturing affiliate.

"(4) PLANNING INFORMATION.—Each Bell operating company shall provide, to contiguous common carriers providing telephone exchange service, timely information on the planned deployment of telecommunications equipment.

"(e) ADDITIONAL COMPETITION REQUIREMENTS.—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 that is functionally equivalent to equipment manufactured by the Bell operating company manufacturing affiliate, opportunities to sell such equipment to such Bell operating company which are comparable to the opportunities which such Company provides to its affiliates; and

"(2) not subsidize its manufacturing affiliate with revenues from telephone exchange service or telephone toll service.

"(f) COLLABORATION PERMITTED.—Nothing in this section (other than subsection (l)) shall be construed to limit or restrict the ability of a Bell operating company and its affiliates to engage in close collaboration with any manufacturer of customer premises equipment or telecommunications equipment during the design and development of hardware, software, or combinations thereof related to such equipment.

"(g) ACCESSIBILITY REQUIREMENTS.—

"(1) MANUFACTURING.—The Commission shall, within 1 year after the date of enactment of this section, prescribe such regulations as are necessary to ensure that telecommunications equipment and customer premises equipment designed, developed, and fabricated pursuant to the authority granted in this section shall be accessible and usable by individuals with disabilities, including individuals with functional limitations of hearing, vision, movement, manipulation, speech, and interpretation of information, unless the costs of making the equipment accessible and usable would result in an undue burden or an adverse competitive impact.

"(2) NETWORK SERVICES.—The Commission shall, within 1 year after the date of enactment of this section, prescribe such regulations as are necessary to ensure that advances in network services deployed by a Bell operating company shall be accessible and usable by individuals whose access might otherwise be impeded by a disability or functional limitation, unless the costs of making the services accessible and usable would result in an undue burden or adverse competitive impact. Such regulations 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.

"(3) COMPATIBILITY.—The regulations prescribed under paragraphs (1) and (2) shall require that whenever an undue burden or adverse competitive impact would result from the manufacturing or network services requirements in such paragraphs, the manufacturing affiliate that designs, develops, or fabricates the equipment or the Bell operating company that deploys the network service shall ensure that the equipment or network service in question 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 subsection:

"(A) UNDUE BURDEN.—The term 'undue burden' means significant difficulty or expense. In determining whether an activity would result in an undue burden, the following factors shall be considered:

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

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

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"(iii) the financial resources of the manufacturing affiliate in the case of manufacturing of equipment, for 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;

"(iv) the financial resources of the Bell operating company in the case of network services, or in the case of manufacturing of equipment if applicable regulatory rules permit cross-subsidization of equipment manufacturing with revenues from regulated telecommunications services and the manufacturing activities are not conducted in a separate subsidiary; and

"(v) the type of operation or operations of the manufacturing affiliate or Bell operating company as applicable.

"(B) ADVERSE COMPETITIVE IMPACT.—In determining whether the activity would result in an 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 general population to make the equipment or network service profitable; and

"(ii) whether such activity would, with respect to the equipment or network service in question, put the manufacturing affiliate or Bell operating company, as applicable, at a competitive disadvantage in comparison with one or more providers of one or more competing products and services. This factor may only be considered so long as competing manufacturers and network service providers 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) EFFECTIVE DATE.—The regulations required by this subsection shall become effective 18 months after the date of enactment of this section.

"(h) PUBLIC NETWORK ENHANCEMENT.—A Bell operating company manufacturing affiliate shall, as a part of its overall research and development effort, establish a permanent program for manufacturing research and development of products and applications for the enhancement of the public switched telephone network and to promote public access to advanced telecommunications services. Such program shall focus its work substantially on developing technological advancements in public telephone network applications, telecommunication equipment and products, and access solutions to new services and technology, including access by (1) public institutions, including educational and health care institutions; and (2) people with disabilities and functional limitations. Notwithstanding the limitations in subsection (a), a Bell operating company and its affiliates may engage in such a program in conjunction with a Bell operating company not so affiliated or any of its affiliates. The existence or establishment of such a program that is jointly provided by manufacturing affiliates of Bell operating companies shall satisfy the requirements of this section as it pertains to all such affiliates of a Bell operating company.

"(i) ADDITIONAL RULES AUTHORIZED.—The Commission may prescribe such additional rules and regulations as the Commission determines necessary to carry out the provisions of this section. The Commission shall prescribe regulations to implement this section within 270 days after the date of enactment of this section.

"(j) ADMINISTRATION AND ENFORCEMENT AUTHORITY.—

"(1) COMMISSION REGULATORY 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 or any affiliate thereof as the Commission has in administering and enforcing the provisions of this title with respect to any common carrier subject to this Act.

"(2) PRIVATE ACTIONS.—Any common carrier that provides telephone exchange service and that is injured by an act or omission of a Bell operating company or its manufacturing affiliate which violates the requirements of paragraph (7) or (8) 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 of damages sustained in consequence of any such viola-

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tion 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.

"(k) EXISTING 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.

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

"(m) 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. The terms 'owns', 'owned', and 'ownership' mean an equity interest of more than 10 percent.

"(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.

"(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.

"(5) The term 'manufacturing affiliate' means an affiliate of a Bell operating company established in accordance with subsection (b) of this section.

"(6) 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), and includes any judgment or order with respect to such action entered on or after August 24, 1982, and before the date of enactment of this section.

"(7) 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.

"(8) The term 'telecommunications equipment' means equipment, other than customer premises equipment, used by a carrier to provide telecommunications services, and includes software integral to such equipment (including upgrades).

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

SEC. 202. REGULATION OF ENTRY INTO ALARM MONITORING SERVICES.

(a) AMENDMENT.—Title II of the Communications Act is amended by adding at the end the following new section:

"SEC. 230. REGULATION OF ENTRY INTO ALARM MONITORING SERVICES.

"(a) REGULATIONS REQUIRED.—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 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.

"(b) EXPEDITED CONSIDERATION OF COMPLAINTS.—The procedures established under subsection (a)(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 accord-

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ance 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.

"(c) REMEDIES.—The Commission may use any remedy available under title V of this Act to terminate and punish violations described in subsection (a)(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.

"(d) RULEMAKING SCHEDULE.—The Commission shall prescribe the regulations required by subsection (a)(2) within 180 days after the date of enactment of this section and shall prescribe the regulations required by subsection (a)(1) and (a)(3) prior to the date on which any Bell operating company may commence providing alarm monitoring services pursuant to title I of the Antitrust and Communication Reform Act of 1994.

"(e) DEFINITIONS.—

"(1) IN GENERAL.—As used in this section, the terms 'Bell operating company', 'affiliate', and 'alarm monitoring services' have the meanings provided in section 106 of the Antitrust and Communication Reform Act of 1994.

"(2) AFFILIATE.—The term 'affiliate' means a person that (directly or indirectly) owns or controls, is owned or controlled by, or is under common ownership or control with, another person. For purposes of this paragraph, to own refers to owning an equity interest (or the equivalent thereof) of more than 10 percent.".

SEC. 203. REGULATION OF ELECTRONIC PUBLISHING.

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

"SEC. 231. REGULATION OF ELECTRONIC PUBLISHING.

"(a) IN GENERAL.—

"(1) PROHIBITION.—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) PERMITTED ACTIVITIES OF SEPARATED AFFILIATE.—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) RULE OF CONSTRUCTION.—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 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 that 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 an 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 required by regulations of the Securities and Exchange;

"(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

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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 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—

"(A) which is 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) the results of which are maintained by the separated affiliate for a period of 5 years subject to review by any lawful authority;

"(9) within 90 days of receiving a review described in paragraph (8), file a report of any exceptions and 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.

"(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 separated 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;

"(6) value any assets that are transferred to the Bell operating company 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—

"(A) which is 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

"(B) the results of which are 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 any exceptions and 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

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unbundled and individually tariffed to the smallest extent that is technically feasible and economically reasonable to provide;

"(12) provide network access and interconnections for basic telephone service to electronic publishers at any technically feasible and economically reasonable point within the Bell operating company's network and at just and reasonable rates that are tariffed (so long as rates for such services are subject to regulation) and that are not higher on a per-unit basis than those charged for such services to any other electronic publisher or any separated affiliate engaged in electronic publishing;

"(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 if such information is within any one or more of the following categories:

"(A) such information is necessary for the transmission or routing of information by an interconnected electronic publisher;

"(B) such information is necessary to ensure the interoperability of an electronic publisher's and the Bell operating company's networks; or

"(C) such information concerns changes in basic telephone service network design and technical standards which may 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, except 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 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.—Consistent with section 232 of this Act, 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 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 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.—No Bell operating company or affiliate thereof (including a separated affiliate) shall act in concert with another Bell operating company or any other 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.—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 for or in conjunction with an affiliate that is related to the provision of electronic publishing.

"(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 un-

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affiliated 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 authorized by this section and provided that the Bell operating company does not 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 electronic 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) RECORDS OF TRANSACTIONS.—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) VALUATION OF TRANSFERS.—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 operating company shall be valued at the lesser of net book cost or fair market value.

"(3) PROHIBITION OF EVASIONS.—A Bell operating company shall not provide directly or indirectly to a separated affiliate any facilities, services, or basic telephone service information related to the provision of electronic publishing which are 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) RECORDS OF TRANSACTIONS.—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

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

"(2) VALUATION OF TRANSFERS.—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

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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) PROHIBITION OF EVASIONS.—An affiliate shall not provide directly or indirectly to a separated affiliate any facilities, services, or basic telephone service information related to the provision of electronic publishing which are not made available to unaffiliated companies on the same terms and conditions.

"(k) OTHER ELECTRONIC PUBLISHERS.—Except as provided in subsection (h)(3)—

"(1) A Bell operating company shall not have any officers, employees, property, or facilities in 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.

"(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 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) DAMAGES.—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 (47 U.S.C. 207), and such Bell operating company, affiliate, or separated affiliate shall be liable as provided in section 206 of this Act (47 U.S.C. 207); except 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.

"(2) CEASE AND DESIST ORDERS.—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) EQUAL EMPLOYMENT OPPORTUNITIES.—Any Bell operating company, and any affiliate or joint venture or other business partner of a Bell operating company, that is engaged in the provision of electronic publishing shall be subject to the provisions of section 634 of this Act, except that the Commission shall prescribe by regulation appropriate job classifications in lieu of the job classifications in subsection (d)(3)(A) of such section.

"(q) 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.

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

"(A) a competitive wireline telephone exchange service provided in a telephone exchange area where another entity provides a wireline telephone exchange service that was provided on January 1, 1984, and

"(B) a commercial mobile 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 C.F.R. 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)(A) The term 'electronic publishing' means the dissemination, provision, publication, or sale to an unaffiliated entity or person, using a Bell operating company's basic telephone service of—

"(i) news,

"(ii) business, financial, legal, consumer, or credit material;

"(iii) editorials;

"(iv) columns;

"(v) sports reporting;

"(vi) features;

"(vii) 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; or

"(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 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 operation 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.

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"(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 the Communications Act of 1934.

"(6) 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.

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

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

"(9) 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.

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

"(11) 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.".

SEC. 204. PRIVACY OF CUSTOMER INFORMATION.

(a) PRIVACY OF CUSTOMER PROPRIETARY NETWORK INFORMATION.—

(1) AMENDMENT.—Title II of the Communications Act of 1934 is amended by adding at the end the following new section:

"SEC. 232. PRIVACY OF CUSTOMER PROPRIETARY NETWORK INFORMATION.

"(a) DUTY TO PROVIDE SUBSCRIBER LIST INFORMATION.—Notwithstanding subsections (b), (c), and (d), a 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 request.

"(b) PRIVACY REQUIREMENTS FOR COMMON CARRIERS.—A carrier—

"(1) shall not, except as required by law or with the approval of the customer to which the information relates—

"(A) use customer proprietary network information in the provision of any service except to the extent necessary (i) in the provision of common carrier communications services, (ii) in the provision of a service necessary to or used in the provision of common carrier communications services, or (iii) to continue to provide a particular information service that the carrier provided as of March 15, 1994 to persons who were customers of such service on that date;

"(B) use customer proprietary network information in the identification or solicitation of potential customers for any service other than the service from which such information is derived;

"(C) use customer proprietary network information in the provision of customer premises equipment; or

"(D) disclose customer proprietary network information to any person except to the extent necessary to permit such person to provide services or products that are used in and necessary to the provision by such carrier of the services described in subparagraph (A);

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

"(3) shall, whenever such carrier provides any aggregate information, or whenever such carrier provides any compiled information derived from customer proprietary network information or any data base to any person to whom disclo-

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sure is permitted by paragraph (1), notify the Commission of the availability of such aggregate information or compiled information and shall—

"(A) provide such aggregate information on reasonable terms and conditions to any other service or equipment provider upon reasonable request therefor; and

"(B) provide such compiled information on reasonable terms and conditions to any other person to whom disclosure is permitted by paragraph (1) upon reasonable request therefor; and

"(4) except for disclosures permitted by paragraph (1)(D), shall not unreasonably discriminate between affiliated and unaffiliated service or equipment providers in providing access to, or in the use and disclosure of, individual and aggregate information or compiled information made available consistent with this subsection.

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

"(1) to render, bill, and collect for the services identified in subparagraph (A);

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

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

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

"(5) to provide any inbound telemarketing, referral, or administrative services to the customer for the duration of the call if such call was initiated by the customer and the customer approves of the use of such information to provide such service.

"(d) EXEMPTION PERMITTED.—The Commission may, by rule, exempt from the requirements of subsection (b) carriers that have, together with any affiliated carriers, in the aggregate nationwide, fewer than 500,000 access lines installed if the Commission determines that such exemption is in the public interest or if compliance with the requirements would impose an undue economic burden on the carrier.

"(e) REGULATIONS.—The Commission shall prescribe regulations to carry out this section within 1 year after the date of its enactment.

"(f) DEFINITION OF AGGREGATE INFORMATION.—For purposes of this section, the term 'aggregate information' means collective data that relates to a group or category of services or customers, from which individual customer identities and characteristics have been removed.".

(2) CONFORMING AMENDMENT.—Section 3 of the Communications Act of 1934 (47 U.S.C. 153) is amended by adding at the end the following:

"(gg) 'Customer proprietary network information' means—

"(1) information which relates to the quantity, technical configuration, type, destination, and amount of use of telephone exchange service or telephone toll service subscribed to by any customer of a carrier, and is made available to the carrier by the customer solely by virtue of the carrier-customer relationship;

"(2) information contained in the bills pertaining to telephone exchange service or telephone toll service received by a customer of a carrier; and

"(3) such other information concerning the customer as is available to the local exchange carrier by virtue of the customer's use of the carrier's telephone exchange service or interexchange telephone services, and 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.

"(hh) 'Subscriber list information' means any information—

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

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

(b) IMPACT OF CONVERGING COMMUNICATIONS TECHNOLOGIES ON CONSUMER PRIVACY.—

(1) PROCEEDING REQUIRED.—Within one year after the date of enactment of this Act, the Commission shall commence a proceeding—

(A) 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;

(B) 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;

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(C) 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;

(D) to propose changes in the Commission's regulations as necessary to correct any defects identified pursuant to subparagraph (A) in such rights and remedies; and

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

(2) SUBJECTS FOR EXAMINATION.—In conducting the examination required by paragraph (1), the Commission shall determine whether consumers are able, and, if not, the methods by which consumers may be enabled—

(A) to have knowledge that consumer information is being collected about them through their utilization of various communications technologies;

(B) to have notice that such information could be used, or is intended to be used, by the entity collecting the data for reasons unrelated to the original communications, or that such information could be sold (or is intended to be sold) to other companies or entities; and

(C) to stop the reuse or sale of that information.

(3) SCHEDULE FOR COMMISSION RESPONSES.—The Commission shall, within 18 months after the date of enactment of this Act—

(A) complete any rulemaking required to revise Commission regulations to correct defects in such regulations identified pursuant to paragraph (1); and

(B) submit to the Congress a report containing the recommendations required by paragraph (1)(C).

TITLE III—FEDERAL COMMUNICATIONS COMMISSION RESOURCES

SEC. 301. AUTHORIZATION OF APPROPRIATIONS.

(a) IN GENERAL.—In addition to any other sums authorized by law, there are authorized to be appropriated to the Federal Communications Commission such sums as may be necessary to carry out this Act and the amendments made by this Act.

(b) EFFECT ON FEES.—For purposes of section 9(b)(2), additional amounts appropriated pursuant to subsection (a) shall be construed to be changes in the amounts appropriated for the performance of activities described in section 9(a).

PURPOSE AND SUMMARY

Since 1984, the Bell operating companies have been restricted from entering various lines of businesses[1] as a result of the consent decree entered in the antitrust case, *United States* v. *Western Electric*.[2] The Consent Decree, commonly referred to as the Modification of Final Judgment, or the MFJ, places the United States District Court for the District of Columbia as the administrator of the Decree, and establishes a procedure by which the Bell operating companies can obtain waivers from the Decree's restrictions.

During the past ten years a number of waivers have been granted,[3] but the process has slowed in recent years. More fundamen-

[1] Under the consent decree entered in *United States* v. *Western Elec. Co.*, 552 F. Supp. 131, 143 (D.D.C. 1982), the Bell operating companies are not permitted "(1) to manufacture or market telecommunications products and consumer premises equipment; (2) to provide interexchange services; (3) to provide directory advertising such as the Yellow Pages; (4) to provide information services; (5) to provide any other product or service is not [sic] a 'natural monopoly service actually regulated by a tariff.'"

[2] *United States* v. *Western Elec. Co.*, 552 F. Supp. 131 (D.D.C. 1982).

[3] The Department of Justice reported in its "Line of Business Waiver Requests Submitted to the Department Pursuant to Section VIII(C) of the Modification of Final Judgment (MFJ), Revised 4–7–94", that at least 175 requests for waivers to lines of business restrictions had been granted since December 1984.

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tally, the judicial process is necessarily limited; the district court's constitutional role is simply to apply the law and administer the Decree, and not make informed policy decisions about how communications law and the communications industry should develop.

For much of the past ten years, the court has performed its role with seriousness and dedication, and has been consistent in administering this complex Decree. But the communications industry has changed fundamentally since 1982. Companies barely in existence in 1984 are now billion dollar enterprises, and segments of the communications business previously thought of as a genuine "natural monopoly" are now facing intense and focused, if not widespread, competition.

Moreover, given the vulnerability of the telephone industry to selective, "cherry-picking" competition, it is likely that the limited nature of today's competition will have a significant effect on the industry's revenues in general, and on local telephone rates in particular.

Consequently, the Committee believes that though the Consent Decree served a useful purpose over the last ten years, it no longer serves the public interest at this dynamic time in the evolution of the communications industry. In place of a process that subjects the communications industry to the terms of a Consent Decree entered 12 years ago and administered by a single district court, the Committee proposes that the expert agencies—the Federal Communications Commission (FCC or the Commission) for communications policy and Department of Justice for antitrust policy—be charged with administering a new federal policy designed to promote competition, innovation, and protect consumers.

The legislation to accomplish that goal, H.R. 3626, the "Antitrust and Communications Reform Act of 1994," shifts administration of the restrictions contained in the Consent Decree from the district court to joint determination by the Federal Communications Commission and the Attorney General. Those restrictions include the provision of interexchange telecommunications services (commonly referred to as long distance service) and the manufacturing of telecommunications equipment. In addition, the bill contains significant safeguards on the Bell operating companies in their offering of information services.

Title I of H.R. 3626 establishes the standards, limitations and procedures for the Bell operating company entry into the market for interexchange telecommunications services and manufacturing. Upon enactment, the Act permits Bell operating companies to petition their State public utility commission to offer intrastate long distance service. H.R. 3626 permits Bell operating companies to petition the Attorney General and the Federal Communications Commission upon enactment of this Act to utilize their own networks to provide interstate long distance service throughout their service region. Bell operating companies are also permitted to petition the Attorney General and the Commission 18 months after enactment of this Act to provide interstate resale services without regard to the regions in which they operate. After five years, the Bell operating companies are permitted to petition the Attorney General and the Commission to build and operate interstate networks outside of their regions.

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For those services and markets that require approval by the Federal Government (*viz.* resale, in-region and nationwide offering of interexchange services) the Attorney General will determine whether or not to grant petitions filed by the Bell operating companies based on a finding that there is no substantial possibility that the Bell operating company or its affiliates could use monopoly power to impede competition in the market it seeks to enter. This language is identical to Section VIII(c) of the Modification of Final Judgment. The Commission will determine whether or not to grant petitions filed based on a finding that granting the petition would serve the public interest, convenience, and necessity.

If the Attorney General and the Commission agree on a petition, the Bell operating companies would be permitted to engage in those services and markets for which a petition is required. Such determination is final unless a petition for judicial review is filed within 45 days of the decision. A petition for judicial review may be filed by the Bell operating company, or any person who might be injured in its business or property as a result of the determination. Judgment shall be rendered by the U.S. Court of Appeals for the District of Columbia Circuit in accordance with section 706 of title 5 of the United States Code.

With respect to entry in the manufacturing business, a Bell operating company may submit an application to the Attorney General to engage in manufacturing immediately after the date of enactment of the Act. If within the following year, the Justice Department fails to seek to enjoin entry by the company, it then would be free to engage in manufacturing, subject to post-entry safeguards contained in Title II of the Act.

The Bell operating companies are allowed to petition the Attorney General and the Commission after 66 months after the date of enactment of this Act to offer alarm monitoring services. If approval is granted, the Bell operating company would be subject to post-entry safeguards contained in Title II of the Act. Within 6 years after enactment of this section, the Commission is required to prescribe regulations to establish requirements, limitations, or conditions with respect to the provision of alarm monitoring services by Bell operating companies and their affiliates.

Title II contains regulatory requirements that will govern the post-entry behavior of the Bell operating companies. A Bell company shall engage in the manufacturing of telecommunications equipment through a separate affiliate and the legislation sets forth various requirements to ensure separation. The Bell company must conduct all manufacturing in the United States. Some components may come from foreign sources only if they are not available in the United States. H.R. 3626 also requires the equipment be accessible and usable by persons with disabilities.

Finally, H.R. 3626 regulates how Bell operating companies engage in electronic publishing. The bill requires a Bell company to form a separate affiliate or electronic publishing joint venture if it uses basic telephone service to provide electronic publishing. The bill contains a number of detailed and elaborate safeguards to ensure actual separation, to guard against discrimination, to prevent cross subsidization, and to protect the privacy interests of consumers.

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BACKGROUND AND NEED FOR THE LEGISLATION

Recent years have seen a proliferation of legislative and judicial action to change the provisions of the original Consent Decree that divested American Telephone and Telegraph[4] of its local exchange service and created the regional Bell operating companies. Currently prohibited from providing long distance service, manufacturing telecommunications equipment, and, up until July 1991, providing information services, the Bell operating companies and others have long advocated open entry into these new lines of business, contending that such action would invigorate the telecommunications marketplace. In opposition, certain consumer organizations, electronic publishers, long distance carriers, the Justice Department, and other industry groups over the past few years have opposed entry on the grounds that the courts should administer an antitrust consent decree and that so long as the Bell operating companies face little or no competition in their core business of providing local telephone service, they should not be permitted to enter competitive lines of business.

I. HISTORICAL BACKGROUND

Prior to the implementation of the MFJ in 1984, AT&T was the monopoly telecommunications provider in the United States. AT&T's Long Lines Department provided long distance telephone service to virtually everyone in the country. AT&T maintained ownership of the 22 Bell operating companies, which provided local telephone service on a monopoly basis to approximately 85 percent of the population. In addition, AT&T owned Western Electric, which manufactured almost all the equipment needed for the operation of the telephone network. AT&T also owned Bell Telephone Laboratories (Bell Labs), which conducted the most extensive research involving high-technologies and telecommunications of any industrial research center in the world.

The roots of the MFJ go back over 100 years. In 1882, Bell Telephone, the predecessor of AT&T, designated Western Electric Company as the exclusive manufacturer of its patented telecommunications equipment. During the early 1900's Bell Telephone maintained a majority interest in Western Electric; by 1925 it had 100 percent ownership of the company. By that same year, Bell Telephone established Bell Telephone Laboratories to conduct its research and development. The Bell System's[5] rapid expansion triggered interest from the Department of Justice and the Interstate Commerce Commission (which then had jurisdiction over interstate telephone service) for possible antitrust violations.

A. Prior Bell System litigation

First Sherman Act[6] case

On July 24, 1913, the Department of Justice filed its first Sherman Act enforcement action against the Bell System, charging it

[4] As AT&T was then legally known, but will be referred to herein as AT&T.

[5] The Bell System was a vertically and horizontally integrated company providing service to nearly 85% of America's telephone customers. The Bell System was comprised of the 22 Bell Operating Companies, Long Lines, Western Electric and Bell Labs.

[6] Sherman Act of 1980 (codified at 15 U.S.C. Sections 1–7).

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with an unlawful combination to monopolize the transmission of telephone messages in the Pacific Northwest. To settle this case, AT&T agreed not to purchase any more competing telephone companies, and agreed to allow competitors to interconnect with the AT&T network. The agreement also required AT&T to sell its shares of Western Union, the monopoly provider of telegraph service.[7]

Second Sherman Act case

On January 14, 1949, the Department of Justice filed its second Sherman Act enforcement against the Bell System. The complaint charged that AT&T purchased all its equipment needs from Western Electric, a subsidiary of AT&T, regardless of price or quality. The Department of Justice sought to require the courts to divest Western Electric from the Bell System, and sought to bar AT&T from engaging in future telephone manufacturing activity. The Department of Justice brought suit on the grounds that: (1) AT&T subsidized its equipment activities with revenues earned from its telephone business; (2) AT&T and the Bell operating companies purchased all equipment from Western Electric regardless of price or quality; and, (3) AT&T manipulated the design of its network to prevent any other equipment providers to sell compatible equipment.

The suit was settled in 1956 by the original Consent Decree. No structural separation of the Bell System emerged from the Decree. However, the decree required AT&T and the Bell operating companies to limit themselves to the offering of basic common carrier communications services under tariff, and Western Electric to the manufacturing and sale of equipment to the Bell System. This meant that AT&T was barred from engaging in computer data processing business and had to divest certain private mobile communications leasing operations. Western Electric was restricted from making railroad signalling equipment and required to divest its recording and typesetting operations.

B. Communications Act of 1934

Congress passed the Communications Act of 1934[8] and created the Federal Communications Commission to consolidate Federal regulatory authority over the interstate operations of telephone, telegraph, and radio companies. The creation of the FCC is partially attributed by some to growing concern over the Bell System's acquisition of its competitors.

The Communications Act has become the cornerstone of communications law in the United States. The 1934 Act established the Federal Communications Commission, and granted it regulatory power over communications by wire, radio, telephone, and cable within the United States. The Act also charged the Federal Communications Commission with the responsibility of maintaining, for all the people of the United States, a "rapid, efficient, Nationwide

[7] *United States* v. *American Telephone and Telegraph*, No. 6082, U.S. Dist. Ct., Dist. of Oregon, Original Petition (July 24, 1913); Nathan C. Kingsbury to James C. McReynolds, December 19, 1913; *United States* v. *American Telephone & Telegraph*, No. 6082 (D. Or. 1914) (Decree). The Kingsbury letter became known as the Kingsbury Commitment.

[8] June 19, 1934, 48 Stat. 1064 (1934) (codified at 47 U.S.C. 151–609) (1982).

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and worldwide wire and radio communications service with adequate facilities and reasonable charges."[9]

Prior to 1934, communications regulation had come under the jurisdiction of three separate Federal agencies. Radio stations were licensed and regulated by the Federal Radio Commission; the Interstate Commerce Commission had jurisdiction over telephone, telegraph, and wireless common carriers; and the Postmaster General had certain jurisdiction over the companies that provided these services. As the number of communications providers in the United States grew, Congress determined that a commission with unified jurisdiction would serve the American people more effectively.

The 1934 Communications Act was written so as to enact the powers which the Interstate Commerce Commission and the Federal Radio Commission then exercised over communications under a single, independent Federal agency.

II. THE CONSENT DECREE

In 1974, the Department of Justice filed an antitrust suit against AT&T.[10] The suit claimed that AT&T misused its Bell system monopoly of the local exchange network to restrict competition in the manufacturing of telecommunications equipment, and in the market for interexchange service through refusal to provide competitors with interconnection to the local networks and, therefore, access to end customers. After years of litigation, the case was settled with entry of a Modification of Final Judgment by Judge Harold Greene, which was negotiated by AT&T and the Justice Department.[11]

The Modification of Final Judgment allowed AT&T to retain its long distance division, AT&T Long Lines; its manufacturing division, Western Electric; and its research arm, Bell Labs. However, the MFJ required AT&T to divest its 22 Bell operating companies, which controlled over 85 percent of the local telephone networks in the country. Although the MFJ did not require them to be organized into any particular configuration,[12] the Bell operating companies were subsequently formed into seven regional holding companies (RHCs) or regional Bell operating companies.[13] In addition, the Modification of Final Judgment imposed numerous lines of business restrictions on the Bell operating companies to prevent any reoccurrence of anticompetitive practices. The MFJ prohibited the Bell companies from offering long distance telephone service, manufacturing telecommunications and customer premises equipment, offering information services, and providing non-telecommunications products and services. However, the Bell operating companies retained control over the local telephone networks and were permitted to provide basic local telephone service, sell "yellow pages advertising," and distribute customer premises equipment.

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[9] Section 1, The Communications Act of 1934 (47 U.S.C. 151).

[10] *United States* v. *American Telephone and Telegraph Co.*, 552 F. Supp. 131, 139 (1982).

[11] 552 F. Supp. at 143.

[12] 552 F. Supp. at 141–42.

[13] The seven Regional Bell Operating Companies are Ameritech, Bell Atlantic, Bell South, NYNEX, Pacific Telesis, Southwestern Bell, and U S West.

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A. Provisions applicable to AT&T

Under the Modification of Final Judgment, AT&T was required to divest its 22 wholly-owned Bell operating company subsidiaries. AT&T was ordered to terminate its license contracts with the Bell companies, which provided that AT&T was paid a percentage of Bell company revenues, in addition to standard supply contracts with the Bell operating companies under which Western Electric, now AT&T Technologies, provided equipment.

In addition, AT&T was forced to transfer facilities, personnel, technical information, and other resources to the Bell operating companies, enabling them to provide exchange service[14] and exchange access[15] functions independently of AT&T. AT&T relinquished all ownership and control over these exchange facilities and agreed to make all research, development, manufacturing and other support services available to the Bell operating companies on a priority basis through September 1, 1987.

Finally, the Modification of Final Judgment prohibited AT&T from engaging in electronic publishing[16] over its own transmission facilities until August 1989. In 1989, this restriction expired. AT&T was also allowed to provide time, weather, and other audio services to subscribers who were receiving those services when the Modification of Final Judgment was formally approved on August 24, 1982.

B. Provisions applicable to the Bell operating companies

The 1982 Modified Final Judgment prohibited the Bell operating companies—both directly or through an affiliate—from: (1) providing interexchange services[17]; (2) providing information services (including electronic publishing services); and (3) manufacturing telecommunications products and customer premise equipment (CPE). Under the original Modification of Final Judgment, the Bell operating companies were generally prohibited from providing "any other product or service, except exchange telecommunications and exchange access service, that is not a natural monopoly service actually regulated by tariff." However, the Bell operating companies successfully petitioned the courts to grant a waiver to the Modification of Final Judgment to permit the Bell companies to market customer premises equipment and produce and distribute printed directories (Yellow Pages).

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[14] Section 3(r) of the Communications Act of 1934 defines "telephone exchange service" to mean service within a telephone exchange, or within a connected system of telephone exchanges within the same exchange area operated to furnish to subscribers intercommunicating service of the character ordinarily furnished by a single exchange, and which is covered by the exchange service charge.

[15] Exchange access means a service that provides to subscribers the ability to originate or terminate interexchange telecommunications services.

[16] In the Modification of Final Judgment, the Court defined "electronic publishing" as the provision of any information which a provider or publisher has, or has caused to be originated, authored, compiled, collected, or edited, or in which he has a direct or indirect financial or proprietary interest, and which is disseminated to an unaffiliated person through some electronic means. 552 F. Supp. at 181.

[17] In the Modification of Final Judgment, the Court defined "interexchange telecommunications" as "telecommunications between a point or points located in one or more other exchange area or a point outside an exchange area." 552 F. Supp. at 229. More simply stated, this is commonly known as long distance service.

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C. The waiver process

In 1984, District Court Judge Harold Greene established a procedure to permit the Bell operating companies limited entry into new lines of business. [18] The court established four criteria that the Bell companies must meet in order to receive a waiver of MFJ restrictions. First, the Bell companies must establish separate subsidiaries to enter these new businesses. Second, the Bell companies must ensure that local ratepayers are not financially burdened by these ventures. Third, the total estimated aggregate revenues of each of the new ventures must comprise no more than ten percent of the Bell companies' total estimated net revenues. And fourth, the Justice Department must examine any new venture to determine its impact on consumers and competition.

Between January 1984 and September 1987, Judge Greene granted more than 160 waivers to Bell companies seeking to enter new lines of business. Waivers were granted for Bell companies interested in entering the following markets: real estate, foreign business, office products, equipment financing, print media, software, billing services, cellular monitoring, consulting, and mobile cellular radio service. All of these categories were subject to multiple waiver requests. Originally, these requests were granted on a case-by-case basis. Due to administrative burdens and delays, this process was streamlined in 1985. After 1985, all Bell operating companies were permitted to enter a line of business for which a waiver has already been granted to another Bell operating company, provided they agree to abide by the terms and conditions governing the original waiver. In a September 1987 opinion, Judge Greene removed all prior waiver requirements for Bell operating company entry into these businesses. [19]

III. COURT REVIEW OF THE MODIFICATION OF FINAL JUDGMENT

The Modification of Final Judgment acknowledges that the time may come when it will no longer be necessary to bar the Bell operating companies from entering prohibited markets. Accordingly, the Consent Decree required the Department of Justice to submit a report every three years on how the restrictions on the Bell operating companies were working and to recommend appropriate changes.

Although the Justice Department under the Reagan Administration signed the Consent Decree settling the antitrust suit against AT&T which resulted in the Modification of Final Judgment, the Reagan Administration reversed course on February 2, 1987, when the Justice Department filed recommendations with Judge Greene suggesting that the Bell operating companies should be permitted to enter a variety of new businesses from which they were barred. The Justice Department recommended removing the prohibitions on Bell operating companies providing information services, manufacturing equipment, and entering any non-telecommunications businesses. In its February 1987 filing, the Department recommended that the Bell companies be allowed to provide long distance services outside their own areas, but later modified the pro-

[18] *United States* v. *Western Elec. Co.*, 592 F. Supp. 846 (D.D.C. 1984).
[19] *United States* v. *Western Elec. Co.*, 673 F. Supp. 525, 599 (D.D.C. 1987).

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posal to permit Bell operating companies to enter the interchange services only after a case-by-case review.

On September 10, 1987, Judge Greene allowed the Bell operating companies to enter all non-telecommunications businesses without having to obtain a waiver or abide by any of the restrictions imposed by Section II(D)(3) of the Modification of Final Judgment. Therefore, Bell operating companies now can invest in non-telecommunications businesses without restrictions.

Judge Greene rejected the Department of Justice's request to repeal the Consent Decree's restriction on interchange services and manufacturing. He found that the Bell operating companies still controlled the facilities needed by competitors to reach the vast majority of the American public, and that the provision of competitive alternatives to these facilities was not significant.

The United States Court of Appeals for the District of Columbia Circuit decided on April 3, 1990, to remand a key portion of Judge Greene's September 1987 Modification of Final Judgment waiver decision.[20] The court of appeals remanded the portion of Judge Greene's ruling which upheld the restriction on entry into information services by the Bell operating companies, while affirming the ruling restricting the Bell operating companies from providing interchange services and manufacturing telecommunications equipment.

Although the court of appeals affirmed Judge Greene's decision to continue the restrictions on Bell operating companies entry into the interchange service and manufacturing businesses, the panel highlighted several areas for the district court to consider in future reviews of the Modification of Final Judgment. First, the court raised a concern with the district court's distinction of *Theoretical* versus *substantial* evidence of the monopolistic practices by a Bell operating company. Second, the court questioned Judge Greene's consideration of whether Bell operating company entry into new markets would damage both competition and individual competitors within those markets. Third, the court was concerned about the inclusion of public policy considerations by the district court.

The district court's purview for imposing safeguards was limited by the court of appeals to considering cross subsidization and effects on competition in the market, not on consumers. The court finally noted that, in the matter of information services, the fact that the Bell operating companies' motion for relief was not contested by AT&T of the Justice Department, the original parties to the Modification of Final Judgment, altered the standard of review and made the application of the stricter section VIII(C) inappropriate. This led to the remand of Judge Greene's decision on information services. In the matter of interchange services and telecommunications manufacturing, it is important to note that the Bell operating companies' motions for permission to enter those lines of business were contested by AT&T, thereby mandating the application of the tougher standard of review contained in section VIII(C).

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[20] *United States* v. *Western Elec. Co.*, 900 F.2d 283 (D.C. Cir. 1990).

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A. The manufacturing restriction

In 1985, AT&T filed a complaint with the Justice Department alleging that a number of Bell operating companies were violating the manufacturing restriction by participating in joint ventures with manufacturers in which the Bell companies designed and developed products to be manufactured by their partners. In response to the complaint, the Justice Department indicated that it believed the manufacturing restriction applied only when a Bell company actually engaged in "fabricating" equipment. AT&T subsequently filed a motion for a declaratory ruling regarding the meaning of the term "manufacture" in section II(D)(2) of the Modification of Final Judgment.

In a September 10, 1987 triennial review decision, Judge Greene ruled that the Bell operating companies would continue to be prohibited from manufacturing products.[21] In a December 3, 1987 clarifying opinion, Greene further explained the nature of this prohibition.[22] The Bell operating companies had asserted that the manufacturing decision was limited to the actual fabrication of customer premises equipment (CPE) and did not cover research and development. Judge Greene disagreed and affirmed the prohibition did extend to design and development.

On February 2, 1990, the D.C. Circuit unanimously upheld Judge Greene's finding that the term "manufacturing" includes design/development work and some software development. The court came to the conclusion that although the term "manufacturing" has ambiguous definitions, implicit in section II(D)(2) of the consent decree is: (1) the prohibition of design and development of telecommunications products; and (2) the prohibition of software programming essential to the integral design and development of telecommunications equipment hardware. The court reasoned that the goal of the original consent decree was to cure anticompetitive behavior. Prior to divestiture, design and development manipulation on the part of the Bell system was a major problem and led to the filing of the original antitrust suit.

B. Information services restriction

Under the MFJ, Bell operating companies were prohibited from offering information services. The Modification of Final Judgment defines "information services" as "the offering of a capability for generating, acquiring, storing, transforming, processing, retrieving, utilizing, or making available information which may be conveyed via telecommunications." Today, the broadly defined industry of information services includes those services such as on-line data retrieval and interactive services (such as Prodigy or Lexis/Nexis), alarm services, voice messaging, data processing, and electronic publishing.

In his September 1987 opinion, Judge Greene reaffirmed the ban on Bell operating company provision of the content of information services; however, he found that the Bell companies should be allowed to provide "gateway" transmission services, allowing users of

[21] 673 F. Supp. 525 (D.D.C. 1987).
[22] *United States* v. *Western Elec. Co.,* 675 F. Supp. 655 (D.D.C. 1987).

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telephone services to access videotext services provided by others.[23] Judge Greene described the functions that he proposed to permit the Bell operating companies to offer as part of their local exchange networks as "low level gateway functions that do not involve control of, or interaction with, information content."[24]

In response to Judge Greene's gateway proposals, the Bell operating companies argued that they should be allowed to provide other information services, including audiotext gateway services, voice storage and messaging, and electronic mail. The Bell operating companies argued that their participation in these services was equally important to ensure their widespread availability. In two decisions, March and July 1988, Judge Greene decided that Bell operating companies would be allowed to provide the following services: (1) voice messaging; (2) electronic mail; (3) audiotext transmission; (4) transmission as part of a gateway to information services; (5) authorization of all protocol conversions necessary to achieve "transparency" in communication; (6) permission to enter into billing arrangements with information service providers; and (7) expansion of the introductory information content by allowing Bell operating companies a "help" capability and directing for navigating within their gateways.[25]

In its April 1990 decision, the Court of Appeals found that, with regard to information services, Judge Greene applied the wrong standard to evaluate the Bell operating companies' motion for relief from the information service restrictions of the Modification of Final Judgment.[26] Specifically, the court held that Judge Greene incorrectly applied MFJ section VIII(C), instead of section VII, to the Bell operating companies' uncontested motion for waiver. The court ruled that the close judicial scrutiny of section VIII(C) should be invoked when a motion for waiver is contested by one of the original parties to the Modification of Final Judgment (either AT&T or the Justice Department). Since the Bell operating companies' request for entry in information services was uncontested, the court ruled that only a broad standard of public interest should be applied to uncontested motions, such as the Bell operating companies' motion on information services. On July 25, 1991, Judge Greene, on remand from the D.C. Circuit, held that the line of business restriction prohibiting Bell operating companies from offering information services should be removed.[27]

Judge Greene's July 1991 decision fundamentally altered the Modification of Final Judgment by lifting one of the three primary line of business restrictions placed upon the Bell operating companies under the terms of the AT&T consent decree. The decision ignited a storm of controversy. The Bell operating companies and a number of experts on the communications business lauded the decision as a means of bringing competition to the information services market and invigorating the telecommunications industry. Some consumer groups and other experts agreed with electronic publishers, newspaper associations, and other providers of information

[23] 673 F. Supp. 525 (D.D.C. 1987).
[24] 673 F. Supp. at 592.
[25] *United States* v. *Western Elec. Co.*, 714 F. Supp. 1 (D.D.C. 1988).
[26] *United States* v. *Western Elec. Co.*, 900 F.2d 283 (D.C. Cir. 1990).
[27] *United States* v. *Western Elec. Co.*, 767 F. Supp. 308 (D.D.C. 1991).

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services, in condemning the ruling. In particular, they are concerned the ruling would lead the Bell operating companies to cross-subsidize their new ventures with revenues from their regulated monopoly local exchange services. The court's decision was affirmed on appeal.

IV. DISCUSSION OF POLICY AND REGULATORY ISSUES

Shortly after the AT&T divestiture in 1984, the Bell operating companies, the Justice Department, and the Reagan Administration began urging the elimination of Modification of Final Judgment restrictions on the Bell companies. Advocates for the elimination of the Modification of Final Judgment's line of business restrictions argued that the existing limitations on manufacturing by the Bell operating companies significantly stifle innovation in the telecommunications market, limiting the availability of information services to the consumer, and worsen our trade deficit. Moreover, they maintain that their telephone networks and consumers will benefit by their knowledge being applied to the challenge of designing and manufacturing next-generation equipment. They also argue that robust competition has failed to develop in the market for long distance service, and that Bell company participation in that market can promote competition and benefit consumers. They assert that the regulatory regime necessary to police their entry is already in place.

Opponents of Bell entry argued that unrestricted entry of Bell operating companies into the market for interexchange service or manufacturing of telecommunications equipment could have an adverse impact on consumers and competition in that market. Opponents contend that, without effective regulatory measures, the Bell companies' control of the local telephone network and their technical resources could endanger open competition. They further believe that the Bell companies could improve their competitive advantage by cross-subsidizing their competitive service with increases in the rates charged to consumers for regulated phone services. Furthermore, opponents contend that allowing the Bell companies into the manufacturing industry could lead to special procurement specifications discriminating against other companies.

A major issue surrounding Bell company entry into new lines of business centers around the impact such entry would have on local rates. The Bell operating companies maintain that lifting the Modification of Final Judgment restrictions would allow them to use the additional revenue generated by new unregulated equipment and service activities to offset potential local rate increases. In addition, they contend that increased revenues from new, unregulated ventures will indirectly benefit local ratepayers by enabling or encouraging them to improve and upgrade facilities.

The debate about the proper role of the Bell operating companies in the communications industry has often overshadowed the larger question of which government bodies should be establishing national telecommunications policy. The Committee observes that courts make rulings, as they should, solely on the narrow questions confronting them. Consequently, courts do not and cannot ensure that broader concerns about sound economic goals are fully considered. As a result of these concerns, which have been fueled by this

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period of globalization and intense international competition in the telecommunications industry, the Committee believes that the Federal Communications Commission, as the expert agency in the oversight of the telecommunications industry, and the Justice Department, with its expertise on antitrust policy, should have authority to manage these issues in order to develop telecommunications policy in a coordinated manner.

The Committee believes at this juncture in the evolution of the communications industry that the Commission and the Attorney General should be the locus of authority on questions involving telecommunications and consumer protection. The experts in these agencies have the ability to see a more complete spectrum of issues, as compared to the narrow view to discrete issues which a court necessarily takes in the context of litigation. Moreover, they can consider broad policy goals in establishing and administering telecommunications policy. Finally, these entities have the staff and resources necessary to tackle the Herculean task of formulating, administering, and enforcing telecommunications policy at the close of twentieth century.

The Committee recognizes that the courts have played, and will continue to play, a necessary and vital role in the development of the law affecting the communications industry. The Committee notes that the Consent Decree was voluntarily signed by all parties after a long court case which found numerous instances of abuse by AT&T. The Committee now believes that the time has come, for a variety of technological, economic and societal reasons, for another stage in the evolution of communications policy, a step away from the courts and towards a communications policy enunciated by Congress and implemented and enforced by the Commission and the Attorney General.

HEARINGS

The Committee's Subcommittee on Telecommunications and Finance held 7 days of hearings on H.R. 3626 and the related bill H.R. 3636. Testimony was received from 53 witnesses, representing 53 organizations, with additional material submitted by 7 individuals and organizations. These hearings build on 4 hearings held in the 102nd Congress, and a total of 15 hearings the Subcommittee has held since 1984 on the Modification of Final Judgment.

On January 27, 1994, the Administration testified in support of both H.R. 3626 and H.R. 3636 bills. Representing the Administration was The Honorable Anne K. Bingaman, Attorney General for Antitrust, Department of Justice; The Honorable Larry Irving, Assistant Secretary for Communications and Information, Department of Commerce (Director, National Telecommunications and Information Administration (NTIA)); and The Honorable Reed E. Hundt, Jr., Chairman, Federal Communications Commission.

On February 8, 1994, the Subcommittee held a hearing on H.R. 3626, specifically on the provisions relating to Bell company entry into manufacturing and information services. Witnesses testifying on the information services panel included: Mr. Frank Bennack, President and CEO, the Hearst Corporation, testifying on behalf of the Newspaper Association of America; Mr. James G. Cullen, President, Bell Atlantic Corporation; Mr. R. Jack Fishman, President,

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Lakeway Publishing, testifying on behalf of the National Newspaper Association; Mr. Stan Martin, Executive Director, National Burglar and Fire Alarm Association; and Mr. George Perry, Senior Vice President, Prodigy Services Company. Testifying on the manufacturing panel included: Mr. John Major, Senior VP, Motorola Corporation, testifying on behalf of the Telecommunications Industry Association; Mr. William B. Smith, President, US West Technologies; Mr. Paul W. Schroeder, Director of Government Affairs, American Council of the Blind; Mr. John Roach, Chairman and CEO, Tandy Corporation; and Mr. Salim Bhatia, President and CEO, Broadband Technologies, Inc.

On the information services panel, the discussion centered around safeguards for Bell operating company participation in the information services business. Small newspaper publishers argued for more stringent safeguards and equal opportunities for small publishers as for the larger publishers. Prodigy argued for language that would ensure that all electronic publishers would be included in the safeguards, not just a limited subset such as newspapers. The witnesses also discussed the need for customer proprietary network information (CPNI) safeguards. Prodigy and the NAA agreed that it is necessary to extend CPNI safeguards to protect consumer privacy.

On the manufacturing panel, a major portion of the discussion was on the domestic content provision and whether it would violate the General Agreement on Tariffs and Trade (GATT) or the North American Free Trade Agreement (NAFTA). The equipment manufacturing industry opposed Bell operating company entry into the equipment market, arguing that until local competition exists, Bell operating companies still have the ability and incentive to engage in "self-dealing" and other anticompetitive behavior. All witnesses besides Bell operating companies argued for extending the safeguards in the electronic publishing provisions to all other activities engaged in by the Bell operating companies.

On February 10, 1994, the Subcommittee held another hearing on H.R. 3626, focusing on the provision related to Bell company entry into the interexchange market. Witnesses included: Mr. Phillip J. Quigley, President and CEO, Pacific Bell; Mr. Bert Roberts, Chairman, MCI Communications; Mr. James M. Smith, President, CompTel; Mr. Robert McGlotten, Legislative Director, AFL–CIO; Dr. Jane Preston, President, American Telemedicine Association; Mr. Dion Blanchard, Manager of Telecommunications, First America Bank Corporation; Mr. Brian R. Moir, Partner, Moir & Hardman, testifying on behalf of the International Communications Association; Mr. Ashok Rao, CEO, Mid-Com Communications; and Mr. Henry Geller, Communications Fellow, The Markle Foundation.

Pacific Bell argued that competition exists in the local exchange, so there is no risk to consumers by Bell operating company entry, and that Bell operating company entry could benefit consumers by increasing customer choice. Mr. Quigley supported the authority granted to the states under H.R. 3626 for intrastate interLATA relief. The long distance carriers and the resellers argued that the Bell operating companies should not enter the long distance market until competition exists in the local exchange. They further ar-

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gued that the Department of Justice and Federal Communications Commission standards that are applied for some long distance services should be applied across the board for all long distance services. In that context, of special concerns to these witnesses was the intrastate intraLATA entry process, which is subject to state Public Utility Commission authorization. Also, the long distance companies and resellers argued that Bell operating companies should only be allowed to provide long distance resale nationwide from any state that mandates intraLATA equal access. Mr. Moir supported the safeguards in H.R. 3626 under the electronic publishing provisions and supported extending those safeguards to apply to all activities engaged in by the Bell operating companies, including information services, long distance and manufacturing. Mr. Moir argued for CPNI safeguards for both competitive and consumer privacy protection. Mr. Quigley agreed. Dr. Preston argued that Modification of Final Judgment relief is needed to advance telemedicine projects. Mr. Geller argued that although he supports H.R. 3626, he believes it is too detailed and complex and more flexibility is needed for the Federal Communications Commission to regulate this dynamic industry.

HEARINGS IN THE 102ND CONGRESS

On July 11, 1991, the Subcommittee on Telecommunications and Finance held a legislative hearing on recommended changes to the Modification of Final Judgment, specifically S. 173, H.R. 1527, H.R. 1523, and a staff discussion draft. Ms. Janice Obuchowski, Assistant Secretary of Commerce, National Telecommunications Information Administration, Department of Commerce, Mr. James F. Rill, Assistant Attorney General, Antitrust Division, Department of Justice. The second panel, Mr. Robert Allen, Chairman, AT&T; Mr. William C. Ferguson, Chairman and CEO, NYNEX; Mr. George Sollman, President, Centigram Corporation; and Mr. Michael J. Birck, Chairman, Telecommunications Industry Association.

On October 23, 1991, the Subcommittee on Telecommunications and Finance held a legislative hearing on Regulating Bell Company Entry into Manufacturing and Information Services, including, H.R. 3515, H.R. 1527, H.R. 1523 and a staff discussion draft. Witnesses included: Senator Larry Pressler; Federal Communications Commission Chairman Alfred C. Sikes; Mr. Ronald Binz, Director of the State of Colorado Office of Consumer Counsel, representing the National Association of State Utility Consumer Advocates; Ms. Nan Norling, Chair of the Delaware Public Service Commission, representing the National Association of Regulatory Utility Commissioners; Ms. Barbara Easterling, Executive Vice President, Communications Workers of America and Mr. Edward Spievack, President, North America Telecommunications Association.

On October 24, 1991, the Subcommittee on Telecommunications and Finance held another hearing on regulating Bell operating company Entry in Manufacturing and Information Services. Witnesses included: Mr. William Ferguson, Chief Executive Officer, NYNEX Corporation; Mr. Robert Johnson, Publisher, Newsday, representing the American Newspaper Publishers Association; Mr. Vance Opperman, Corporate Counsel for West Publishing; Ms. Charlotte Schexnayder, Editor of the Dumas Clarion and President

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of the National Newspaper Association; Mr. Warner Sinback, Chairman of the Domestic Communications Committee of the Association of Data Processing Service Organizations; Mr. Gene Kimmelman, Legislative Director of the Consumer Federation of America; Mr. Arland Hocker, Senior Vice President for Government Regulatory Affairs for Telephone and Data Systems, Rural Telephone Coalition; and Mr. Mitchell Kapor, representing the Electronic Frontier Foundation.

On May 27, 1992, the Subcommittee on Telecommunications and Finance held a legislative hearing on Bell operating company entry into the interexchange market. Witnesses included: Mr. Robert G. Harris, Chair, Business and Public Policy Group, Walter A. Haas Graduate School of Business, University of California at Berkeley; Mr. Jim Kilpatric, Vice President, AT&T; Mr. Robert A. Levetown, Vice Chairman, Bell Atlantic; Mr. James M. Smith, President, Competitive Telecommunications Association.

HEARINGS IN PREVIOUS CONGRESSES

During the 101st Congress, First Session, the Subcommittee on Telecommunications and Finance held hearings in 1989 on May 4, May 31, June 7, June 14, June 21, on the Modification of Final Judgment. On March 7, April 18, April 26, and May 10, 1990, the Subcommittee held hearings, on the Telecommunications Policy Act of 1990.

During the 100th Congress, the Subcommittee on Telecommunications and Finance held 4 hearings on the Modification of Final Judgment, competition in the telecommunications industry and its impact on consumers on April 20, July 15, July 30, and November 10, 1987.

During the 99th Congress, the Subcommittee held 3 hearings on the Modification of Final Judgment, competition in the telecommunications industry, and its impact on consumers on February 19 and 20, 1986, and March 13, 1986.

COMMITTEE CONSIDERATION

On March 1, 1994, the Subcommittee on Telecommunications and Finance met in open session and ordered reported the bill H.R. 3626, by a voice vote, a quorum being present. On March 16, 1994, the Committee met in open session and ordered reported the bill H.R. 3626, with amendments, by voice vote, a quorum being present.

A substitute amendment, offered by Chairman Dingell and approved by voice vote, expands upon H.R. 3626 as introduced to ensure that nothing in Section 101 would be construed to prohibit Bell operating companies providing "incidental" services such as cable television, mobile telephone and other services. The Committee adopted an amendment offered by Representative Richardson that would extend equal employment opportunity requirements to electronic publishers. The Committee rejected an amendment offered by Representatives Oxley and Richardson to remove a provision requiring that Bell operating companies include at least 60 percent domestic content in the equipment they manufacture. The Committee adopted, by voice vote, an amendment offered by Rep-

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resentative Synar that would authorize the Federal Communications Commission additional resources necessary to carry out this Act. Representative Barton offered an amendment on safeguards regulating Bell company provision of telemessaging, but withdrew it. The Committee adopted, by voice vote, an amendment offered by Representative Slattery that would require Bell companies to charge the same network access rates for small publishers wishing to offer electronic news services that they do for large publishers.

By a vote of 34–10 the Committee adopted an amendment offered by Representatives Oxley, Barton and Brown to a pending amendment offered by Representatives Bryant and Bliley. The Oxley amendment requires the Bell operating companies to charge their own long-distance affiliates the same access fees they charge long-distance competitors. The Bryant amendment, among other things, would have required FCC–Justice Department review of Bell company entry into the market for intrastate, interstate and resale long distance services.

The Committee also adopted an amendment offered by Mr. Slattery to clarify that the manufacturing process is only subject to a 1-year delay. Finally, the Committee adopted, en bloc, amendments offered by Representative Markey to expand the definition of electronic publishers so that most, if not all, electronic publishers would benefit from safeguard protection; and an amendment that would define customer proprietary network information (CPNI) safeguards to ensure that consumer privacy rights are protected.

COMMITTEE OVERSIGHT FINDINGS

Pursuant to clause 2(1)(3)(A) of Rule XI of the Rules of the House of Representatives, the Subcommittee held oversight hearings and made findings that are reflected in the legislative report.

COMMITTEE ON GOVERNMENT OPERATIONS

Pursuant to clause 2(1)(3)(D) of rule XI of the Rules of the House of Representatives, no oversight findings have been submitted to the Committee by the Committee on Government Operations.

COMMITTEE COST ESTIMATE

In compliance with clause 7(a) of rule XIII of the Rules of the House of Representatives, the Committee believes that the net cost incurred in carrying out H.R. 3636 would be between $6 and $7 million per year for the first three years, and $3 million per year thereafter.

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CONGRESSIONAL BUDGET OFFICE ESTIMATE

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, June 24, 1994.

Hon. JOHN D. DINGELL,
Chairman, Committee on Energy and Commerce,
House of Representatives, Washington, DC.

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for H.R. 3626, the Antitrust and Communications Reform Act of 1994.

Enactment of H.R. 3626 would affect direct spending and receipts. Therefore, pay-as-you-go procedures would apply to the bill.

If you wish further details on this estimate, we will be pleased to provide them.

Sincerely,

JAMES L. BLUM
(For Robert D. Reischauer).

Enclosure.

CONGRESSIONAL BUDGET OFFICE COST ESTIMATE

1. Bill Number: H.R. 3626.

2. Bill Title: Antitrust and Communications Reform Act of 1994.

3. Bill Status: As ordered reported by the House Committee on Energy and Commerce on March 16, 1994.

4. Bill Purpose: Title I of H.R. 3626 would permit a Bell operating company to apply to the Department of Justice (DOJ) and the Federal Communications Commission (FCC) for authority to provide certain communications services and would establish criteria for an application's approval. The bill would permit the Bell companies, after notifying the DOJ and waiting one year, to manufacture and sell telecommunications equipment. It would permit both the DOJ and private individuals to bring civil actions against Bell companies violating provisions of the bill, and would make violators of certain provisions criminally liable.

Title II would permit a Bell company, through an affiliate, to manufacture and provide telecommunciations equipment, and would place certain requirements on these companies. The bill would require the FCC to promulgate regulations governing Bell companies that manufacture such equipment and to establish procedures for reviewing complaints regarding violations of regulations or laws by the Bell companies. Title II also would require the FCC to prepare an annual report on the cost of communications components manufactured outside the United States.

Title III would authorize appropriation of the necessary funds to implement the bill's provisions, and would permit the FCC to increase regulatory fees to offset that agency's cost of implementing the bill.

5. Estimated cost to the federal government:

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[By fiscal year, in millions of dollars]

	1995	1996	1997	1998	1999
Authorizations of Appropriations:					
Estimated Authorizations of Appropriations:					
Department of Justice	6	7	7	3	#
The Judiciary	4	4	4	2	2
Total Estimated Authorizations	10	11	11	5	5
Estimated Outlays	9	10	11	6	5
Revenues:					
Estimated Receipts from Fines	0	(1)	(1)	(1)	(1)
Direct Spending:					
Estimated Budget Authority	0	(1)	(1)	(1)	(1)
Estimated Outlays	0	(1)	(1)	(1)	(1)

[1] Less than $500,000

The costs of this bill fall within budget function 370.

Basis of estimate: CBO assumes that estimated amounts authorized would be appropriated for each fiscal year. Outlay estimates are based on historical outlay rates for the DOJ and the Judiciary.

FCC: H.R. 3626 would require the FCC to promulgate a variety of regulations, establish new procedures, and develop and maintain processes to respond to complaints about the Bell companies' business practices. Based on information from the FCC, CBO estimates that implementing the provisions of the bill would cost the commission approximately $27 million the first year, and from $18 million to $20 million each year over the next four years. Costs in the first year would be divided roughly equally between personnel costs associated with rulemakings and overhead costs associated with acquiring space, furnishings, hardware, and software necessary to carry out the required tasks. Costs in later years are primarily for personnel costs associated with continued enforcement and handling of complaints. The bill would permit the FCC to increase regulatory fees to recover these costs, resulting in no net increase in outlays.

DOJ: H.R. 3626 would require the DOJ to promulgate regulations and procedures, process applications, hold hearings, and litigate appeals. Based on information from the DOJ, CBO estimates that implementing the provisions of the bill would cost the department $6 million to $7 million in each of the first three years, and about $3 million in later years, primarily for personnel costs. We expect the initial costs to be higher because most rulemakings would occur in the first year, because the Bell companies would probably file most of their applications during that period, and finally because most complaints and challenges would be filed in the first few years before precedents exist.

The Judiciary: Based on information from the DOJ and the Administrative Office of the United States Courts, CBO estimates that costs to the federal judiciary would be about $4 million annually in the first three years, with costs declining to approximately $2 million annually in later years as the number of appeals decreased.

6. Pay-as-you-go considerations: Section 252 of the Balanced Budget and Emergency Deficit Control Act of 1985 sets up pay-as-you-go procedures for legislation affecting direct spending or receipts through 1998. H.R. 3626 would make criminally liable any-

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one who knowingly violates certain provisions of the bill. Fine collections would count as governmental receipts and would be deposited in the Crime Victims Fund. Deposits in the Crime Victims Fund would be available for spending, usually in the following fiscal year. CBO expects that any additional fine collections would be negligible.

In addition, the bill would authorize the FCC to increase fees to cover the costs of implementing this bill. The net effect on outlays would be negligible in each year.

[By fiscal year, in millions of dollars]

	1994	1995	1996	1997	1998
Change in outlays	0	0	0	0	0
Change in receipts	0	0	0	0	0

7. Estimated cost to State and local governments: Implementing the provisions of H.R. 3626 could result in increased costs to some states. While the bill would impose no requirements on states, they would have more developments to monitor and coordinate with the FCC, and would have the authority to permit Bell companies to provide certain types of long-distance services. CBO expects that any additional costs would not be significant.

8. Estimate comparison: None.

9. Previous CBO estimate: On June 24, 1994, CBO transmitted a cost estimate for H.R. 3626, the Antitrust and Communications Reform Act of 1994, as ordered reported by the House Committee on the Judiciary on March 16, 1994. In that cost estimate, CBO projected that the FCC would spend approximately $26 million in the first year, and $16 million to $18 million in later years. These costs are $1 million to $2 million a year less than we estimate for this version of the bill. We expect that the costs to the FCC of implementing the Energy and Commerce Committee's bill would be slightly higher because this bill would permit the Bell companies to enter more telecommunications fields, and thus would result in higher spending by the FCC for rulemaking and enforcement. The Judiciary Committee's bill, however, would not authorize the FCC to increase its fees to offset the costs of implementing the bill.

10. Estimate prepared by: John Webb, Susanne Mehlman, and Melissa Sampson.

11. Estimate approved by: Paul Van de Water for C.G. Nuckols, Assistant Director for Budget Analysis.

INFLATIONARY IMPACT STATEMENT

Pursuant to clause 2(l)(4) of rule XI of the Rules of the House of Representatives, the Committee makes the following statement with regard to the inflationary impact of the reported bill: The enactment of H.R. 3626 will have no inflationary impact.

SECTION-BY-SECTION ANALYSIS

SECTION 1. SHORT TITLE

Section 1 states the short title of the bill: the "Antitrust and Communications Reform Act of 1994."

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A. Title I—Supersession of the modification of final judgment

The provisions of title I of the bill supersede the line-of-business restrictions in the 1982 AT&T antitrust consent decree, also known as the Modification of Final Judgment, or MFJ.

SECTION 101. AUTHORIZATION

Section 101 of the bill establishes the procedure for a Bell operating company (BOC) to apply for and receive authorization to enter a competitive market to provide interexchange (long distance) telecommunications services or alarm monitoring services, notwithstanding the line-of-business restrictions in section II(B) of the MFJ. The definition of "Bell operating company" in the bill is based on the one in the MFJ, and includes each of the 20 local Bell operating companies, and also any successor or affiliate.

Under the procedure, a BOC seeking to lift, or obtain a waiver from, a restriction must apply to both the Attorney General and the Federal Communications Commission (FCC), each of who is to make a separate, independent determination regarding the application. The Attorney General would evaluate the application under the MFJ competitive entry test: the BOC must prove that there is no substantial possibility that it or its affiliates could use monopoly power to impede competition in the market it seeks to enter. The FCC would evaluate the application under a "public interest" test, considering a number of competitive, consumer, and regulatory factors. The BOC has the burden to prove both tests are satisfied by clear and convincing evidence.

In addition, the Attorney General and the FCC are to prescribe regulations for expedited consideration of applications by a BOC to provide interexchange telecommunications services that are "incidental" to other services the BOC may lawfully provide. The Committee intends that in prescribing these regulations, the Attorney General and the FCC follow the rulemaking procedures set forth in the Administrative Procedures Act (5 U.S.C. 553).

Subsection (a) sets forth the application requirements. A BOC is eligible to apply to offer intraregion interstate facilities-based telecommunications services immediately on the date of enactment, but must wait 18 months to apply to offer resale services; 60 months to offer out of region facilities-based services; and 66 months after the date of enactment to apply for entry to provide alarm monitoring services. A BOC is also eligible to apply immediately on the date of enactment for entry into any interexchange telecommunication market in which there exists no actual or potential competition. By "actual competition," the Committee means that at least two persons are providing the relevant service in some form in the market identified with particularity in accordance with paragraph (1). By potential competition, the Committee means that though there may not be actual competition, one or more persons have the ability to offer the service that are the subject of the application, and would be reasonably expected to do so if market conditions made it in their economic self-interest.

The Attorney General and the FCC are to notify each other upon receipt of an application, and jointly publish the application in the Federal Register within 10 days after they have both received it.

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The application procedure is expressly designed to focus on the particular market the BOC seeks to enter. This market-specific approach, traditional in antitrust analysis, recognizes that a BOC may be able to satisfy the tests set forth in the bill for some product, service, and geographical markets before others. Thus, under H.R. 3626, the BOC decides how broad or narrow to make its application—which specific activity (or activities) and which product, service, and geographic markets to include. The Attorney General and the FCC are to approve the granting of an application as to any activities and markets included in the application for which the pertinent test is satisfied. This approach thus provides maximum flexibility to the Bells to achieve entry as quickly and as completely as antitrust and public interest considerations will permit. At the same time, this market-specific focus recognizes that a single proposed Bell activity may constitute simultaneous entry into a number of product and service markets and submarkets, to each of which the test must be applied.

Subsection (b) governs the separate determinations by the Attorney General and the FCC regarding a BOC application. Interested persons have 45 days after an application is published in the Federal Register to submit written comments to the Attorney General or the FCC. After the time for comment has expired, but not later than 180 days after receiving the application, the Attorney General and the FCC are to issue their separate respective determinations on the record, after consulting with each other and after an opportunity for a hearing.

The Committee included the consultation requirement because the Committee believes that the special expertise of the Commission in the communications industry and communications law can assist the Attorney General in making a determination about the effect of granting the application on competition, and that the unique experience of the Justice Department on telecommunications antitrust matters can inform the Commission's public interest determination.

Any person who might be injured in its business or property as a result of the approval of the requested authorization has the right to participate as a party in both the Attorney General and FCC proceedings; this standing requirement is based on the traditional standing requirement under the antitrust laws. The use of this standing requirement is not intended to preclude any other interested person—including an organization—from appearing as amicus in the proceeding, whether or not the person submitted written comments during the 45-day comment period.

The BOC's requested authorization is granted only to the extent approved by both the Attorney General and the FCC. The Attorney General is to approve granting the requested authorization only to the extent that the Attorney General finds there is no substantial possibility that the BOC or its affiliates could use monopoly power to impede competition in the market it seeks to enter. This is the prophylactic test formulated by Judge Greene for the MFJ; it focuses not on whether the BOC's market entry would itself constitute an antitrust violation, but on whether the BOC possesses, by virtue of its monopoly power in the local telephone exchange,

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the incentive and ability to impede competition in a related market that depends on local telephone service.

The FCC is to approve granting the requested authorization only to the extent that the FCC finds granting it to be "consistent with the public interest, convenience, and necessity."

Subparagraph (D) further states that the Commission should grant the requested authorization only to the extent that the Commission finds granting the request would be consistent with the public interest, convenience, and necessity. Clause (ii) also makes clear that the Commission can approve part of a requested authorization, and deny part. The Committee intends this authority to be used to permit the Commission to take a refined view of the market for interexchange service and to make appropriate decisions based on that review. Subparagraph (F) reinforces this point by requiring the Attorney General and the Commission, when any part of a requested authorization is granted, to state with particularly the nature and scope of each activity and the market involved.

The public interest, convenience, and necessity standard in subparagraph (D)(ii) comes directly from the Communications Act of 1935, and grants the Commission considerable leeway in taking into account various interests. In assessing the impact on the public interest, subsection (b)(3)(E) directs the Commission to consider, at a minimum, a number of factors. Clauses (i) and (ii), for instance, direct the Commission to consider the probability that granting the requested authorization will secure reduced rates for consumers in the near future and over the long term. Clauses (iv), (v), and (vi) direct the Commission's attention to the potential for anticompetitive behavior if the application is granted. Clause (iii) will focus the Commission on the potential for expedited delivery of new services if the application is granted.

Not later than 10 days after issuing a determination, the Attorney General of the FCC, as the case may be, is to publish a brief description of the determination in the Federal Register.

Not later than 45 days after the description of a determination is published, either the BOC who applied, or any person threatened with loss or damage, may commence an action for judicial review in the United States Court of Appeals for the District of Columbia Circuit. If no such action is commenced, the determination of the Attorney General or the FCC, as the case may be, becomes final. If such an action is commenced, then, with respect to an application for which both the Attorney General and the FCC have approved granting authorization, the authorization is granted if and to the extent neither approval is vacated or reversed as a result of the judicial review.

The standard for judicial review is the one traditionally applicable to appeals of agency decisions under the Administrative Procedures Act. The Attorney General or the FCC, as the case may be, is to file a certified copy of the record on which its determination was based. All actions with respect to a particular BOC application are to be consolidated for judicial review. Interested persons may submit amicus briefs.

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SECTION 102. AUTHORIZATION AS PREREQUISITE

Section 102 establishes the general rule that a BOC is prohibited from providing interexchange telecommunications services or alarm monitoring services except to the extent authorized in accordance with section 101 of the bill.

Several exceptions to the general prohibition are set forth for various interexchange telecommunications services. First, there is an exception for any waiver or authorization granted under the MFJ pursuant to either of two tests: the competitive entry test found in section VIII(C) of the MFJ, or the public interest test for unopposed motions found in section VII of the MFJ. This exception also applies to any request for such a waiver or authorization which is pending on the date of enactment, if it is ultimately granted under section VIII(C) or section VII.

Second, there is an exception contained in subsection (b)(2), which states that a Bell operating company may engage in intrastate interexchange service within a particular state any time immediately after enactment of this Act if such service has been approved or authorized by that State after enactment of this Act, and public notice of the intent of the company has occurred at least 60 days before the offering of such services. During full Committee consideration the Committee adopted an amendment imposing additional obligations on the Bell operating companies before they can enter an intrastate interexchange market. According to this amendment, which was added to paragraph (2), a Bell operating company seeking to enter an intrastate market must be subject to Commission and State regulations that require it to charge itself a nondiscriminatory access charge in the same way it charges long distance companies seeking access from a local exchange carrier.

Third, there is an exception to permit a BOC to provide interexchange telecommunications services through resale of telecommunications services purchased from a person who is not an affiliate of the BOC.[28] This exception applies only in States that have granted "dialing parity" for intraexchange toll telecommunications.

Intraexchange toll telecommunications are calls that do not cross an exchange area boundary, yet travel far enough that an additional fee, or "toll," is charged for them in addition to the basic monthly phone fee. While the MFJ restricted the divested BOC monopolies from providing interexchange telecommunications services until the competitive entry test was satisfied, it deliberately left intraexchange toll calls in BOC hands. In most States, the local BOC held a monopoly in the intraexchange market at the time the MFJ took effect, although only a few States had explicit statutory prohibitions against intraexchange competition at that time.[29]

In recent years, a number of States have permitted other long distance carriers to compete with the local BOC in the intraexchange toll market, but customers in those States can opt

[28] The term "resale" refers to the practice, common in the telecommunications industry, of obtaining a telecommunications service and reselling it to service to "end users." Thus, for example, a company could provide an end user with long distance service without having any equipment or facilities necessary to physically perform the service. See, e.g., 47 C.F.R. Section 22.914, *Provision of Resale Capacity and Cellular Service to Subscribers.*

[29] See National Ass'n of Regulatory Util. Comm'rs, Intrastate Telecommunications Competition (1985), at v-viii.

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for a non-BOC carrier only by dialing an "access code" in addition to the phone number. To date, no State has permitted other long distance carriers to compete with the local BOC in the intraexchange toll market on the same terms—e.g., without the customer having to dial the additional access code.[30] Intraexchange toll competition on the same terms has come to be referred to as "dialing parity." Although "dialing parity" is not yet available in any State, some States have considered allowing competing long distance carriers to offer intraexchange toll service without the need for access codes; Michigan has recently approved such "1-plus" competition, but it is not required to be implemented until January 1, 1996.[31]

As with the exception for intrastate interexchange telecommunications services, the "dialing parity"/resale exception is subject to a 45-day waiting period after the BOC gives notice to the public and the Attorney General that State approval or authorization for "dialing parity" is final, during which time the Attorney General can commence a civil action to enjoin BOC entry if the Attorney General determines that the competitive entry test is not met.

Finally, there are several exceptions to permit the BOCs to provide designated interexchange telecommunications services deemed "incidental" to activities in which various BOCs are already lawfully engaged.

Subsection (c)(1) stipulates that nothing in subsection (a) shall prohibit a Bell operating company from providing cable service to subscribers.

Paragraph (2) addresses a related concern: as Bell operating companies enter the cable business outside of their service territory, some may have an interest in providing telephone service as well as cable service. This provision ensures that as Bell operating companies enter the cable business outside of their service territory no MFJ impediments will stand in their way of fully competing with the incumbent telephone company. This provision should trigger little concern, since the company is operating outside of its service territory, and hence it should have no ability to use its bottleneck facilities in a discriminatory fashion.

Paragraph (3), like paragraph (1), provides that nothing in subsection (a) shall prohibit a Bell operating company from providing commercial mobile services, which is defined in section 332(d)(1) of the Communications Act of 1934.

Subsection (c)(4) addresses a concern that the intersection of the interexchange prohibition in the consent decree, and the permission to enter the information services business as of July 24, 1991, has created a pile-up. For instance, Mr. Cullen from Bell Atlantic testified at a Subcommittee hearing on H.R. 3626 that it was very inefficient for Bell Atlantic to have one computer in each local exchange transport area to provide stock quotes or sports scores, for example, or voice-mail. Instead, a Bell operating company should be permitted to set up a central computer to engage in this sort of activity. Accordingly, paragraph (4) permits a Bell operating com-

[30] See National Ass'n of Regulatory Util. Comm'rs, Compilation of Utility Regulatory Policy 1992–1993, at table 164, 167.

[31] *MCI* v. *Michigan Bell Tel. Co.* (Michigan Public Service Comm'n, Feb. 24, 1994).

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pany to offer a service that permits this sort of interexchange transmitting or receiving of similar information.

Paragarph (5) clarifies that signalling integral to the internal operation of the telephone network, including Signalling System 7, shall not be deemed prohibited interexchange service.

SECTION 103. LIMITATIONS ON MANUFACTURING AND PROVIDING EQUIPMENT

Section 103 of the bill establishes the procedure for a BOC to receive authorization to manufacture or provide telecommunications equipment, or to manufacture customer premises equipment. (Under the MFJ, a BOC is already permitted to provide customer premises equipment, such as telephones and PBX's, if manufactured by others.)

This procedure differs from the one set forth in section 102 for BOC entry into the interexchange and alarm services markets, in that there is a different application and approval process. Under this section, the BOC submits a written notification to the Attorney General of the manufacturing activity in which it intends to engage; after a one-year waiting period, the BOC is free to engage in the activity unless the Attorney General commences a civil action to enjoin BOC entry. Like the procedure in section 102, however, the Attorney General's review is based on the MFJ competitive entry test.

Subsection (a) sets forth one-year prohibition, beginning on the date of enactment, against BOC manufacture or provision of telecommunications equipment or BOC manufacture of customer premises equipment, whether directly or through an affiliated enterprise.

Section 103 was amended by Representative Slattery, who offered an amendment that was adopted by voice vote by the Committee. This amendment clarified that the applicable waiting period, as defined in paragraph (3), is the one-year period beginning on the date such notification is received by the Attorney General, and that such notification may be filed immediately after enactment.

Subsection (b) sets forth the notification and review procedure under which a BOC may receive authorization effective after the one-year prohibition has expired. At any time after the date of enactment, a BOC may submit a notification to the Attorney General describing the manufacturing (or telecommunications equipment providing) activity in which it intends to engage and including such additional relevant documentary material and information as will assist the Attorney General in determining whether the competitive entry test is satisfied. The BOC must also supply any additional relevant information requested during the course of the Attorney General's review.

The BOC must wait for a year after submitting the written notification to the Attorney General before engaging in the activity described in the notification—regardless of when the notification is submitted. After this one-year waiting period has expired, the BOC is free to engage in the activity unless the Attorney General has commenced a civil action to enjoin BOC entry based on a determination that the competitive entry test is not satisfied. The Attor-

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ney General may shorten this waiting period by providing early notice to the BOC that she does not intend to commence such a civil action.

Subsection (c) provides an exception to the one-year prohibition and the notification and review procedure, for any waiver or authorization granted under the MFJ pursuant to either the section VIII(C) competitive entry test or the section VII public interest test, or for any request for such a waiver or authorization which is pending on the date of enactment, if it is ultimately granted under section VIII(C) or section VII.

SECTION 104. ANTICOMPETITIVE TYING ARRANGEMENTS

Section 104 of the bill establishes an additional antitrust-based safeguard that will continue to apply to a BOC for as long as the BOC possesses monopoly power in any market for exchange service. This safeguard is grounded in core antitrust principles and reflects concerns that were at the heart of the Sherman Act case that led to the MFJ. It prohibits a BOC from tying, directly or indirectly, the sale of any product or service to the provision of any telecommunications service, in any relevant market, if the effect of such tying may be to substantially lessen competition, or tend to create a monopoly, in any line of commerce. The phrase "substantially lessen competition, or tend to create a monopoly, in any line of commerce" is taken from section 7 of the Clayton Act. The Committee intends that the same types of competitive considerations used in section 7 also be used to evaluate the effects of tying, in order to distinguish anticompetitive tying from packaging that may have a benign or even procompetitive effect.

SECTION 105. ENFORCEMENT

Section 105 of the bill contains the bill's enforcement provisions, taken from existing provisions in the antitrust laws.

Subsection (a) establishes the duties and powers of the United States Attorneys to seek to enjoin violations, either to prevent or to restrain them. This provision is modeled on section 15 of the Clayton Act (15 U.S.C. 25) and section 4 of the Sherman Act (15 U.S.C. 4).

Subsection (b) provides criminal penalties for knowing violations of the Act. These penalties are to be the same as for knowing violations of section I of the Sherman Act.

Subsection (c) provides a private right of action for treble damages for persons who are injured in their business or property by reason of a violation. This provision is modeled on section 4 of the Clayton Act.

Subsection (d) provides a private right to seek injunctive relief, for persons who are threatened with loss or damage by a violation. This provision is modeled on section 16 of the Clayton Act.

Subsection (e) vests the courts of the United States with exclusive Jurisdiction to make determinations under the Act, other than the determinations made by the Attorney General and the FCC regarding Bell entry into a restricted line-of-business, as specified in section 101(b)(3). These Attorney General and FCC determinations are to be reviewed by the United States Court of Appeals for the District of Columbia Circuit.

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This subsection further provides that actions commenced to enforce a duty, claim, or right under the Act shall not be stayed pending a determination to be made by the Attorney General or FCC regarding an application for entry by a BOC. This provision does not, of course, refer to an action commenced in the D.C. Circuit regarding the same application for entry; such action must await the determination of the Attorney General or the FCC, as the case may be.

Subsection (f) provides that a subpoena requiring the attendance of a witness at a hearing or trial in connection with an action under the Act may be served at any place within the United States.

SECTION 106. DEFINITIONS

Section 106 of the bill contains the definitions to terms used in title I of the Act.

The definition of "affiliate," "carrier," "customer premises equipment," "electronic publishing," "exchange area," "exchange service," "information," "interexchange telecommunications," "telecommunications," "telecommunications equipment," "telecommunications service," and "transmission facilities" are drawn from definitions in the MFJ. The Committee intends that these terms have the same meaning as under the MFJ. The definitions of "customer premises equipment" and "telecommunications equipment" are clarified to reflect the D.C. District Court's opinion of December 3, 1987 and the D.C. Circuit's opinion of February 2, 1990.[32]

The definition of "Bell operating company" is also modeled on the definition in the MFJ. The definition is designed to subject to title I's requirements the same entities that are subject to the MFJ's line-of-business restrictions, in keeping with the bill's purpose of superseding those restrictions with a procedure for BOC entry into those lines of business in accordance with antitrust and public interest considerations.

The Committee rejected suggestions that the bill's entry requirements be written to cover all local exchange service providers including companies who are not parties to the MFJ and are not subject to its line-of-business restrictions. The Committee has carefully considered, and rejected, the notion that this focus on the Bell companies might somehow constitute an unconstitutional bill of attainder. Title I of the bill naturally focuses on the BOCs and their affiliates, because they uniquely are seeking release from restrictions imposed under the MFJ. And as Judge Greene has stated, the line-of-business restrictions themselves are not punitive in nature, but are "prophylactic measures"[33] designed "to avoid a recurrence of the type of discrimination and cross-subsidization that were the basis of the AT&T lawsuit."[34]

The definition of "exchange access" is likewise modeled on the MFJ definition, except that the definition in title I does not include the various requirements pertaining to exchange access which are included within the text of the MFJ's definition. Instead, the MFJ's

[32] *United States* v. *Western Elec. Co.*, 675 F. Supp. 655, 667 n.54 (D.D.C. 1987), aff'd, 894 F.2d 1387 (D.C. Cir. 1990).
[33] *United States* v. *Western Elec. Co.*, 592 F. Supp 846, 869 (D.D.C. 1984).
[34] MFJ Opinion, supra note 1, 552 F. Supp. at 142.

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exchange access requirements are included in the savings clause provisions in section 107(a) of the bill, and thereby left unaffected.

The definition of "manufacture" explicitly incorporates the meaning given such a term under the MFJ. Although this term is used in the text of the MFJ, it is not defined there. Instead, its definition is found in the case history, reflected in various judicial opinions interpreting the MFJ. The most recent opinion interpreting the term "manufacture" is United States v. Western Elec. Co., 894 F.2d 1387 (D.C. Cir. 1990). The Committee intends that this term incorporate all relevant case law interpreting it.

The definition of "alarm monitoring service" is derived from various descriptions of the industry, including the one found in the 1987 report by Peter Huber to the Justice Department, as well as on the general definition of "information service" found in section IV (J) of the Modification of Final Judgment. It is precisely written in order to distinguish alarm monitoring services from other similar services. The hallmark of an alarm monitoring service is a device at a fixed premises that receives signals from other devices in its immediate vicinity regarding a possible threat at such premises, and then transmits its own signal regarding that threat to a remote monitoring center. Thus, the definition does not include devices designed to detect threats to mobile objects such as motor vehicles. In addition, the definition specifically excludes devices attached to individuals for monitoring an ongoing medical condition. Finally, the definition only includes services in which the signal from the device at the fixed premises travels to the remote location via the transmission facilities of a Bell operating company or Bell affiliate.

The definition of "antitrust laws" includes the acts listed in the Clayton Act definition, as well as the part of the Federal Trade Commission Act that confers antitrust enforcement authority.

The definitions of "cable service" and "commercial mobile service" are taken from the Communications Act of 1934.

The definition of "Modification of Final Judgment" includes the order entered by Judge Greene on August 24, 1982, as well as any order entered in the case on or after that date.

The definition of "person" is taken from that found in section I of the Clayton Act (15 U.S.C. 12).

The definition of "State" includes not only the 50 States and the District of Columbia, but also all commonwealths, republics, territories, and possessions subject to United States sovereignty.

SECTION 107. RELATIONSHIP TO OTHER LAWS

Section 107 of the bill contains savings provisions for other applicable laws.

Subsection (a) provides that, although title I of the bill supersedes the MFJ's line-of-business restrictions, the other parts of the MFJ are not affected. For clarify those other parts are explicitly enumerated.

Subsection (b) provides that, except for the explicit amendment to the Antitrust Civil Process Act, nothing in this Act shall be construed to modify, impair, or supersede any of the antiturst laws.

Subsection (c) provides that nothing in this Act shall be construed to modify, impair, or supersede any other Federal law other

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than law expressly referred to in this Act. This subsection also contains a savings clause for State and local law, except "to the extent such law would impair or prevent the operation of this Act."

Subsection (d) provides that any penalty imposed, or relief granted, under title I shall be in addition to, and not in lieu of, any penalty or relief authorized by any other law. Thus, other substantive laws are preserved not only in their requirements, but also in their penalties and relief.

SECTION 108. AMENDMENT TO CLAYTON ACT

Section 108 makes a conforming change to the definition of "antitrust laws" in the Clayton Act by adding title I of the "Antitrust and Communications Reform Act of 1994."

B. Title II—Regulation of manufacturing, alarm services, and electronic publishing by Bell Operating Companies

Title II amends the Communication Act of 1934 to establish new regulations governing manufacturing, alarm service and electronic publishing by Bell operating companies.

SECTION 201. REGULATION OF MANUFACTURING BY BELL OPERATING COMPANIES

Section 201 of the bill adds a new section 229 to the Communications Act of 1934. This new section establishes the regulations governing entry by Bell operating companies into the business of manufacturing and providing telecommunications equipment.

Subsection (a) of this new section grants the authority for the Bell operating companies to engage in manufacturing telecommunications equipment and customer premises equipment. Subsection (b) requires a Bell operating company to set up a separate affiliate to engage in manufacturing. Subsection (c) specifies in more detail the requirements for the separate affiliate. Section (c)(1) prescribes regulations to ensure compliance with this Act.

Subsection (c)(2) requires the affiliate to maintain separate books, records, and accounts from its affiliated Bell operating company. This section also requires the Commission to prescribe regulations to ensure compliance with this Act.

Subsection (c)(3) prohibits a Bell operating company or any of its non-manufacturing affiliates from performing advertising, sales, installation or maintenance for the manufacturing affiliate, except after acquiring such equipment from their manufacturing affiliate. The Bell operating company may engage in institutional advertising not related to specific telecommunications equipment.

Subsection (c)(4)(A) contains a general rule that a Bell operating company shall conduct all of its manufacturing, and acquire all component parts from the United States. Subparagraph (B) provides that an affiliate may use components from outside the United States if such components are not available in the United States. The cost of components obtained from foreign sources shall not exceed 40%. The affiliate must certify to the Commission that it has made a good faith effort to obtain components from the United States, and, on an annual basis, that the affiliate complied with the requirements of this section. If the Commission determines after reviewing such certification that there was a violation, it may im-

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pose penalties or forfeitures. Any supplier that suffered because of a violation of this section may bring a complaint to the Commission. The Commission, in consultation with the Department of Commerce, shall conduct an annual report determining the cost of components manufactured outside the United States, and may adjust the 40% figure. Any intellectual property from outside the United States used by the affiliate shall not count towards the 40% figure.

Subsection (c)(5) provides that any debt incurred by any manufacturing affiliate may not be issued by its affiliate Bell operating company, nor may the affiliate incur debt in a manner that would permit a creditor, upon default, to have recourse to the assets of the BOC.

Subsection (c)(6) clarifies that a manufacturing affiliate is not required to remain separate from any other affiliate of the Bell operating company; however, if a non-manufacturing affiliate becomes affiliated with the manufacturing affiliate, then it will be required to comply with the requirements of this section.

Subsection (c)(7) requires the manufacturing affiliate to offer to any common carrier its equipment at a price and on terms and conditions that reflect no discrimination or preference in light of the price, terms and conditions that it offers such equipment to its affiliated Bell operating company.

Subsection (c)(8) imposes certain requirements on the sales practices of manufacturing affiliates. This paragraph prohibits an affiliate from discontinuing equipment for which there is reasonable demand, except the affiliate can demonstrate to the Commission that it is not making a profit. The Commission is required to prescribe regulations defining reasonable demand by considering whether: (i) continuing manufacturing is profitable; (ii) the equipment is obsolete; (iii) the components necessary are available; (iv) alternatives are available in the market; and (v) any other factors the Commission deems appropriate.

Subsection (c)(9) permits joint planning agreements; however, such agreements must not be a prerequisite prior for the introduction or deployment of new services or equipment.

Subsection (d) addresses information requirements of the manufacturing affiliate. Under this subsection, each Bell operating company must file with the Commission full and complete information regarding technical requirements for connection with and use of its telephone exchange service facilities. Each company must promptly report to the Commission any changes or planned changes.

Subsection (d) also prohibits Bell operating company from disclosing to its manufacturing affiliate any information required to be filed pursuant to the subsection, unless that information is first filed with the Commission. The Commission may prescribe additional regulations to ensure that competing equipment providers will have access to the technical information of a Bell operating company. Each Bell operating company is required to provide to common carriers providing telephone exchange service information on the planned deployment of telecommunications equipment.

Subsection (e) requires the Commission to prescribe regulations requiring that any Bell operating company with a manufacturing affiliate provide to other non-affiliated providers of equipment the

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same opportunity to sell equipment to it. This subsection also states that a Bell operating company is not allowed to subsidize its manufacturing affiliate with revenues from telephone exchange service or telephone toll service.

Subsection (f) permits a Bell operating company and its affiliate to engage in close collaboration with any manufacturer of customer premises or telecommunications equipment.

Subsection (g) requires the Commission to prescribe regulations with 1 year after the date of enactment that will ensure that telecommunications equipment is designed, developed, and fabricated to be accessible and usable by individuals with disabilities, unless the cost of making the equipment accessible and usable would result in an undue burden or adverse competitive impact. The regulations must take effect within 18 months after the date of enactment. The Commission also is required to prescribe regulations to ensure that advances in network services will be accessible to individuals whose access might otherwise be impeded by a disability of functional limitation, unless the result would be an undue burden or adverse competitive impact. Whenever the Commission determines that an undue burden or adverse competitive impact would result, it is required to prescribe regulations ensuring that the network service or equipment in question will be compatible with existing periphery devices commonly used by persons with disabilities.

Subsection (g)(4) defines "undue burden" to mean significant difficulty or expense. In making a determination of undue burden, the Commission is required to consider: (i) the cost; (ii) the impact on the operation of the facility involved; (iii) the financial resources of the affiliate; (iv) the financial resources of the Bell operating company; and (v) the type of operation or operations of the affiliate or Bell operating company.

In determining adverse competitive impact, the Commission is required to consider: (i) whether such activity would raise the cost of the equipment or network service in question beyond consumer demand; and (ii) whether such activity would put the affiliate at a competitive disadvantage. "Activity" includes the research, design, development, deployment, and fabrication activities necessary to comply with the requirements of Subsection (g), and the acquisition of the related materials and equipment components.

Subsection (h) requires a Bell operating company affiliate to establish a permanent program for the manufacturing research and development of products and applications for the enhancement of the public switched telephone network and to promote public access to advanced communications services. Such access must include access by public institutions and people with disabilities and functional limitations. The Commission is authorized to prescribe additional regulations to carry out this subsection.

Subsection (i) requires the Commission to prescribe regulations to implement this section within 270 days after the date of enactment of this section.

Subsection (j) authorizes the Commission to carry out this section and the regulations prescribed thereunder. Any common carrier that is injured by an act or a violation of a Bell operating company

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is permitted to initiate an action in an appropriate district court to recover damages sustained as a consequence of the act or omission.

Subsection (k) clarifies that this section does not impede any manufacturing affiliate from engaging directly or through an affiliate in any manufacturing activity in which it is authorized to engage or do at the date of enactment.

Subsection (l) ensures that nothing in this section will alter or affect any antitrust law.

Subsection (m) contains definitions of the terms "affiliate," "owns," "ownership," "Bell operating company," "customer premises equipment," "manufacturing," "manufacturing affiliate," "Modification of Final Judgment," "telecommunications," "telecommunications equipment," and "telecommunications services" as those terms are used in this section.

SECTION 202. REGULATION OF ENTRY INTO ALARM MONITORING SERVICES

Section 202 of the bill adds a new section 230 to the Communications Act of 1934. This new section requires the Commission to prescribe regulations to protect the public interest when a Bell operating company is permitted to provide alarm monitoring services.

Subsection (a) of this new section directs the Commission to prohibit Bell operating companies and their affiliates from recording the occurrence, or the contents of calls received by providers of alarm monitoring services for the purposes of marketing such services. The Commission is also required to establish procedures for the receipt and review of complaints concerning violations by such companies.

Subsection (b) establishes procedures for expedited consideration of complaints, requiring the Commission to make a final determination within 120 days after receipt of a complaint. If a violation is found, the Commission is required to issue a cease and desist order within 60 days.

Subsection (c) authorizes the Commission to punish violations of this section pursuant to its authority under title V of the Communication Act of 1934, explicitly including the authority to order an offending operating company to cease offering alarm monitoring services.

Subsection (d) requires the Commission to prescribe regulations within 180 days after the date of enactment with regard to recording the occurrence or contents of calls relating to alarm monitoring services, and to prescribe the general regulations required by subsection (a) prior to the date on which any Bell operating company is permitted to commence providing alarm monitoring services.

Subsection (e) contains definitions of the terms "Bell operating company," "affiliate," and "alarm monitoring services" as used in this section.

SECTION 203. REGULATIONS OF ELECTRONIC PUBLISHING

Section 203 of the new bill adds section 231 to the Communications Act of 1934. This new section sets forth new regulatory requirements for Bell operating company participation in electronic publishing. Subsection (a) of this new section states generally that a Bell operating company may only engage in electronic publishing

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through a separate affiliate or an electronic publishing joint venture. A Bell operating company may engage in electronic publishing when such publishing is not disseminated by means of such company's basic telephone service.

Subsection (b) requires the separate affiliate or electronic publishing joint venture to maintain books, records, and accounts separate from those of the Bell operating company. The affiliate is prohibited from incurring debt in a manner that would permit a creditor upon default to have recourse on the Bell operating company. After 1 year from the date of enactment, an affiliate shall not hire as corporate officers whose work will cover the service territory of the Bell operating company any sales or marketing personnel who worked at the Bell operating company the year before, with an exception for persons covered by a collective bargaining agreement. The affiliate is prohibited from providing telephone exchange service in any exchange area of the Bell operating company, and shall not use the name or trademarks of the existing Bell operating company except where used in common with the entity that owns or controls the Bell operating company.

Subsection (b)(8) requires the separate affiliate to have an annual review performed for five years. These reviews are to be provided to the Commission and made public.

Subsection (c) requires a Bell operating company to provide to its separate affiliate facilities, services, and information on the same terms and conditions as provided to non-affiliates. The Bell company is required to carry out transactions with a separate affiliate on terms and conditions similar to those with its non-affiliates, and in a manner that 1) is auditable in accordance with generally accepted accounting principles, 2) is pursuant to written contracts, 3) is nondiscriminatory, and 4) values assets in a way beneficial to telephone subscribers. The Bell operating company must comply fully with all applicable Commission and State cost allocation and other accounting rules.

Paragraphs (11), (12), and (15) of Subsection (c) reflect an amendment adopted by the Committee, that requires a Bell operating company to provide to all electronic publishers the same type of facilities and services as offered to any other electronic publisher, or the same terms and conditions and at a charge that is no higher on a per unit basis. Small newspaper publishers testified at a hearing before the Subcommittee on Telecommunications and Finance that because they do not purchase the same quantity as large publishers, they would be charged higher and perhaps discriminatory rates. This amendment was adopted to ensure that small publishers are charged the same rates as large publishers.

Subsection (d) prohibits the Bell operating company from providing to any electronic publisher, including its own separate affiliate or electronic publishing joint venture, any customer proprietary network information (CPNI) not available to electronic publisher generally. The Committee also adopted an amendment ensuring that such use of CPNI would be consistent with newly added section 232.

Subsection (e) requires full compliance with these safeguards and prohibits companies or affiliates from acting in concert to evade the law.

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Subsection (f) clarifies that this section does not preclude an affiliate from investing dividends derived from a Bell operating company in its separated affiliate.

Subsection (g) prohibits a Bell operating company from engaging in any promotion, marketing, sales or advertising with its affiliate.

Subsection (h) explicitly permits three types of joint activities between a Bell operating company and its electronic publishing affiliate, under specified conditions. Subsection (h)(1) permits a Bell operating company to provide inbound telemarketing or referral services related to the provision of electronic publishing if it provides the same service on the same terms and conditions and prices to its affiliates as to non-affiliates. The term "inbound telemarketing or referral services". is defined in Subsection (q)(9) to mean "the marketing of property, goods, or services by telephone to a customer or potential customer who initiated the call." Thus, a Bell operating company may refer a customer who seeks information on an electronic publishing service to the various providers of the service. No outbound telemarketing or similar activity, under which the call is initiated by the Bell operating company or its affiliate or someone on its behalf, is permitted.

Subsection (h)(2) permits a Bell operating company to engage in nondiscriminatory teaming or business arrangements. Subsection (h)(3) permits a Bell operating company to participate in electronic joint ventures, provided that the Bell operating company or affiliate has not more than a 50% (or for small publishers, 80%) direct or indirect equity interest in publishing the joint venture. The Committee intends that the term "small, local electronic publishers" cover publishers serving communities of fewer than 50,000 persons. Officers and employees of a Bell operating company are prohibited from collectively having more than 50% of the voting control of the venture. The Bell operating company is permitted to provide promotion, marketing, sales, or advertising personnel services for the joint venture.

Subsection (i) requires that any transactions between a Bell Operating company and any affiliate relating to electronic publishing be recorded in the books of each entity, be auditable, and be pursuant to written contracts or tariffs filed with the Commission or a State and made publicly available. Any transfer of assets related to electronic publishing from a Bell operating company to an affiliate shall be valued at greater of net book cost or fair market value, and any transfer of assets from an affiliate to the Bell operating company shall be valued at the lesser of net book cost or fair market value. A Bell operating company must provide to non-affiliates any information related to the provision of electronic publishing on the same terms and condition it offers to its affiliate.

Subsection (j) requires that any transactions between any affiliate of a Bell operating company and an electronic publishing affiliate shall be recorded in the books and records of each entity, be auditable, and be pursuant to written contracts and tariffs filed at the Commission and State and made publicly available. Any transfer of assets directly related to electronic publishing from a Bell operating company to any affiliate and then to a separated affiliate must be valued at greater of net book cost of fair market value. Any transfer of assets from a separate affiliate to any affiliate and

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then to a Bell operating company must be valued at the lesser of net book cost or fair market value. An affiliate is required provide any information related to the provision of electronic publishing to non-affiliates on the same terms and conditions it offers to the separate affiliate.

Subsection (k) prohibits a Bell operating company from having any officer, employees, property, or facilities in common with any electronic publishing entity. This subsection also prohibits a Bell operating company employee from serving as director of any electronic publishing entity; a Bell operating company from carrying out any marketing or sales, or any hiring of personnel, purchasing, production for any electronic publishing entity. A Bell operating company must provide to any non-affiliated, electronic publisher any facilities, services or information on the same terms and conditions it provides to its affiliate.

Subsection (l) gives a Bell operating company one year from the date of enactment to comply with the requirements of this section.

Subsection (m) provides that the provisions of this section cease to apply on June 3, 2000.

Subsection (n) entitles a person claiming a violation of this section to file a compliant with the Commission or bring a suit as provided in section 207 of the Communications Act of 1934. The Bell operating company, affiliate, or separate affiliate is liable for damages for any violation found, it is discovered first through the internal compliance review process and corrected within 90 days of such discovery. A person may apply to the Commission for an order requiring the Bell operating company to cease and desist, or apply to a district court of the United States to order the Bell operating company to comply.

Subsection (o) states that this section will not alter or affect any of the operation antitrust law.

Subsection (p) was an amendment adopted by the Committee. This subsection applies equal employment opportunity requirements, such as those now applicable to broadcast license, to Bell operating companies, affiliates, or joint ventures that engage in electronic publishing. The Committee intends that these obligations will only apply to the extent that an entity is providing electronic publishing. Thus, if the affiliate of a Bell operating company is engaged in any electronic publishing joint venture with another company, then that other company would only have to comply with these requirements to the extent that it participated in the joint venture.

Subsection (q) establishes several definitions applicable to this section. A number of points about these definitions merit attention. Paragraph (1) defines "affiliate" in terms of "owns or controls", and paragraph (4) defines "control" with reference to the regulations of the Securities and Exchange Commission. Together, these definitions provide a useful definition of the nature of the relationship between Bell operating companies and other entities for regulatory purposes. Paragraph (2) defines the term "basic telephone service" to mean any wireline telephone service or wireline telephone exchange facility provided by a Bell operating company in a telephone exchange area.

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The term "customer proprietary network information" (CPNI) refers to information which relates to the quantity, technical configuration, type, destination, and amount of volume of service subscribed by a customer that is available to the BOC by virtue of the company-customer relationship; and information contained in the bills received by a customer. Though the Commission, and the Communications Act, generally refer to such persons as "subscribers" and not "customers." In using CPNI as a term of art, the Committee does not abandon the general distinction between customers and subscribers.

Paragraph (5) defines "electronic publishing" to mean the dissemination, provision, publication, or sale to an unaffiliated entity or person, using a Bell operating company's basic telephone service, of any news; business and financial reports; editorials; columns; sports reporting; features; advertising; photos or images; archival or research material; legal notices or public records; or other like or similar information. This language reflects an amendment adopted by the Committee to expand the definition of "electronic publishing" so that it applies to all content based information services generally thought of as electronic publishing, but excluding games, provided by a Bell company using any part of its local exchange network, including advanced wireline digital services. The Committee is aware that it is acting at the dawn of the Information Age, when new technologies, services, and practices are announced almost every day. In recognition of the rich and varied possibilities that lie ahead, the Committee included clause (xii) to cover information that is "similar or like" the kinds of information that is enumerated here. This provision is intended to cover future circumstances which could not have been foreseen but which are similar to, or analogous to, the kind of information described here.

Paragraph (8) defines "inbound telemarketing" as the marketing of property, goods, or services by telephone to a customer or potential customer who initiated the call. "Customer" refers to a person who purchases or would purchase property, goods, or services other than basic telephone service, because a person who purchases basic telephone service is a subscriber.

Paragraphs (9), (10), and (11) define the terms "own," "separated affiliate," and "Bell operating company," respectively.

SECTION 204. PRIVACY OF CUSTOMER INFORMATION

Section 204 of the bill adds a new section 232 to the Communications Act of 1934. Section 232 establishes privacy protections with regard to customer proprietary network information. Section 232(a) imposes on carriers a statutory duty to provide subscriber list information on a timely and unbundled basis, under nondiscriminatory and reasonable rates, terms and conditions, to any person upon request. Subscriber list information is information about a subscriber's name, telephone number, address, or advertising classification that the carrier possesses, including information for recently connected customers. This provision is intended to ensure that persons who utilize subscriber information, including publishers of telephone directories unaffiliated with local exchange carriers, are able to purchase published or soon-to-be published subscriber listings and updates from carriers on reasonable terms and

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conditions. Reasonable terms and conditions include, but are not limited to, the ability to purchase listings and updates on a periodic basis at a reasonable price based on incremental cost, by zip code or area code, and in electronic format.

Local exchange carriers have total control over subscriber list information. Over the past decade, some local exchange carriers have charged excessive and discriminatory prices for subscriber listings. Some have imposed unreasonable conditions such as requiring that the listings be purchased only on a statewide basis or refusing outright to sell listings or updates.

Section 232 states that CPNI may be disclosed if disclosure is required by law, or the customer approves of release of the information to a carrier or to another service provider designated by the customer. All carriers are prohibited from using the information for any service other than the service from which it is derived or if it is necessary in the provision of customer premise equipment. These new privacy rules will apply to all telecommunications carriers—local exchange carriers, interexchange carriers and any other person who offers services to the public generally (or to some segment of the public). The Committee is aware of no reason to distinguish among classes of service providers in imposing obligations to protect the privacy of customer information.

The protections contained in section 232 (b) and (c) represent a careful balance of competing, often conflicting, considerations. First, of course, is the need for consumers to be sure that information about them that carriers can collect is not misused; this consideration argues for strict controls on carriers' use of all customer data. Consumers, on the other hand, rightfully expect that when they are dealing with their carrier concerning their telecommunications services, the carrier's employee will have available all relevant information about their service. This consideration argues for looser restrictions on internal use of customer information. The balance is reflected in subsections 232 (b) and (c), which impose strict controls, with limited exceptions for the carrier's use of customer information in connection with providing its own services to that customer. For example, a carrier is not required to obtain the approval of customers to use customer information in the provision of common carrier communications services, or services necessary to, or used in, the provision of such services, such as the publishing of directories by a carrier or affiliate.

Section 232(b)(1)(B) prohibits the use of CPNI "in the identification or solicitation of potential customers for any service other than the service from which such information is derived." The Committee intends that "service" be defined narrowly, e.g., only those services integral to the service being provided. Thus, in no event should this section be construed to permit a carrier to use CPNI to market long distance services to their local customers or local telephone exchange services to their long distance customers.

With respect to section 232(b)(2), the Committee recognizes that carriers are likely to incur some costs in complying with the customer-requested disclosures contemplated by this section. This section does not preclude a carrier from being reimbursed by the customers or third parties for the costs associated with making such disclosures. In addition, the disclosures described in this section in-

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clude only the information provided to the carrier by the customer. A carrier is not required to disclose any of its work product based on such information.

With respect to section 232(b)(3), the term "compiled information" should not be construed as a mechanism whereby carriers are forced to disclose sensitive information to their competitors. For example, a carrier operating in a competitive market would not be required by this section to disclose information it has amassed at real expense over years of telemarketing, e.g., MCI would not be required by this section to disclose the information it has gathered as part of its "Friends and Family" program to competitors such as Sprint, AT&T and the various resellers. Indeed, the key component of "compiled information" is that it would have to be able to be disclosed to a person, which means that only those persons who have the approval of the customer, or customers, could obtain access. Thus, the Committee intends that the use of "compiled information" would be rather limited or restricted.

Section 232(c) states that this section shall not prevent use of CPNI to combat toll fraud or to bill and collect for services request by the customers.

Section 232(d) allows the Commission to exempt from its requirements of subsection (b) carriers with fewer than 500,000 access lines, if the Commission determines that exemption is in the public interest or if compliance would impose an undue burden.

Section 232(e) directs the Commission to prescribe regulations implementing this section within 1 year after the date of enactment of this section.

Section 232(f) defines "customer proprietary network information", "subscriber list information", and "aggregate information." Subsection (f)(1) defines "customer proprietary network information." The term "customer" is intended to refer to the carrier's subscribers.

The term "subscriber" list information is not intended to include any information identifying subscribers that is prepared or distributed within a company or between affiliates or that is provided to any person in a non-public manner.

Subsection 204(b) directs the Commission to review the impact of converging communications technologies on consumer privacy. This subsection requires the Commission to commence a proceeding with 1 year after the date of enactment to examine what impact converging technologies and globalization of communications networks has on the privacy rights of consumers an possible remedies to protect them. This subsection also directs changes in the Commission's regulations to ensure that consumer privacy rights are considered in the introduction of new telecommunications service; and directs the Commission to correct any defects in its privacy regulations that are identified pursuant to this section. The Commission is also directed to make any recommendations to Congress for any legislative changes required to correct such defects within 18 months after the date of enactment of this Act.

This subsection defines three fundamental principles to protect all consumers. Those principles are: (A) the right for consumers to know that information is being collect about them; (B) the right for consumers to have proper notice that such information is being

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used for other purposes; and (C) the right for consumers to stop the reuse or sale of that information.

C. Title III—Federal Communications Commission resources

SECTION 301. AUTHORIZATION OF APPROPRIATIONS

Section 301(a) authorizes appropriations for the Commission such sums as necessary to carry out this Act.

Section 301(b) defines the effect on fees collectable under section 9 of the Communications Act of 1934.

This title was an amendment adopted by the Committee, and reflects the commitment of the Committee to the principle that a federal agency should be funded at a level that permits that agency the ability to fulfill the mission given by Congress.

CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with clause 3 of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italics, existing law in which no change is proposed is shown in roman):

CLAYTON ACT

AN ACT To supplement existing laws against unlawful restraints and monopolies, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That (a) "antitrust laws," as used herein, includes the Act entitled "An Act to protect trade and commerce against unlawful restraints and monopolies," approved July second, eighteen hundred and ninety; sections seventy-three to seventy-seven, inclusive, of an Act entitled "An Act to reduce taxation, to provide revenue for the Government, and for other purposes," of August twenty-seventh, eighteen hundred and ninety-four; an Act entitled "An Act to amend sections seventy-three and seventy-six of the Act of August twenty-seventh, eighteen hundred and ninety-four, entitled 'An Act to reduce taxation, to provide revenue for the Government, and for other purposes,'" approved February twelfth, nineteen hundred and thirteen; *title I of the Antitrust and Communications Reform Act of 1994;* and also this Act.

"Commerce," as used herein, means trade or commerce among the several States and with foreign nations, or between the District of Columbia or any Territory of the United States and any State, Territory, or foreign nation, or between any insular possessions or other places under the jurisdiction of the United States, or between any such possession or place and any State or Territory of the United States or the District of Columbia or any foreign nation, or within the District of Columbia or any Territory or any insular possession or other place under the jurisdiction of the United States: *Provided,* That nothing in this Act contained shall apply to the Philippine Islands.

The word "person" or "persons" wherever used in this Act shall be deemed to include corporations and associations existing under

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or authorized by the laws of either the United States, the laws of any of the Territories, the laws of any State, or the laws of any foreign country.

* * * * * * *

COMMUNICATIONS ACT OF 1934

TITLE I—GENERAL PROVISIONS

* * * * * * *

DEFINITIONS

SEC. 3. For the purposes of this Act, unless the context otherwise requires—

(a) * * *

* * * * * * *

(gg) "Customer proprietary network information" means—

(1) information which relates to the quantity, technical configuration, type, destination, and amount of use of telephone exchange service or telephone toll service subscribed to by any customer of a carrier, and is made available to the carrier by the customer solely by virtue of the carrier-customer relationship;

(2) information contained in the bills pertaining to telephone exchange service or telephone toll service received by a customer of a carrier; and

(3) such other information concerning the customer as is available to the local exchange carrier by virtue of the customer's use of the carrier's telephone exchange service or interexchange telephone services, and 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.

(hh) "Subscriber list information" means any information—

(1) identifying the names of subscribers of a carrier and such subscribers' telephone numbers, addresses, or advertising classifications, or any combination of such names, numbers, addresses, or classifications; and

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

* * * * * * *

TITLE II—COMMON CARRIERS

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SEC. 229. REGULATION OF MANUFACTURING BY BELL OPERATING COMPANIES.

(a) GENERAL AUTHORITY.—Subject to the requirements of this section and the regulations prescribed thereunder, but notwithstanding any restriction or obligation imposed before the date of enactment of this section pursuant to the Modification of Final Judgment on the lines of business in which a Bell operating company may engage, a Bell operating company, through an affiliate of that com-

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pany, may manufacture and provide telecommunications equipment and manufacture customer premises equipment.

(b) SEPARATE MANUFACTURING AFFILIATE.—Any manufacturing or provision authorized under subsection (a) shall be conducted only through an affiliate that is separate from any Bell operating company.

(c) COMMISSION REGULATION OF MANUFACTURING AFFILIATE.—

(1) REGULATIONS REQUIRED.—The Commission shall prescribe regulations to ensure that Bell operating companies and their affiliates comply with the requirements of this section.

(2) BOOKS, RECORDS, ACCOUNTS.—A manufacturing affiliate required by subsection (b) shall—

(A) maintain books, records, and accounts that are separate from the books, records, and accounts of its affiliated Bell operating company and that identify all financial transactions between the manufacturing affiliate and its affiliated Bell operating company, and

(B) even if such manufacturing affiliate is not a publicly held corporation, prepare financial statements which are in compliance with financial reporting requirements under the Federal securities laws for publicly held corporations, file such statements with the Commission, and make such statements available for public inspection.

(3) IN-KIND BENEFITS TO AFFILIATE.—Consistent with the provisions of this section, neither a Bell operating company nor any of its nonmanufacturing affiliates shall perform sales, advertising, installation, production, or maintenance operations for a manufacturing affiliate, except that—

(A) a Bell operating company and its nonmanufacturing affiliates may sell, advertise, install, and maintain telecommunications equipment and customer premises equipment after acquiring such equipment from their manufacturing affiliate; and

(B) institutional advertising, of a type not related to specific telecommunications equipment, carried out by the Bell operating company or its affiliates, shall be permitted.

(4) DOMESTIC MANUFACTURING REQUIRED.—

(A) GENERAL RULE.—A manufacturing affiliate required by subsection (b) 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) EXCEPTION.—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, the cost

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of the components manufactured outside the United States contained in all such equipment does not exceed 40 percent of the sales revenue derived in any calendar year from such equipment.

(C) CERTIFICATION REQUIRED.—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 such affiliate complied with the requirements of subparagraph (B)(ii), as adjusted in accordance with subparagraph (G).

(D) REMEDIES FOR FAILURES.—(i) If the Commission determines, after reviewing the certification required in subparagraph (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.

(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) ANNUAL REPORT.—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.

(F) USE OF INTELLECTUAL PROPERTY IN MANUFACTURE.—Notwithstanding subparagraph (A), 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. A component manufactured using such intellectual property shall not be treated for purposes of subparagraph (B)(ii) as a component manufactured outside the United States solely on the basis of the use of such intellectual property.

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(G) RESTRICTIONS ON COMMISSION AUTHORITY.—The Commission may not waive or alter the requirements of this paragraph, 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, pursuant to subparagraph (E).

(5) INSULATION OF RATE PAYERS FROM MANUFACTURING AFFILIATE DEBT.—Any debt incurred by any such manufacturing affiliate may not be issued by its affiliated Bell operating company 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.

(6) RELATION TO OTHER AFFILIATES.—A manufacturing affiliate required by subsection (b) shall not be required to operate separately from the other affiliates of its affiliated Bell operating company, but 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 (except for purposes of subsection (c)(3)) and shall comply with the requirements of this section.

(7) AVAILABILITY OF EQUIPMENT TO OTHER CARRIERS.—A manufacturing affiliate required by subsection (b) shall make available, without discrimination or preference as to price, delivery, terms, or conditions, to any common carrier any telecommunications equipment that is used in the provision of telephone exchange service and that is manufactured by such affiliate only if such purchasing carrier—

(A) does not manufacture telecommunications equipment, and does not have an affiliated telecommunications equipment manufacturing entity; or

(B) agrees to make available, to the Bell operating company affiliated with such manufacturing affiliate or any common carrier affiliate of such Bell operating company, any telecommunications equipment that is used in the provision of telephone exchange service and that is manufactured by such purchasing carrier or by any entity or organization with which such purchasing carrier is affiliated.

(8) SALES PRACTICES OF MANUFACTURING AFFILIATES.—

(A) PROHIBITION OF DISCONTINUATION OF EQUIPMENT FOR WHICH THERE IS REASONABLE DEMAND.—A manufacturing affiliate required by subsection (b) shall not discontinue or restrict sales to a common carrier of any telecommunications equipment that is used in the provision of telephone exchange service and 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 by regulation, on the sale of such equipment.

(B) DETERMINATIONS OF REASONABLE DEMAND.—Within 60 days after receipt of an application under subparagraph

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(A), the Commission shall reach a determination as to the existence of reasonable demand for purposes of such subparagraph. In making such determination the Commission shall consider—

(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.

(9) JOINT PLANNING OBLIGATIONS.—Each Bell operating company shall, consistent with the antitrust laws, engage in joint network planning and design with other contiguous common carriers providing telephone exchange service, but agreement with such other carriers shall not be required as a prerequisite for the introduction or deployment of services pursuant to such joint network planning and design.

(d) INFORMATION REQUIREMENTS.—

(1) FILING OF INFORMATION ON PROTOCOLS AND TECHNICAL REQUIREMENTS.—Each Bell operating company shall, in accordance with regulations prescribed by the Commission, 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. Each such company shall 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) FILING AS PREREQUISITE TO DISCLOSURE TO AFFILIATE.—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 filed promptly, as required by regulation by the Commission.

(3) ACCESS BY COMPETITORS TO INFORMATION.—The Commission may prescribe such additional regulations under this subsection as may be necessary to ensure that manufacturers in competition with a Bell operating company's manufacturing affiliate have access to the information with respect to the protocols and technical requirements for connection with and use of its telephone exchange service facilities required for such competition that such company makes available to its manufacturing affiliate.

(4) PLANNING INFORMATION.—Each Bell operating company shall provide, to contiguous common carriers providing telephone exchange service, timely information on the planned deployment of telecommunications equipment.

(e) ADDITIONAL COMPETITION REQUIREMENTS.—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—

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(1) provide, to other manufacturers of telecommunications equipment and customer premises equipment that is functionally equivalent to equipment manufactured by the Bell operating company manufacturing affiliate, opportunities to sell such equipment to such Bell operating company which are comparable to the opportunities which such Company provides to its affiliates; and

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

(f) COLLABORATION PERMITTED.—Nothing in this section (other than subsection (l)) shall be construed to limit or restrict the ability of a Bell operating company and its affiliates to engage in close collaboration with any manufacturer of customer premises equipment or telecommunications equipment during the design and development of hardware, software, or combinations thereof related to such equipment.

(g) ACCESSIBILITY REQUIREMENTS.—

(1) MANUFACTURING.—The Commission shall, within 1 year after the date of enactment of this section, prescribe such regulations as are necessary to ensure that telecommunications equipment and customer premises equipment designed, developed, and fabricated pursuant to the authority granted in this section shall be accessible and usable by individuals with disabilities, including individuals with functional limitations of hearing, vision, movement, manipulation, speech, and interpretation of information, unless the costs of making the equipment accessible and usable would result in an undue burden or an adverse competitive impact.

(2) NETWORK SERVICES.—The Commission shall, within 1 year after the date of enactment of this section, prescribe such regulations as are necessary to ensure that advances in network services deployed by a Bell operating company shall be accessible and usable by individuals whose access might otherwise be impeded by a disability or functional limitation, unless the costs of making the services accessible and usable would result in an undue burden or adverse competitive impact. Such regulations 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.

(3) COMPATIBILITY.—The regulations prescribed under paragraphs (1) and (2) shall require that whenever an undue burden or adverse competitive impact would result from the manufacturing or network services requirements in such paragraphs, the manufacturing affiliate that designs, develops, or fabricates the equipment or the Bell operating company that deploys the network service shall ensure that the equipment or network service in question 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 subsection:

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(A) UNDUE BURDEN.—The term "undue burden" means significant difficulty or expense. In determining whether an activity would result in an undue burden, the following factors shall be considered:

(i) the nature and cost of the activity;

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

(iii) the financial resources of the manufacturing affiliate in the case of manufacturing of equipment, for 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;

(iv) the financial resources of the Bell operating company in the case of network services, or in the case of manufacturing of equipment if applicable regulatory rules permit cross-subsidization of equipment manufacturing with revenues from regulated telecommunications services and the manufacturing activities are not conducted in a separate subsidiary; and

(v) the type of operation or operations of the manufacturing affiliate or Bell operating company as applicable.

(B) ADVERSE COMPETITIVE IMPACT.—In determining whether the activity would result in an 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 general population to make the equipment or network service profitable; and

(ii) whether such activity would, with respect to the equipment or network service in question, put the manufacturing affiliate or Bell operating company, as applicable, at a competitive disadvantage in comparison with one or more providers of one or more competing products and services. This factor may only be considered so long as competing manufacturers and network service providers 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) EFFECTIVE DATE.—The regulations required by this subsection shall become effective 18 months after the date of enactment of this section.

(h) PUBLIC NETWORK ENHANCEMENT.—A Bell operating company manufacturing affiliate shall, as a part of its overall research and

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development effort, establish a permanent program for manufacturing research and development of products and applications for the enhancement of the public switched telephone network and to promote public access to advanced telecommunications services. Such program shall focus its work substantially on developing technological advancements in public telephone network applications, telecommunication equipment and products, and access solutions to new services and technology, including access by (1) public institutions, including educational and health care institutions; and (2) people with disabilities and functional limitations. Notwithstanding the limitations in subsection (a), a Bell operating company and its affiliates may engage in such a program in conjunction with a Bell operating company not so affiliated or any of its affiliates. The existence or establishment of such a program that is jointly provided by manufacturing affiliates of Bell operating companies shall satisfy the requirements of this section as it pertains to all such affiliates of a Bell operating company.

(i) ADDITIONAL RULES AUTHORIZED.—The Commission may prescribe such additional rules and regulations as the Commission determines necessary to carry out the provisions of this section. The Commission shall prescribe regulations to implement this section within 270 days after the date of enactment of this section.

(j) ADMINISTRATION AND ENFORCEMENT AUTHORITY.—

(1) COMMISSION REGULATORY 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 or any affiliate thereof as the Commission has in administering and enforcing the provisions of this title with respect to any common carrier subject to this Act.

(2) PRIVATE ACTIONS.—Any common carrier that provides telephone exchange service and that is injured by an act or omission of a Bell operating company or its manufacturing affiliate which violates the requirements of paragraph (7) or (8) 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 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.

(k) EXISTING 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.

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

(m) 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

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by, or is under common ownership with a Bell operating company. The terms "owns", "owned", and "ownership" mean an equity interest of more than 10 percent.

(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.

(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.

(5) The term "manufacturing affiliate" means an affiliate of a Bell operating company established in accordance with subsection (b) of this section.

(6) 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), and includes any judgment or order with respect to such action entered on or after August 24, 1982, and before the date of enactment of this section.

(7) 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.

(8) The term "telecommunications equipment" means equipment, other than customer premises equipment, used by a carrier to provide telecommunications services, and includes software integral to such equipment (including upgrades).

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

SEC. 230. REGULATION OF ENTRY INTO ALARM MONITORING SERVICES.

(a) REGULATIONS REQUIRED.—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 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 regula-

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tions, 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.

(b) EXPEDITED CONSIDERATION OF COMPLAINTS.—The procedures established under subsection (a)(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.

(c) REMEDIES.—The Commission may use any remedy available under title V of this Act to terminate and punish violations described in subsection (a)(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.

(d) RULEMAKING SCHEDULE.—The Commission shall prescribe the regulations required by subsection (a)(2) within 180 days after the date of enactment of this section and shall prescribe the regulations required by subsection (a)(1) and (a)(3) prior to the date on which any Bell operating company may commence providing alarm monitoring services pursuant to title I of the Antitrust and Communication Reform Act of 1994.

(e) DEFINITIONS.—

(1) IN GENERAL.—As used in this section, the terms "Bell operating company", "affiliate", and "alarm monitoring services" have the meanings provided in section 106 of the Antitrust and Communication Reform Act of 1994.

(2) AFFILIATE.—The term "affiliate" means a person that (directly or indirectly) owns or controls, is owned or controlled by, or is under common ownership or control with, another person. For purposes of this paragraph, to own refers to owning an equity interest (or the equivalent thereof) of more than 10 percent.

SEC. 231. REGULATION OF ELECTRONIC PUBLISHING.

(a) IN GENERAL.—

(1) PROHIBITION.—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) PERMITTED ACTIVITIES OF SEPARATED AFFILIATE.—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) RULE OF CONSTRUCTION.—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 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.

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(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 that 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 an 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 required by regulations of the Securities and Exchange;

(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 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—

(A) which is 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) the results of which are maintained by the separated affiliate for a period of 5 years subject to review by any lawful authority;

(9) within 90 days of receiving a review described in paragraph (8), file a report of any exceptions and corrective action with the Commission and allow any person to inspect and copy such report subject to reasonable safeguards to protect any pro-

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prietary information contained in such report from being used for purposes other than to enforce or pursue remedies under this section.

(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 separated 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;

(6) value any assets that are transferred to the Bell operating company 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—

(A) which is 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

(B) the results of which are 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 any exceptions and 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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(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 smallest extent that is technically feasible and economically reasonable to provide;

(12) provide network access and interconnections for basic telephone service to electronic publishers at any technically feasible and economically reasonable point within the Bell operating company's network and at just and reasonable rates that are tariffed (so long as rates for such services are subject to regulation) and that are not higher on a per-unit basis than those charged for such services to any other electronic publisher or any separated affiliate engaged in electronic publishing;

(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 if such information is within any one or more of the following categories:

(A) such information is necessary for the transmission or routing of information by an interconnected electronic publisher;

(B) such information is necessary to ensure the interoperability of an electronic publisher's and the Bell operating company's networks; or

(C) such information concerns changes in basic telephone service network design and technical standards which may 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, except 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;

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(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 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.—Consistent with section 232 of this Act, 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 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 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.—No Bell operating company or affiliate thereof (including a separated affiliate) shall act in concert with another Bell operating company or any other 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.—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 for or in conjunction with an affiliate that is related to the provision of electronic publishing.

(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 af-

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filiate or with any other electronic publisher provided that the Bell operating company only provides facilities, services, and basic telephone service information as authorized by this section and provided that the Bell operating company does not 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 electronic 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) RECORDS OF TRANSACTIONS.—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) VALUATION OF TRANSFERS.—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 operating company shall be valued at the lesser of net book cost or fair market value.

(3) PROHIBITION OF EVASIONS.—A Bell operating company shall not provide directly or indirectly to a separated affiliate any facilities, services, or basic telephone service information related to the provision of electronic publishing which are 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.—

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(1) RECORDS OF TRANSACTIONS.—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

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

(2) VALUATION OF TRANSFERS.—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) PROHIBITION OF EVASIONS.—An affiliate shall not provide directly or indirectly to a separated affiliate any facilities, services, or basic telephone service information related to the provision of electronic publishing which are not made available to unaffiliated companies on the same terms and conditions.

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

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

(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 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

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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) DAMAGES.—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 (47 U.S.C. 207), and such Bell operating company, affiliate, or separated affiliate shall be liable as provided in section 206 of this Act (47 U.S.C. 207); except 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.

(2) CEASE AND DESIST ORDERS.—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) EQUAL EMPLOYMENT OPPORTUNITIES.—Any Bell operating company, and any affiliate or joint venture or other business partner of a Bell operating company, that is engaged in the provision of electronic publishing shall be subject to the provisions of section 634 of this Act, except that the Commission shall prescribe by regulation appropriate job classifications in lieu of the job classifications in subsection (d)(3)(A) of such section.

(q) 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 any wireline telephone exchange service or wireline telephone exchange facility provided by a Bell operating company in a telephone exchange area, except—

(A) a competitive wireline telephone exchange service provided in a telephone exchange area where another entity provides a wireline telephone exchange service that was provided on January 1, 1984, and

(B) a commercial mobile 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

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a result of its engaging in the provision of basic telephone service.

(4) The term "control" has the meaning that it has in 17 C.F.R. 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)(A) The term "electronic publishing" means the dissemination, provision, publication, or sale to an unaffiliated entity or person, using a Bell operating company's basic telephone service of—

(i) news,

(ii) business, financial, legal, consumer, or credit material;

(iii) editorials;

(iv) columns;

(v) sports reporting;

(vi) features;

(vii) 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; or

(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 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.

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(xi) The provision of information necessary for the management, control, or operation 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 the Communications Act of 1934.

(6) 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.

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

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

(9) 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.

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

(11) 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.

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SEC. 232. PRIVACY OF CUSTOMER PROPRIETARY NETWORK INFORMATION.

(a) DUTY TO PROVIDE SUBSCRIBER LIST INFORMATION.—Notwithstanding subsections (b), (c), and (d), a 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 request.

(b) PRIVACY REQUIREMENTS FOR COMMON CARRIERS.—A carrier—

(1) shall not, except as required by law or with the approval of the customer to which the information relates—

(A) use customer proprietary network information in the provision of any service except to the extent necessary (i) in the provision of common carrier communications services, (ii) in the provision of a service necessary to or used in the provision of common carrier communications services, or (iii) to continue to provide a particular information service that the carrier provided as of March 15, 1994 to persons who were customers of such service on that date;

(B) use customer proprietary network information in the identification or solicitation of potential customers for any service other than the service from which such information is derived;

(C) use customer proprietary network information in the provision of customer premises equipment; or

(D) disclose customer proprietary network information to any person except to the extent necessary to permit such person to provide services or products that are used in and necessary to the provision by such carrier of the services described in subparagraph (A);

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

(3) shall, whenever such carrier provides any aggregate information, or whenever such carrier provides any compiled information derived from customer proprietary network information or any data base to any person to whom disclosure is permitted by paragraph (1), notify the Commission of the availability of such aggregate information or compiled information and shall—

(A) provide such aggregate information on reasonable terms and conditions to any other service or equipment provider upon reasonable request therefor; and

(B) provide such compiled information on reasonable terms and conditions to any other person to whom disclosure is permitted by paragraph (1) upon reasonable request therefor; and

(4) except for disclosures permitted by paragraph (1)(D), shall not unreasonably discriminate between affiliated and unaffiliated service or equipment providers in providing access to, or in the use and disclosure of, individual and aggregate information or compiled information made available consistent with this subsection.

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

(1) to render, bill, and collect for the services identified in subparagraph (A);

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

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

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

(5) to provide any inbound telemarketing, referral, or administrative services to the customer for the duration of the call if such call was initiated by the customer and the customer approves of the use of such information to provide such service.

(d) EXEMPTION PERMITTED.—The Commission may, by rule, exempt from the requirements of subsection (b) carriers that have, together with any affiliated carriers, in the aggregate nationwide, fewer than 500,000 access lines installed if the Commission determines that such exemption is in the public interest or if compliance with the requirements would impose an undue economic burden on the carrier.

(e) REGULATIONS.—The Commission shall prescribe regulations to carry out this section within 1 year after the date of its enactment.

(f) DEFINITION OF AGGREGATE INFORMATION.—For purposes of this section, the term "aggregate information" means collective data that relates to a group or category of services or customers, from which individual customer identities and characteristics have been removed.

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ADDITIONAL VIEWS

In the ten years since the breakup of the old AT&T system, sales of foreign telecommunications equipment in the United States have skyrocketed. Legislation the Congress passed established a competitive market in which these sales by foreign suppliers could occur.

I remain as committed to open and fair competition today, as I was when telecommunications deregulation was first proposed. But, what we have today is not fair competition.

While foreign equipment suppliers now account for above 45 percent of the U.S. switch market, American equipment suppliers have been shut out of many of the world's most lucrative telecommunications markets. This situation has resulted in AT&T eliminating 60,000 jobs in its U.S. manufacturing operations since 1984. In addition to the six AT&T production plants that have been closed here in the United States, substantial workforce reductions have occurred, including an 83 percent reduction in Shreveport, Louisiana and a 70 percent reduction in Kansas City, Missouri.

During this time, European restrictions on U.S. access have actually increased, not decreased. The European Union recently adopted a directive that not only establishes a high local content requirement for telecommunications equipment sold, but also includes a price preference for European suppliers.

Real competition can only exist if foreign producers are not only permitted to compete in our market, but also are forced to compete with U.S. suppliers in their own home markets.

Clearly, Europe's new policy is not intended to permit American suppliers to compete in that market. Real competition between European and American telecommunications equipment producers does not and, under Europe's current policy, cannot exist.

As a result, American producers are being hurt, not by competition—but, by the lack of it. Only action by our own government can offset this unfair relationship. Provisions of the reported bill, which establish a U.S. content requirement for equipment the Bell Operating Companies could manufacture, is not only appropriate in light of Europe's actions, but essential to prevent American companies from being unfairly victimized.

It should be noted that European negotiators apparently do not even recognize the access they have to our telecommunications market as being a benefit for which they have not paid. In negotiations we are currently having with the European Union, Europe is demanding new concessions from the United States in order to remove its discriminatory barriers to American telecommunications equipment producers.

We should not be expected to pay so that U.S. telecommunications producers can have access to Europe, just because we have already given European producers that same access to the Amer-

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ican market. Thousands of American workers who have lost their jobs have already paid for U.S. access to the telecommunications markets of Europe and elsewhere. It is now time for these workers to reap the benefits of access they have been denied too long in foreign telecommunications markets.

In summary, I strongly support the domestic content requirements of this bill. It is good policy that will help offset the harmful effects of the severely discriminatory treatment U.S. producers and workers face in Europe and many other parts of the world.

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