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103D CONGRESS  
1ST SESSION

# 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.

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## IN THE HOUSE OF REPRESENTATIVES

NOVEMBER 22, 1993

Mr. BROOKS (for himself and Mr. DINGELL) introduced the following bill; which was referred jointly to the Committees on the Judiciary and Energy and Commerce

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## A BILL

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.

1 *Be it enacted by the Senate and House of Representa-*  
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLES.**

4 (a) **TITLE I.**—Title I of this Act may be cited as the  
5 **“Antitrust Reform Act of 1993”.**

1 (b) TITLE II.—Title II of this Act may be cited as  
2 the Communications Reform Act of 1993”.

3 **TITLE I—SUPERSESSION OF THE**  
4 **MODIFICATION OF FINAL**  
5 **JUDGMENT**

6 **SEC. 101. AUTHORIZATION FOR BELL OPERATING COM-**  
7 **PANY TO ENTER COMPETITIVE LINES OF**  
8 **BUSINESS.**

9 (a) APPLICATION.—

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

16 (A) to provide alarm monitoring services,  
17 or  
18 (B) to provide interexchange telecommuni-  
19 cations.

20 The application shall describe with particularity the  
21 nature and scope of each activity, and of each prod-  
22 uct market or service market, and each geographic  
23 market, for which authorization is sought.

24 (2) APPLICABLE DATES.—For purposes of  
25 paragraph (1), the applicable date after which a Bell

1 operating company may apply for authorization shall  
2 be—

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

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

10 (ii) offering of a service described in  
11 subsection (b)(3)(D)(iii),

12 (iii) providing, through transmission  
13 facilities owned by such company, of inter-  
14 state interexchange telecommunications  
15 that originate and terminate in exchange  
16 areas in which the Bell operating company,  
17 or an affiliate (as of November 21, 1993)  
18 of such company that is a Bell operating  
19 company, provided telephone exchange  
20 service as of November 21, 1993,

21 (B) except to the extent that an earlier  
22 date is available under subparagraph (A), the  
23 date that occurs 18 months after the date of  
24 enactment of this Act, with respect to providing  
25 interexchange telecommunications through the

1 acquisition and resale of telecommunications  
2 services,

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

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

12 (3) INTERAGENCY NOTIFICATION.—Whenever  
13 the Attorney General or the Federal Communica-  
14 tions Commission receives an application made  
15 under paragraph (1), the recipient of the application  
16 shall notify the other of such receipt.

17 (4) PUBLICATION.—Not later than 10 days  
18 after receiving an application made under paragraph  
19 (1), the Attorney General and the Federal Commu-  
20 nications Commission jointly shall publish the appli-  
21 cation in the Federal Register.

22 (b) SEPARATE DETERMINATIONS BY THE ATTORNEY  
23 GENERAL AND THE FEDERAL COMMUNICATIONS COMMIS-  
24 SION.—

1           (1) COMMENT PERIOD.—Not later than 45 days  
2           after the application is published under subsection  
3           (a)(4), interested persons may submit comments to  
4           the Attorney General, to the Federal Communica-  
5           tions Commission, or to both regarding the applica-  
6           tion. Submitted comments shall be available to the  
7           public.

8           (2) INTERAGENCY CONSULTATION.—Before  
9           making their respective determinations under para-  
10          graph (3), the Attorney General and the Federal  
11          Communications Commission shall consult with each  
12          other regarding the application involved.

13          (3) DETERMINATIONS.—(A) After the time for  
14          comment under paragraph (1) has expired, but not  
15          later than 180 days after the application is received  
16          under subsection (a)(1), the Attorney General and  
17          the Federal Communications Commission each shall  
18          issue separately a written determination, on the  
19          record after an opportunity for a hearing, with re-  
20          spect to granting the authorization for which the  
21          Bell operating company has applied.

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

24          (C) A person who might be injured in its busi-  
25          ness or property as a result of the approval of the

1 authorization requested shall be permitted to partici-  
2 pate as a party in the proceeding on which the de-  
3 termination is based.

4 (D)(i) The Attorney General shall approve the  
5 granting of the authorization requested in the appli-  
6 cation only to the extent that the Attorney General  
7 finds that there is no substantial possibility that  
8 such company or its affiliates could use monopoly  
9 power to impede competition in the market such  
10 company seeks to enter. The Attorney General shall  
11 deny the remainder of the requested authorization.

12 (ii) The Federal Communications Commission  
13 shall approve the granting of the requested author-  
14 ization only to the extent that the Commission finds  
15 that granting such request is consistent with the  
16 public interest, convenience, and necessity. The  
17 Commission shall deny the remainder of the re-  
18 quested authorization.

19 (iii) Notwithstanding clauses (i) and (ii), within  
20 180 days after the date of enactment of this Act, the  
21 Attorney General and the Federal Communications  
22 Commission shall jointly prescribe regulations to es-  
23 tablish procedures and criteria for the expedited de-  
24 termination and approval of applications for pro-  
25 posed interexchange telecommunications services

1 that are incidental to the provision of another serv-  
2 ice which the Bell operating company may lawfully  
3 provide.

4 (E) In making any determination under sub-  
5 paragraph (D)(ii) of the public interest, convenience,  
6 and necessity, the Commission shall take into  
7 account—

8 (i) the probability that approval of the re-  
9 quested authorization will secure reduced rates  
10 for consumers of the services that are the sub-  
11 ject of the application, especially residential  
12 subscribers,

13 (ii) whether approval of the requested au-  
14 thorization will result in increases in rates for  
15 consumers of exchange service,

16 (iii) the extent to which approval of the re-  
17 quested authorization will expedite the delivery  
18 of new services and products to consumers,

19 (iv) the extent to which the Commission's  
20 regulations will preclude the applicant from en-  
21 gaging in predatory pricing or other coercive  
22 economic practices with respect to the services  
23 that are the subject of the application,

24 (v) the extent to which approval of the re-  
25 quested authorization would permit collusive



1 acts or practices between or among Bell operat-  
2 ing companies that are not affiliates of each  
3 other,

4 (vi) whether approval of the requested au-  
5 thorization will result, directly or indirectly, in  
6 increasing concentration among providers of the  
7 service that is the subject of the application to  
8 such an extent that consumers will not be pro-  
9 tected from rates that are unjust or unreason-  
10 able or that are unjustly or unreasonably dis-  
11 criminatory, and

12 (vii) in the case of an application to pro-  
13 vide alarm monitoring services, whether the  
14 Commission has the capability to enforce effec-  
15 tively the regulations established pursuant to  
16 section 230 of the Communications Act of 1934  
17 as added by this Act.

18 (F) A determination that approves the granting  
19 of any part of a requested authorization shall de-  
20 scribe with particularity the nature and scope of  
21 each activity, and of each product market or service  
22 market, and each geographic market, to which ap-  
23 proval applies.

24 (4) PUBLICATION.—Not later than 10 days  
25 after issuing a determination under paragraph (3),

1 the Attorney General or the Federal Communica-  
2 tions Commission, as the case may be, shall publish  
3 in the Federal Register a brief description of the  
4 determination.

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

9 (6) AUTHORIZATION GRANTED.—Subject to  
10 paragraph (7), a requested authorization is granted  
11 to the extent that—

12 (A)(i) both the Attorney General and the  
13 Federal Communications Commission approved  
14 under paragraph (3) the granting of the au-  
15 thorization, and

16 (ii) neither of their approvals is vacated or  
17 reversed as a result of judicial review author-  
18 ized by subsection (c), or

19 (B) as a result of such judicial review of  
20 either or both determinations, both the Attor-  
21 ney General and the Federal Communications  
22 Commission approve the granting of the re-  
23 quested authorization.

24 (c) JUDICIAL REVIEW.—

1           (1) **CIVIL ACTION.**—Not later than 45 days  
2           after a determination by the Attorney General or the  
3           Federal Communications Commission is published  
4           under subsection (b)(4), the Bell operating company  
5           that applied to the Attorney General and the Fed-  
6           eral Communications Commission under subsection  
7           (a), or any person who might be injured in its busi-  
8           ness or property as a result of the determination re-  
9           garding such company's engaging in the activity de-  
10          scribed in such company's application, may com-  
11          mence a civil action against the Attorney General or  
12          the Federal Communications Commission, as the  
13          case may be, in the United States Court of Appeals  
14          for the District of Columbia for review of the deter-  
15          mination regarding the application.

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

21           (3) **CONSOLIDATION OF ACTIONS.**—The court  
22          shall consolidate for review all civil actions com-  
23          menced under this subsection with respect to the ap-  
24          plication.

1           (4) **JUDGMENT.**—(A) The court shall enter a  
2 judgment after reviewing the determination in ac-  
3 cordance with section 706 of title 5 of the United  
4 States Code.

5           (B) A judgment—

6           (i) affirming the part of the determination  
7 that approves granting all or part of the re-  
8 quested authorization, or

9           (ii) reversing the part of the determination  
10 that denies all or part of the requested author-  
11 ization,

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

16 **SEC. 102. AUTHORIZATION AS PREREQUISITE.**

17           (a) **PREREQUISITE.**—Until a Bell operating company  
18 is so authorized in accordance with section 101, it shall  
19 be unlawful for such company, directly or through an af-  
20 filiated enterprise, to engage in an activity described in  
21 section 101(a)(1).

22           (b) **EXCEPTIONS.**—Subsection (a) shall not prohibit  
23 a Bell operating company from engaging, at any time after  
24 the date of enactment of this Act—

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

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

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

10           (2) in providing interexchange telecommuni-  
11 cations on an intrastate basis if, after the date of  
12 enactment of this Act, such telecommunications have  
13 been approved by, or are authorized under the laws  
14 of, the State involved, and public notice of the avail-  
15 ability of such authority has occurred at least 60  
16 days before the offering of such interexchange tele-  
17 communications, or

18           (3) in providing interexchange telecommuni-  
19 cations through the purchase and resale of tele-  
20 communications services obtained from a person who  
21 is not an affiliate of such company if—

22                   (A) such interexchange telecommunications  
23 originate in any State that, after the date of  
24 the enactment of this Act, approves or author-  
25 izes persons that are not affiliates of such com-

1           pany to provide intraexchange toll telecommuni-  
2           cations services in such a manner that cus-  
3           tomers in such State have the ability to route  
4           automatically, without the use of any access  
5           code, their intraexchange toll telecommuni-  
6           cations to the telecommunications services pro-  
7           vider of the customer's designation from among  
8           2 or more telecommunications services providers  
9           (including such company), and

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

13           (i) such company gives public notice  
14           of the availability of such approval or au-  
15           thorization, and

16           (ii) the Attorney General fails to com-  
17           mence a civil action to enjoin such com-  
18           pany from so providing such interexchange  
19           telecommunications.

20 **SEC. 103. LIMITATIONS ON MANUFACTURING AND PROVID-**  
21 **ING EQUIPMENT.**

22           (a) **ABSOLUTE LIMITATION.**—Until the expiration of  
23 the 1-year period beginning on the date of the enactment  
24 of this Act, it shall be unlawful for a Bell operating com-  
25 pany, directly or through an affiliated enterprise, to mar u-

1   facture or provide telecommunications equipment, or to  
2   manufacture customer premises equipment.

3       (b) QUALIFIED LIMITATION.—

4           (1) REQUIRED CONDITIONS.—After the expira-  
5           tion of the 1-year period beginning on the date of  
6           the enactment of this Act, it shall be lawful for a  
7           Bell operating company, directly or through an af-  
8           filiated enterprise, to manufacture or provide tele-  
9           communications equipment, or to manufacture cus-  
10          tomer premises equipment, if—

11               (A) such company submits to the Attorney  
12               General the notification described in paragraph  
13               (2) and such additional material and informa-  
14               tion described in such paragraph as the Attor-  
15               ney General may request, and complies with the  
16               waiting period specified in paragraph (3), and

17               (B) before the expiration of the waiting pe-  
18               riod specified in paragraph (3)—

19                       (i) the Attorney General fails to com-  
20                       mence a civil action to enjoin such com-  
21                       pany from engaging in the activity de-  
22                       scribed in such notification, or

23                       (ii) the Attorney General notifies such  
24                       company that for purposes of this sub-  
25                       section the Attorney General does not in-

1                   tend to commence such civil action before  
2                   the expiration of such waiting period.

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

12                  (3) WAITING PERIOD.—The waiting period re-  
13                  ferred to in paragraph (1) is the 1-year period be-  
14                  ginning on the date the notification required by such  
15                  paragraph is received by the Attorney General.

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

22                  (c) EXCEPTION FOR PREVIOUSLY AUTHORIZED AC-  
23                  TIVITIES.—Subsections (a) and (b) shall not prohibit a  
24                  Bell operating company from engaging, at any time after  
25                  the date of enactment of this Act, in any activity as au-



1 thORIZED BY AN ORDER ENTERED BY THE UNITED STATES DISTRICT  
2 COURT FOR THE DISTRICT OF COLUMBIA PURSUANT TO SECTION  
3 VIII(C) OF THE MODIFICATION OF FINAL JUDGMENT, IF—

4 (1) SUCH ORDER WAS ENTERED ON OR BEFORE THE  
5 DATE OF THE ENACTMENT OF THIS ACT, OR

6 (2) A REQUEST FOR SUCH AUTHORIZATION WAS PEND-  
7 ING BEFORE SUCH COURT ON THE DATE OF THE ENACTMENT  
8 OF THIS ACT.

9 **SEC. 104. ANTICOMPETITIVE TYING ARRANGEMENTS.**

10 A BELL OPERATING COMPANY WITH MONOPOLY POWER IN  
11 ANY EXCHANGE SERVICE MARKET SHALL NOT TIE (DIRECTLY OR INDI-  
12 RECTLY) IN ANY RELEVANT MARKET THE SALE OF ANY PRODUCT OR  
13 SERVICE TO THE PROVISION OF ANY TELECOMMUNICATIONS SERVICE,  
14 IF THE EFFECT OF SUCH TYING MAY BE TO SUBSTANTIALLY LESSEN  
15 COMPETITION, OR TO TEND TO CREATE MONOPOLY, IN ANY LINE  
16 OF COMMERCE.

17 **SEC. 105. ENFORCEMENT.**

18 (a) **EQUITABLE POWERS OF UNITED STATES ATTOR-**  
19 **NEYS.**—It shall be the duty of the several United States  
20 attorneys, under the direction of the Attorney General, to  
21 institute proceedings in equity in their respective districts  
22 to prevent and restrain violations of this Act.

23 (b) **CRIMINAL LIABILITY.**—Whoever knowingly en-  
24 gages or knowingly attempts to engage in an activity that  
25 is prohibited by section 102, 103, or 104 shall be guilty

1 of a felony, and on conviction thereof, shall be punished  
2 to the same extent as a person is punished upon conviction  
3 of a violation of section 1 of the Sherman Act  
4 (15 U.S.C. 1).

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

8 (1) may bring a civil action in any district court  
9 of the United States in the district in which the de-  
10 fendant resides or is found or has an agent, without  
11 respect to the amount in controversy, and

12 (2) shall recover threefold the damages sus-  
13 tained, and the cost of suit (including a reasonable  
14 attorney's fee).

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

23 (d) PRIVATE INJUNCTIVE RELIEF.—Any person shall  
24 be entitled to sue for and have injunctive relief, in any  
25 court of the United States having jurisdiction over the

1 parties, against threatened loss or damage by a violation  
2 of this Act, when and under the same conditions and prin-  
3 ciples as injunctive relief is available under section 16 of  
4 the Clayton Act (15 U.S.C. 26). In any action under this  
5 subsection in which the plaintiff substantially prevails, the  
6 court shall award the cost of suit, including a reasonable  
7 attorney's fee, to such plaintiff.

8 (e) JURISDICTION.—(1) Subject to paragraph (2),  
9 the courts of the United States shall have exclusive juris-  
10 diction to make determinations with respect to a duty,  
11 claim, or right arising under this Act, other than deter-  
12 minations authorized to be made by the Attorney General  
13 and the Federal Communications Commission under sec-  
14 tion 101(b)(3).

15 (2) The United States Court of Appeals for the Dis-  
16 trict of Columbia shall have exclusive jurisdiction to review  
17 determinations made under section 101(b)(3).

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

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

1 **SEC. 106. DEFINITIONS.**

2 For purposes of this Act:

3 (1) **AFFILIATE.**—The term “affiliate” means a  
4 person that (directly or indirectly) owns or controls,  
5 is owned or controlled by, or is under common own-  
6 ership or control with, another person. For purposes  
7 of this paragraph, to own refers to owning an equity  
8 interest (or the equivalent thereof) of more than 50  
9 percent.

10 (2) **ALARM MONITORING SERVICES.**—The term  
11 “alarm monitoring services” means services that de-  
12 tect threats to life, safety, or property, by burglary,  
13 fire, vandalism, bodily injury, or other emergency,  
14 through the use of devices that transmit signals to  
15 a central point in a customer’s residence, place of  
16 business, or other fixed premises which—

17 “(A) retransmits such signals to a remote  
18 monitoring center by means of telephone ex-  
19 change service facilities, and

20 “(B) serves to alert persons at the mon-  
21 itoring center of the need to inform police, fire,  
22 rescue, or other security or public safety per-  
23 sonnel of the threat at such premises.

24 Such term does not include medical monitoring de-  
25 vices attached to individuals for the automatic sur-  
26 veillance of ongoing medical conditions.

1           (3) ANTITRUST LAWS.—The term “antitrust  
2 laws” has the meaning given it in subsection (a) of  
3 the first section of the Clayton Act (15 U.S.C.  
4 12(a)), except that such term includes the Act of  
5 June 19, 1936 (49 Stat. 1526; 15 U.S.C. 13 et  
6 seq.), commonly known as the Robinson Patman  
7 Act, and section 5 of the Federal Trade Commission  
8 Act (15 U.S.C. 45) to the extent that such section  
9 5 applies to monopolies, attempts to monopolize, and  
10 unlawful restraints of trade.

11           (4) BELL OPERATING COMPANY.—The term  
12 “Bell operating company” means—

13           (A) Bell Telephone Company of Nevada,  
14 Illinois Bell Telephone Company, Indiana Bell  
15 Telephone Company, Incorporated, Michigan  
16 Bell Telephone Company, New England Tele-  
17 phone and Telegraph Company, New Jersey  
18 Bell Telephone Company, New York Telephone  
19 Company, US West Communications Company,  
20 South Central Bell Telephone Company, South-  
21 ern Bell Telephone and Telegraph Company,  
22 Southwestern Bell Telephone Company, The  
23 Bell Telephone Company of Pennsylvania, The  
24 Chesapeake and Potomac Telephone Company,  
25 The Chesapeake and Potomac Telephone Com-

1           pany of Maryland, The Chesapeake and Poto-  
2           mac Telephone Company of Virginia, The  
3           Chesapeake and Potomac Telephone Company  
4           of West Virginia, The Diamond State Tele-  
5           phone Company, The Ohio Bell Telephone  
6           Company, The Pacific Telephone and Telegraph  
7           Company, or Wisconsin Telephone Company, or

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

10           (5) CUSTOMER PREMISES EQUIPMENT.—The  
11           term “customer premises equipment” means equip-  
12           ment employed on the premises of a person (other  
13           than a person engaged in the business of providing  
14           a telecommunications service) to originate, route, or  
15           terminate telecommunications, and includes software  
16           relating to such equipment.

17           (6) ELECTRONIC PUBLISHING.—The term  
18           “electronic publishing” means the provision via tele-  
19           communications, by a Bell operating company or an  
20           affiliate of such company to a person other than an  
21           affiliate of such company, of information—

22                   (A) which such company or affiliate has, or  
23           has caused to be, originated, authored, com-  
24           piled, collected, or edited, or

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

4           (7) EXCHANGE AREA.—The term “exchange  
5           area” means a contiguous geographic area estab-  
6           lished by a Bell operating company such that no ex-  
7           change area includes points within more than 1 met-  
8           ropolitan statistical area, consolidated metropolitan  
9           statistical area, or State, except as expressly per-  
10          mitted under the Modification of Final Judgment  
11          before the date of the enactment of this Act.

12          (8) EXCHANGE ACCESS.—The term “exchange  
13          access” means exchange services provided for the  
14          purpose of originating or terminating interexchange  
15          telecommunications.

16          (9) EXCHANGE SERVICE.—The term “exchange  
17          service” means a telecommunications service pro-  
18          vided within an exchange area.

19          (10) INFORMATION.—The term “information”  
20          means knowledge or intelligence represented by any  
21          form of writing, signs, signals, pictures, sounds, or  
22          other symbols.

23          (11) INTEREXCHANGE TELECOMMUNI-  
24          CATIONS.—The term “interexchange telecommuni-  
25          cations” means telecommunications between a point

1 located in an exchange area and a point located out-  
2 side such exchange area. Such term does not include  
3 alarm monitoring services or electronic publishing.

4 (12) **MODIFICATION OF FINAL JUDGMENT.**—

5 The term “Modification of Final Judgment” means  
6 the order entered August 24, 1982, in the antitrust  
7 action styled United States v. Western Electric, Civil  
8 Action No. 82-0192, in the United States District  
9 Court for the District of Columbia, and includes any  
10 judgment or order with respect to such action en-  
11 tered on or after August 24, 1982.

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

15 (14) **TELECOMMUNICATIONS.**—The term “tele-  
16 communications” means the transmission of infor-  
17 mation between points by electromagnetic means.

18 (15) **TELECOMMUNICATIONS EQUIPMENT.**—The  
19 term “telecommunications equipment” means equip-  
20 ment, other than customer premises equipment, used  
21 to provide a telecommunications service, and in-  
22 cludes software relating to such equipment.

23 (16) **TELECOMMUNICATIONS SERVICE.**—The  
24 term “telecommunications service” means the offer-  
25 ing for hire of transmission facilities or of tele-



1       communications by means of such facilities. Such  
2       term does not include alarm monitoring services or  
3       electronic publishing.

4           (17) **TRANSMISSION FACILITIES.**—The term  
5       “transmission facilities” means equipment (including  
6       wire, cable, microwave, satellite, and fiber-optics)  
7       that transmits information by electromagnetic means  
8       or that directly supports such transmission, but does  
9       not include customer premises equipment.

10 **SEC. 107. RELATIONSHIP TO OTHER LAWS.**

11       (a) **MODIFICATION OF FINAL JUDGMENT.**—This Act  
12 shall supersede the Modification of Final Judgment, ex-  
13 cept that this Act shall not affect—

14           (1) section I of the Modification of Final Judg-  
15       ment, relating to AT&T reorganization,

16           (2) section II(A) (including Appendix B) and  
17       II(B) of the Modification of Final Judgment, relat-  
18       ing to equal access and nondiscrimination,

19           (3) section IV(F) and IV(I) of the Modification  
20       of Final Judgment, with respect to the requirements  
21       included in the definitions of “exchange access” and  
22       “information access”,

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

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

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

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

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

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

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

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

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

21           (E) section VII of the Modification of  
22 Final Judgment, relating to retention of juris-  
23 diction, and

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

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

7 (c) FEDERAL, STATE, AND LOCAL LAW.—(1) Except  
8 as provided in paragraph (2), this Act shall not be con-  
9 strued to modify, impair, or supersede Federal, State, or  
10 local law unless expressly so provided in this Act.

11 (2) This Act shall supersede State and local law to  
12 the extent that such law would impair or prevent the oper-  
13 ation of this Act.

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

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

21 Subsection (a) of the first section of the Clayton Act  
22 (15 U.S.C. 12(a)) is amended by inserting “the Antitrust  
23 Reform Act of 1993;” after “thirteen;”.

1 **TITLE II—REGULATION OF MAN-**  
2 **UFACTURING, ALARM SERV-**  
3 **ICES AND ELECTRONIC PUB-**  
4 **LISHING BY BELL OPERATING**  
5 **COMPANIES**

6 **SEC. 201. REGULATION OF MANUFACTURING BY BELL OP-**  
7 **ERATING COMPANIES.**

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

11 **"SEC. 229. REGULATION OF MANUFACTURING BY BELL**  
12 **OPERATING COMPANIES.**

13 "(a) **GENERAL AUTHORITY.**—Subject to the require-  
14 ments of this section and the regulations prescribed there-  
15 under, but notwithstanding any restriction or obligation  
16 imposed before the date of enactment of this section pur-  
17 suant to the Modification of Final Judgment on the lines  
18 of business in which a Bell operating company may en-  
19 gage, a Bell operating company, through an affiliate of  
20 that company, may manufacture and provide tele-  
21 communications equipment and manufacture customer  
22 premises equipment.

23 "(b) **SEPARATE MANUFACTURING AFFILIATE.**—Any  
24 manufacturing or provision authorized under subsection

1 (a) shall be conducted only through an affiliate that is sep-  
2 arate from any Bell operating company.

3 “(c) COMMISSION REGULATION OF MANUFACTURING  
4 AFFILIATE.—

5 “(1) REGULATIONS REQUIRED.—The Commis-  
6 sion shall prescribe regulations to ensure that Bell  
7 operating companies and their affiliates comply with  
8 the requirements of this section.

9 “(2) BOOKS, RECORDS, ACCOUNTS.—A manu-  
10 facturing affiliate required by subsection (b) shall  
11 maintain books, records, and accounts separate from  
12 its affiliated Bell operating company which identify  
13 all financial transactions between the manufacturing  
14 affiliate and its affiliated Bell operating company  
15 and, even if such manufacturing affiliate is not a  
16 publicly held corporation, prepare financial state-  
17 ments which are in compliance with financial report-  
18 ing requirements under the Federal securities laws  
19 for publicly held corporations, file such statements  
20 with the Commission, and make such statements  
21 available for public inspection.

22 “(3) IN-KIND BENEFITS TO AFFILIATE.—Con-  
23 sistent with the provisions of this section, neither a  
24 Bell operating company nor any of its  
25 nonmanufacturing affiliates shall perform sales, ad-

1       vertising, installation, production, or maintenance  
2       operations for a manufacturing affiliate, except  
3       that—

4               “(A) a Bell operating company and its  
5       nonmanufacturing affiliates may sell, advertise,  
6       install, and maintain telecommunications equip-  
7       ment and customer premises equipment after  
8       acquiring such equipment from their manufac-  
9       turing affiliate; and

10              “(B) institutional advertising, of a type not  
11       related to specific telecommunications equip-  
12       ment, carried out by the Bell operating com-  
13       pany or its affiliates, shall be permitted.

14              “(4) DOMESTIC MANUFACTURING REQUIRED.—

15              “(A) GENERAL RULE.—A manufacturing  
16       affiliate required by subsection (b) shall conduct  
17       all of its manufacturing within the United  
18       States and, except as otherwise provided in this  
19       paragraph, all component parts of customer  
20       premises equipment manufactured by such affil-  
21       iate, and all component parts of telecommuni-  
22       cations equipment manufactured by such affili-  
23       ate, shall have been manufactured within the  
24       United States.

1           “(B) EXCEPTION.—Such affiliate may use  
2           component parts manufactured outside the  
3           United States if—

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

9                   “(ii) for the aggregate of tele-  
10                  communications equipment and customer  
11                  premises equipment manufactured and sold  
12                  in the United States by such affiliate, the  
13                  cost of the components manufactured out-  
14                  side the United States contained in all  
15                  such equipment does not exceed 40 percent  
16                  of the sales revenue derived in any cal-  
17                  endar year from such equipment.

18           “(C) CERTIFICATION REQUIRED.—Any  
19           such affiliate that uses component parts manu-  
20           factured outside the United States in the manu-  
21           facture of telecommunications equipment and  
22           customer premises equipment within the United  
23           States shall—

24                   “(i) certify to the Commission that a  
25                   good faith effort was made to obtain equiv-

1           alent parts manufactured within the  
2           United States at reasonable prices, terms,  
3           and conditions, which certification shall be  
4           filed on a quarterly basis with the Commis-  
5           sion and list component parts, by type,  
6           manufactured outside the United States;  
7           and

8                   “(ii) certify to the Commission on an  
9           annual basis that such affiliate complied  
10          with the requirements of subparagraph  
11          (B)(ii), as adjusted in accordance with  
12          subparagraph (G).

13          “(D) REMEDIES FOR FAILURES.—(i) If the  
14          Commission determines, after reviewing the cer-  
15          tification required in subparagraph (C)(i), that  
16          such affiliate failed to make the good faith ef-  
17          fort required in subparagraph (B)(i) or, after  
18          reviewing the certification required in subpara-  
19          graph (C)(ii), that such affiliate has exceeded  
20          the percentage specified in subparagraph  
21          (B)(ii), the Commission may impose penalties  
22          or forfeitures as provided for in title V of this  
23          Act.

24                   “(ii) Any supplier claiming to be damaged  
25          because a manufacturing affiliate failed to



1           make the good faith effort required in subpara-  
2           graph (B)(i) may make complaint to the Com-  
3           mission as provided for in section 208 of this  
4           Act, or may bring suit for the recovery of actual  
5           damages for which such supplier claims such  
6           affiliate may be liable under the provisions of  
7           this Act in any district court of the United  
8           States of competent jurisdiction.

9           “(E) ANNUAL REPORT.—The Commission,  
10          in consultation with the Secretary of Commerce,  
11          shall, on an annual basis, determine the cost of  
12          component parts manufactured outside the  
13          United States contained in all telecommuni-  
14          cations equipment and customer premises  
15          equipment sold in the United States as a per-  
16          centage of the revenues from sales of such  
17          equipment in the previous calendar year.

18          “(F) USE OF INTELLECTUAL PROPERTY IN  
19          MANUFACTURE.—Notwithstanding subpara-  
20          graph (A), a manufacturing affiliate may use  
21          intellectual property created outside the United  
22          States in the manufacture of telecommuni-  
23          cations equipment and customer premises  
24          equipment in the United States. A component  
25          manufactured using such intellectual property

1 shall not be treated for purposes of subpara-  
2 graph (B)(ii) as a component manufactured  
3 outside the United States solely on the basis of  
4 the use of such intellectual property.

5 “(G) RESTRICTIONS ON COMMISSION AU-  
6 THORITY.—The Commission may not waive or  
7 alter the requirements of this paragraph, except  
8 that the Commission, on an annual basis, shall  
9 adjust the percentage specified in subparagraph  
10 (B)(ii) to the percentage determined by the  
11 Commission, in consultation with the Secretary  
12 of Commerce, pursuant to subparagraph (E).

13 “(5) INSULATION OF RATE PAYERS FROM MAN-  
14 UFACTURING AFFILIATE DEBT.—Any debt incurred  
15 by any such manufacturing affiliate may not be is-  
16 sued by its affiliated Bell operating company and  
17 such manufacturing affiliate shall be prohibited from  
18 incurring debt in a manner that would permit a  
19 creditor, on default, to have recourse to the assets  
20 of its affiliated Bell operating company.

21 “(6) RELATION TO OTHER AFFILIATES.—A  
22 manufacturing affiliate required by subsection (b)  
23 shall not be required to operate separately from the  
24 other affiliates of its affiliated Bell operating com-  
25 pany, but if an affiliate of a Bell operating company

1       becomes affiliated with a manufacturing entity, such  
2       affiliate shall be treated as a manufacturing affiliate  
3       of that Bell operating company and shall comply  
4       with the requirements of this section.

5               “(7) AVAILABILITY OF EQUIPMENT TO OTHER  
6       CARRIERS.—A manufacturing affiliate required by  
7       subsection (b) shall make available, without discrimi-  
8       nation or self-preference as to price, delivery, terms,  
9       or conditions, to any common carrier any tele-  
10       communications equipment that is used in the provi-  
11       sion of telephone exchange service and that is manu-  
12       factured by such affiliate so long as each such pur-  
13       chasing carrier—

14               “(A) does not either manufacture tele-  
15       communications equipment, or have an affili-  
16       ated telecommunications equipment manufac-  
17       turing entity; or

18               “(B) agrees to make available, to the Bell  
19       operating company affiliated with such manu-  
20       facturing affiliate or any common carrier affili-  
21       ate of such Bell operating company, any tele-  
22       communications equipment that is used in the  
23       provision of telephone exchange service and that  
24       is manufactured by such purchasing carrier or

1 by any entity or organization with which such  
2 purchasing carrier is affiliated.

3 **“(8) SALES PRACTICES OF MANUFACTURING**  
4 **AFFILIATES.—**

5 **“(A) PROHIBITION OF DISCONTINUATION**  
6 **OF EQUIPMENT FOR WHICH THERE IS REASON-**  
7 **ABLE DEMAND.—**A manufacturing affiliate re-  
8 quired by subsection (b) shall not discontinue or  
9 restrict sales to a common carrier of any tele-  
10 communications equipment that is used in the  
11 provision of telephone exchange service and that  
12 such affiliate manufactures for sale as long as  
13 there is reasonable demand for the equipment  
14 by such carriers; except that such sales may be  
15 discontinued or restricted if such manufactur-  
16 ing affiliate demonstrates to the Commission  
17 that it is not making a profit, under a marginal  
18 cost standard implemented by the Commission  
19 by regulation, on the sale of such equipment.

20 **“(B) DETERMINATIONS OF REASONABLE**  
21 **DEMAND.—**Within 60 days after receipt of an  
22 application under subparagraph (A), the Com-  
23 mission shall reach a determination as to the  
24 existence of reasonable demand for purposes of

1           such subparagraph. In making such determina-  
2           tion the Commission shall consider—

3                   “(i) whether the continued manufac-  
4                   ture of the equipment will be profitable;

5                   “(ii) whether the equipment is func-  
6                   tionally or technologically obsolete;

7                   “(iii) whether the components nec-  
8                   essary to manufacture the equipment con-  
9                   tinue to be available;

10                  “(iv) whether alternatives to the  
11                  equipment are available in the market; and

12                  “(v) such other factors as the Com-  
13                  mission deems necessary and proper.

14                  “(9) JOINT PLANNING OBLIGATIONS.—Each  
15                  Bell operating company shall, consistent with the  
16                  antitrust laws, engage in joint network planning and  
17                  design with other contiguous common carriers pro-  
18                  viding telephone exchange service, but agreement  
19                  with such other carriers shall not be required as a  
20                  prerequisite for such introduction or deployment.

21                  “(d) INFORMATION REQUIREMENTS.—

22                   “(1) FILING OF INFORMATION ON PROTOCOLS  
23                   AND TECHNICAL REQUIREMENTS.—Each Bell oper-  
24                   ating company shall, in accordance with regulations  
25                   prescribed by the Commission, maintain and file

1 with the Commission full and complete information  
2 with respect to the protocols and technical require-  
3 ments for connection with and use of its telephone  
4 exchange service facilities. Each such company shall  
5 report promptly to the Commission any material  
6 changes or planned changes to such protocols and  
7 requirements, and the schedule for implementation  
8 of such changes or planned changes.

9       “(2) FILING AS PREREQUISITE TO DISCLOSURE  
10 TO AFFILIATE.—A Bell operating company shall not  
11 disclose to any of its affiliates any information re-  
12 quired to be filed under paragraph (1) unless that  
13 information is filed promptly, as required by regula-  
14 tion by the Commission.

15       “(3) ACCESS BY COMPETITORS TO INFORMA-  
16 TION.—The Commission may prescribe such addi-  
17 tional regulations under this subsection as may be  
18 necessary to ensure that manufacturers in competi-  
19 tion with a Bell operating company’s manufacturing  
20 affiliate have access to the information with respect  
21 to the protocols and technical requirements for con-  
22 nection with and use of its telephone exchange serv-  
23 ice facilities required for such competition that such  
24 company makes available to its manufacturing  
25 affiliate.

1           “(4) **PLANNING INFORMATION.**—Each Bell op-  
2           erating company shall provide, to contiguous com-  
3           mon carriers providing telephone exchange service,  
4           timely information on the planned deployment of  
5           telecommunications equipment.

6           “(e) **ADDITIONAL COMPETITION REQUIREMENTS.**—  
7           The Commission shall prescribe regulations requiring that  
8           any Bell operating company which has an affiliate that  
9           engages in any manufacturing authorized by subsection  
10          (a) shall—

11           “(1) provide, to other manufacturers of tele-  
12           communications equipment and customer premises  
13           equipment that is functionally equivalent to equip-  
14           ment manufactured by the Bell operating company  
15           manufacturing affiliate, opportunities to sell such  
16           equipment to such Bell operating company which are  
17           comparable to the opportunities which such Com-  
18           pany provides to its affiliates; and

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

22           “(f) **COLLABORATION PERMITTED.**—Nothing in this  
23           section (other than subsection (m)) shall be construed to  
24           limit or restrict the ability of a Bell operating company  
25           and its affiliates to engage in close collaboration with any

1 manufacturer of customer premises equipment or tele-  
2 communications equipment during the design and develop-  
3 ment of hardware, software, or combinations thereof  
4 related to such equipment.

5 “(g) ACCESSIBILITY REQUIREMENTS.—

6 “(1) MANUFACTURING.—The Commission shall,  
7 within 1 year after the date of enactment of this sec-  
8 tion, prescribe such regulations as are necessary to  
9 ensure that telecommunications equipment and cus-  
10 tomer premises equipment designed, developed, and  
11 fabricated pursuant to the authority granted in this  
12 section shall be accessible and usable by individuals  
13 with disabilities, including individuals with func-  
14 tional limitations of hearing, vision, movement, ma-  
15 nipulation, speech, and interpretation of information,  
16 unless the costs of making the equipment accessible  
17 and usable would result in an undue burden or an  
18 adverse competitive impact.

19 “(2) NETWORK SERVICES.—The Commission  
20 shall, within 1 year after the date of enactment of  
21 this section, prescribe such regulations as are nec-  
22 essary to ensure that advances in network services  
23 deployed by a Bell operating company shall be acces-  
24 sible and usable by individuals whose access might  
25 otherwise be impeded by a disability or functional



1 limitation, unless the costs of making the services  
2 accessible and usable would result in an undue bur-  
3 den or adverse competitive impact. Such regulations  
4 shall seek to permit the use of both standard and  
5 special equipment and seek to minimize the need of  
6 individuals to acquire additional devices beyond  
7 those used by the general public to obtain such  
8 access.

9       “(3) COMPATIBILITY.—The regulations pre-  
10 scribed under paragraphs (1) and (2) shall require  
11 that whenever an undue burden or adverse competi-  
12 tive impact would result from the manufacturing or  
13 network services requirements in such paragraphs,  
14 the manufacturing affiliate that designs, develops, or  
15 fabricates the equipment or the Bell operating com-  
16 pany that deploys the network service shall ensure  
17 that the equipment or network service in question is  
18 compatible with existing peripheral devices or spe-  
19 cialized customer premises equipment commonly  
20 used by persons with disabilities to achieve access,  
21 unless doing so would result in an undue burden or  
22 adverse competitive impact.

23       “(4) DEFINITIONS.—As used in this subsection:

24               “(A) UNDUE BURDEN.—The term ‘undue  
25 burden’ means significant difficulty or expense.

1 In determining whether an activity would result  
2 in an undue burden, factors to be considered  
3 include—

4 “(i) the nature and cost of the activ-  
5 ity;

6 “(ii) the impact on the operation of  
7 the facility involved in the manufacturing  
8 of the equipment or deployment of the net-  
9 work service;

10 “(iii) the financial resources of the  
11 manufacturing affiliate in the case of man-  
12 ufacturing of equipment, for as long as ap-  
13 plicable regulatory rules prohibit cross-sub-  
14 sidization of equipment manufacturing  
15 with revenues from regulated telecommuni-  
16 cations service or when the manufacturing  
17 activities are conducted in a separate sub-  
18 sidiary;

19 “(iv) the financial resources of the  
20 Bell operating company in the case of net-  
21 work services, or in the case of manufac-  
22 turing of equipment if applicable regula-  
23 tory rules permit cross subsidization of  
24 equipment manufacturing with revenues  
25 from regulated telecommunications services

1                   and the manufacturing activities are not  
2                   conducted in a separate subsidiary; and

3                   “(v) the type of operation or oper-  
4                   ations of the manufacturing affiliate or  
5                   Bell operating company as applicable.

6                   “(B) ADVERSE COMPETITIVE IMPACT.—In  
7                   determining whether the activity would result in  
8                   an adverse competitive impact, the following  
9                   factors will be considered:

10                   (i) whether such activity would raise  
11                   the cost of the equipment or network serv-  
12                   ice in question beyond the level at which  
13                   there would be sufficient consumer demand  
14                   by the general population to make the  
15                   equipment or network service profitable;  
16                   and

17                   (ii) whether such activity would, with  
18                   respect to the equipment or network serv-  
19                   ice in question, put the manufacturing af-  
20                   filiate or Bell operating company, as appli-  
21                   cable, at a competitive disadvantage in  
22                   comparison with one or more providers of  
23                   one or more competing products and serv-  
24                   ices. This factor may only be considered so  
25                   long as competing manufacturers and net-

1 work service providers are not held to the  
2 same obligation with respect to access by  
3 persons with disabilities.

4 **“(C) ACTIVITY.—**For the purposes of this  
5 paragraph, the term ‘activity’ includes—

6 (i) the research, design, development,  
7 deployment, and fabrication activities nec-  
8 essary to comply with the requirements of  
9 this section; and

10 (ii) the acquisition of the related ma-  
11 terials and equipment components.

12 **“(5) EFFECTIVE DATE.—**The regulations re-  
13 quired by this subsection shall become effective 18  
14 months after the date of enactment of this section.

15 **“(6) IMPACT OF ADA.—**Nothing in this section  
16 shall be interpreted to limit or otherwise affect the  
17 application of the Americans with Disabilities Act or  
18 its implementing regulations.

19 **“(h) PUBLIC NETWORK ENHANCEMENT.—**A Bell op-  
20 erating company manufacturing affiliate shall, as a part  
21 of its overall research and development effort, establish  
22 a permanent program for the manufacturing research and  
23 development of products and applications for the enhance-  
24 ment of the public switched telephone network and to pro-  
25 mote public access to advanced telecommunications serv-

1 ices. Such program shall focus its work substantially on  
2 developing technological advancements in public telephone  
3 network applications, telecommunication equipment and  
4 products, and access solutions to new services and tech-  
5 nology, including access by (1) public institutions, includ-  
6 ing educational and health care institutions; and (2) peo-  
7 ple with disabilities and functional limitations. Notwith-  
8 standing the limitations in subsection (a), a Bell operating  
9 company and its affiliates may engage in such a program  
10 in conjunction with a Bell operating company not so affili-  
11 ated or any of its affiliates. The existence or establishment  
12 of such a program that is jointly provided by manufactur-  
13 ing affiliates of Bell operating companies shall satisfy the  
14 requirements of this section as it pertains to all such affili-  
15 ates of a Bell operating company.

16       “(i) **ADDITIONAL RULES AUTHORIZED.**—The Com-  
17 mission may prescribe such additional rules and regula-  
18 tions as the Commission determines necessary to carry out  
19 the provisions of this section.

20       “(j) **ADMINISTRATION AND ENFORCEMENT AUTHOR-**  
21 **ITY.**—

22               “(1) **COMMISSION REGULATORY AUTHORITY.**—  
23 For the purposes of administering and enforcing the  
24 provisions of this section and the regulations pre-  
25 scribed thereunder, the Commission shall have the

1 same authority, power, and functions with respect to  
2 any Bell operating company as the Commission has  
3 in administering and enforcing the provisions of this  
4 title with respect to any common carrier subject to  
5 this Act.

6 “(2) PRIVATE ACTIONS.—Any common carrier  
7 that provides telephone exchange service and that is  
8 injured by an act or omission of a Bell operating  
9 company or its manufacturing affiliate which vio-  
10 lates the requirements of paragraph (7) or (8) of  
11 subsection (c), or the Commission’s regulations im-  
12 plementing such paragraphs, may initiate an action  
13 in a district court of the United States to recover  
14 the full amount of damages sustained in con-  
15 sequence of any such violation and obtain such or-  
16 ders from the court as are necessary to terminate  
17 existing violations and to prevent future violations;  
18 or such regulated local telephone exchange carrier  
19 may seek relief from the Commission pursuant to  
20 sections 206 through 209.

21 “(k) RULEMAKING REQUIRED.—The Commission  
22 shall prescribe regulations to implement this section with-  
23 in 180 days after the date of enactment of this section.

24 “(l) EXISTING MANUFACTURING AUTHORITY.—  
25 Nothing in this section shall prohibit any Bell operating

1 company from engaging, directly or through any affiliate,  
2 in any manufacturing activity in which any Bell operating  
3 company or affiliate was authorized to engage on the date  
4 of enactment of this section.

5       “(m) **ANTITRUST LAWS.**—Nothing in this section  
6 shall be construed to modify, impair, or supersede the ap-  
7 plicability of any of the antitrust laws.

8       “(n) **DEFINITIONS.**—As used in this section:

9           “(1) The term ‘affiliate’ means any organiza-  
10 tion or entity that, directly or indirectly, owns or  
11 controls, is owned or controlled by, or is under com-  
12 mon ownership with a Bell operating company. The  
13 terms ‘owns’, ‘owned’, and ‘ownership’ mean an eq-  
14 uity interest of more than 10 percent.

15           “(2) The term ‘Bell operating company’ means  
16 those companies listed in appendix A of the Modi-  
17 fication of Final Judgment, and includes any succes-  
18 sor or assign of any such company, but does not in-  
19 clude any affiliate of any such company.

20           “(3) The term ‘customer premises equipment’  
21 means equipment employed on the premises of a  
22 person (other than a carrier) to originate, route, or  
23 terminate telecommunications.

24           “(4) The term ‘manufacturing’ has the same  
25 meaning as such term has in the Modification of

1 Final Judgment, and includes research, design, de-  
2 velopment, and fabrication.

3 “(5) The term ‘manufacturing affiliate’ means  
4 an affiliate of a Bell operating company established  
5 in accordance with subsection (b) of this section.

6 “(6) The term ‘Modification of Final Judg-  
7 ment’ means the decree entered August 24, 1982, in  
8 United States v. Western Electric Civil Action No.  
9 82-0192 (United States District Court, District of  
10 Columbia), and includes any judgment or order with  
11 respect to such action entered on or after August  
12 24, 1982, and before the date of enactment of this  
13 section.

14 “(7) The term ‘telecommunications’ means the  
15 transmission, between or among points specified by  
16 the user, of information of the user’s choosing, with-  
17 out change in the form or content of the information  
18 as sent and received, by means of an electromagnetic  
19 transmission medium, including all instrumentalities,  
20 facilities, apparatus, and services (including the col-  
21 lection, storage, forwarding, switching, and delivery  
22 of such information) essential to such transmission.

23 “(8) The term ‘telecommunications equipment’  
24 means equipment, other than customer premises  
25 equipment, used by a carrier to provide tele-



1 communications services, and includes software inte-  
2 gral to such equipment (including upgrades).

3 “(9) The term ‘telecommunications service’  
4 means the offering for hire of telecommunications  
5 facilities, or of telecommunications by means of such  
6 facilities.”.

7 **SEC. 202. REGULATION OF ENTRY INTO ALARM MONITOR-**  
8 **ING SERVICES.**

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

12 **“SEC. 230. REGULATION OF ENTRY INTO ALARM MONITOR-**  
13 **ING SERVICES.**

14 “(a) REGULATIONS REQUIRED.—Not later than 6  
15 years after the date of enactment of this section, the Com-  
16 mission shall prescribe regulations—

17 “(1) to establish such requirements, limitations,  
18 or conditions as are (A) necessary and appropriate  
19 in the public interest with respect to the provision of  
20 alarm monitoring services by Bell operating compa-  
21 nies and their affiliates, and (B) effective at such  
22 time as a Bell operating company or any of its affili-  
23 ates is authorized to provide alarm monitoring serv-  
24 ices;

1           “(2) to prohibit Bell operating companies and  
2           their affiliates, at that or any earlier time after the  
3           date of enactment of this section, from recording in  
4           any fashion the occurrence or the contents of calls  
5           received by providers of alarm monitoring services  
6           for the purposes of marketing such services on be-  
7           half of the Bell operating company, any of its affili-  
8           ates, or any other entity; and

9           “(3) to establish procedures for the receipt and  
10          review of complaints concerning violations by such  
11          companies of such regulations, or of any other provi-  
12          sion of this Act or the regulations thereunder, that  
13          result in material financial harm to a provider of  
14          alarm monitoring services.

15          “(b) **EXPEDITED CONSIDERATION OF COM-**  
16 **PLAINTS.**—The procedures established under subsection  
17 (a)(3) shall ensure that the Commission will make a final  
18 determination with respect to any complaint described in  
19 such subsection within 120 days after receipt of the com-  
20 plaint. If the complaint contains an appropriate showing  
21 that the alleged violation occurred, as determined by the  
22 Commission in accordance with such regulations, the Com-  
23 mission shall, within 60 days after receipt of the com-  
24 plaint, issue a cease and desist order to prevent the Bell

1 operating company and its affiliates from continuing to  
2 engage in such violation pending such final determination.

3       “(c) REMEDIES.—The Commission may use any rem-  
4 edy available under title V of this Act to terminate and  
5 punish violations described in subsection (a)(2). Such rem-  
6 edies may include, if the Commission determines that such  
7 violation was willful or repeated, ordering the Bell operat-  
8 ing company to cease offering alarm monitoring services.

9       “(d) DEFINITIONS.—As used in this section, the  
10 terms ‘Bell operating company’, ‘affiliate’, and ‘alarm  
11 monitoring services’ have the meanings provided in section  
12 106 of the Antitrust Reform Act of 1993.”.

13 **SEC. 203. REGULATION OF ELECTRONIC PUBLISHING.**

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

17 **“SEC. 231. REGULATION OF ELECTRONIC PUBLISHING.**

18       “(a) IN GENERAL.—(1) A Bell operating company  
19 and any affiliate shall not engage in the provision of elec-  
20 tronic publishing that is disseminated by means of such  
21 Bell operating company’s or any of its affiliates’ basic tele-  
22 phone service.

23       “(2) Nothing in this section shall prohibit a separated  
24 affiliate or electronic publishing joint venture from engag-

1 ing in the provision of electronic publishing or any other  
2 lawful service in any area.

3       “(3) Nothing in this section shall prohibit a Bell op-  
4 erating company or affiliate from engaging in the provi-  
5 sion of any lawful service other than electronic publishing  
6 in any area or from engaging in the provision of electronic  
7 publishing that is not disseminated by means of such Bell  
8 operating company’s or any of its affiliates’ basic tele-  
9 phone service.

10       “(b) SEPARATED AFFILIATE OR ELECTRONIC PUB-  
11 LISHING JOINT VENTURE REQUIREMENTS.—A separated  
12 affiliate or electronic publishing joint venture shall—

13               “(1) maintain books, records, and accounts that  
14 are separate from those of the Bell operating com-  
15 pany and from any affiliate and which record in ac-  
16 cordance with generally accepted accounting prin-  
17 ciples all transactions, whether direct or indirect,  
18 with the Bell operating company;

19               “(2) not incur debt in a manner that would per-  
20 mit a creditor upon default to have recourse to the  
21 assets of the Bell operating company;

22               “(3) prepare financial statements that are not  
23 consolidated with those of the Bell operating com-  
24 pany or an affiliate, provided that consolidated  
25 statements may also be prepared;

1           “(4) file with the Commission annual reports in  
2           a form substantially equivalent to the Form 10-K  
3           referenced at 17 C.F.R. 249.310 as that section and  
4           form are in effect on the date of enactment;

5           “(5) after 1 year from the effective date of this  
6           section, not hire as corporate officers sales and mar-  
7           keting management personnel whose responsibilities  
8           at the separated affiliate or electronic publishing  
9           joint venture will include the geographic area where  
10          the Bell operating company provides basic telephone  
11          service, or network operations personnel whose re-  
12          sponsibilities at the separated affiliate or electronic  
13          publishing joint venture would require dealing di-  
14          rectly with the Bell operating company, any person  
15          who was employed by the Bell operating company  
16          during the year preceding their date of hire, pro-  
17          vided that this requirement shall not apply to per-  
18          sons subject to a collective bargaining agreement  
19          that gives such persons rights to be employed by a  
20          separated affiliate or electronic publishing joint ven-  
21          ture of the Bell operating company;

22          “(6) not provide any wireline telephone ex-  
23          change service in any telephone exchange area where  
24          a Bell operating company with which it is under

1 common ownership or control provides basic tele-  
2 phone exchange service except on a resale basis;

3 “(7) not use the name, trademarks, or service  
4 marks of an existing Bell operating company except  
5 for names or service marks that are or were used in  
6 common with the entity that owns or controls the  
7 Bell operating company;

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

11 “(A) must be conducted by an independent  
12 entity which is subject to professional, legal,  
13 and ethical obligations for the purpose of deter-  
14 mining compliance during the preceding cal-  
15 endar year with any provision of this section  
16 that imposes a requirement on such separated  
17 affiliate or electronic publishing joint venture;  
18 and

19 “(B) must be maintained by the separated  
20 affiliate for a period of 5 years subject to re-  
21 view by any lawful authority;

22 “(9) within 90 days of receiving a review de-  
23 scribed in paragraph (8), file a report of such excep-  
24 tions and any corrective action with the Commission  
25 and allow any person to inspect and copy such re-

1 port subject to reasonable safeguards to protect any  
2 proprietary information contained in such report  
3 from being used for purposes other than to enforce  
4 or pursue remedies under this section.

5 **“(c) BELL OPERATING COMPANY REQUIREMENTS.—**

6 **A Bell operating company under common ownership or**  
7 **control with a separated affiliate or electronic publishing**  
8 **joint venture shall—**

9 “(1) not provide a separated affiliate any facili-  
10 ties, services, or basic telephone service information  
11 unless it makes such facilities, services, or informa-  
12 tion available to unaffiliated entities upon request  
13 and on the same terms and conditions;

14 “(2) carry out transactions with a separated af-  
15 filiate in a manner equivalent to the manner that  
16 unrelated parties would carry out independent trans-  
17 actions and not based upon the affiliation;

18 “(3) carry out transactions with a separated af-  
19 filiate, which involve the transfer of personnel, as-  
20 sets, or anything of value, pursuant to written con-  
21 tracts or tariffs that are filed with the Commission  
22 and made publicly available;

23 “(4) carry out transactions with a separated af-  
24 filiate in a manner that is auditable in accordance  
25 with generally accepted accounting principles;

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

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

7           “(7) except for—

8           “(A) instances where Commission or State  
9           regulations permit in-arrears payment for  
10          tariffed telecommunications services; or

11          “(B) the investment by an affiliate of divi-  
12          dends or profits derived from a Bell operating  
13          company,

14          not provide debt or equity financing directly or indi-  
15          rectly to a separated affiliate;

16          “(8) comply fully with all applicable Commis-  
17          sion and State cost allocation and other accounting  
18          rules;

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

22          “(A) must be conducted by an independent  
23          entity which is subject to professional, legal,  
24          and ethical obligations for the purpose of deter-  
25          mining compliance during the preceding cal-



1           endar year with any provision of this section  
2           that imposes a requirement on such Bell oper-  
3           ating company; and

4                   “(B) must be maintained by the Bell oper-  
5           ating company for a period of 5 years subject  
6           to review by any lawful authority;

7                   “(10) within 90 days of receiving a review de-  
8           scribed in paragraph (9), file a report of such excep-  
9           tions and any corrective action with the Commission  
10          and allow any person to inspect and copy such re-  
11          port subject to reasonable safeguards to protect any  
12          proprietary information contained in such report  
13          from being used for purposes other than to enforce  
14          or pursue remedies under this section;

15                  “(11) if it provides facilities or services for tele-  
16          communication, transmission, billing and collection,  
17          or physical collocation to any electronic publisher,  
18          including a separated affiliate, for use with or in  
19          connection with the provision of electronic publishing  
20          that is disseminated by means of such Bell operating  
21          company’s or any of its affiliates’ basic telephone  
22          service, provide to all other electronic publishers the  
23          same type of facilities and services on request, on  
24          the same terms and conditions or as required by the  
25          Commission or a State, and unbundled and individ-

1 ually tariffed to the same extent as provided to such  
2 publisher;

3 “(12) provide network access and interconnec-  
4 tions for basic telephone service to electronic pub-  
5 lishers at prices that are regulated so long as the  
6 prices for these services are subject to regulation;

7 “(13) if prices for network access and inter-  
8 connection for basic telephone service are no longer  
9 subject to regulation, provide electronic publishers  
10 such services on the same terms and conditions as  
11 a separated affiliate receives such services;

12 “(14) if any basic telephone service used by  
13 electronic publishers ceases to require a tariff, pro-  
14 vide electronic publishers with such service on the  
15 same terms and conditions as a separated affiliate  
16 receives such service;

17 “(15) provide reasonable advance notification at  
18 the same time and on the same terms to all affected  
19 electronic publishers of information relating to  
20 changes in basic telephone service network design  
21 and technical standards which would affect the pro-  
22 vision of electronic publishing;

23 “(16) not directly or indirectly provide anything  
24 of monetary value to a separated affiliate unless in  
25 exchange for consideration at least equal to the

1 greater of its net book cost or fair market value, ex-  
2 cept the investment by an affiliate of dividends or  
3 profits derived from a Bell operating company;

4 “(17) not discriminate in the presentation or  
5 provision of any gateway for electronic publishing  
6 services or any electronic directory of information  
7 services, which is provided over such Bell operating  
8 company’s basic telephone service;

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

11 “(19) not own any property in common with a  
12 separated affiliate;

13 “(20) not perform hiring or training of person-  
14 nel performed on behalf of a separated affiliate;

15 “(21) not perform the purchasing, installation  
16 or maintenance of equipment on its behalf of a sepa-  
17 rated affiliate, except for telephone service that it  
18 provides under tariff or contract subject to the pro-  
19 visions of this section; and

20 “(22) not perform research and development on  
21 behalf of a separated affiliate.

22 “(d) CUSTOMER PROPRIETARY NETWORK INFORMA-  
23 TION.—A Bell operating company or any affiliate shall not  
24 provide to any electronic publisher, including a separated  
25 affiliate or electronic publishing joint venture, customer

1 proprietary network information for use with or in connec-  
2 tion with the provision of electronic publishing that is dis-  
3 seminated by means of such Bell operating company's or  
4 any of its affiliates' basic telephone service that is not  
5 made available by the Bell operating company or affiliate  
6 to all electronic publishers on the same terms and condi-  
7 tions.

8       “(e) COMPLIANCE WITH SAFEGUARDS.—A Bell oper-  
9 ating company, affiliate or its separated affiliate is prohib-  
10 ited from acting in concert with another Bell operating  
11 company or any entity in order to knowingly and willfully  
12 violate or evade the requirements of this section.

13       “(f) TELEPHONE OPERATING COMPANY DIVI-  
14 DENDS.—Nothing in this section shall prohibit an affiliate  
15 from investing dividends derived from a Bell operating  
16 company in its separated affiliate and subsections (i) and  
17 (j) of this section shall not apply to any such investment.

18       “(g) JOINT MARKETING, ETC.—Except as provided  
19 in subsection (h)—

20               “(1) a Bell operating company shall not carry  
21 out any promotion, marketing, sales, or advertising  
22 for or in conjunction with a separated affiliate.

23               “(2) A Bell operating company shall not carry  
24 out any promotion, marketing, sales, or advertising

1 for or in conjunction with an affiliate that is related  
2 to the provision of electronic publishing.

3 “(h) PERMISSIBLE JOINT ACTIVITIES.—

4 “(1) JOINT TELEMARKETING.—A Bell operat-  
5 ing company may provide inbound telemarketing or  
6 referral services related to the provision of electronic  
7 publishing for a separated affiliate, electronic pub-  
8 lishing joint venture, affiliate, or unaffiliated elec-  
9 tronic publisher, provided that if such services are  
10 provided to a separated affiliate, electronic publish-  
11 ing joint venture, or affiliate, such services shall be  
12 made available to all electronic publishers on re-  
13 quest, on nondiscriminatory terms, at compensatory  
14 prices, and subject to regulations of the Commission  
15 to ensure that the Bell operating company’s method  
16 of providing telemarketing or referral and its price  
17 structure do not competitively disadvantage any elec-  
18 tronic publishers regardless of size, including those  
19 which do not use the Bell operating company’s  
20 telemarketing services.

21 “(2) TEAMING ARRANGEMENTS.—A Bell oper-  
22 ating company may engage in nondiscriminatory  
23 teaming or business arrangements to engage in elec-  
24 tronic publishing with any separated affiliate or with  
25 any other electronic publisher provided that the Bell

1 operating company only provides facilities, services,  
2 and basic telephone service information as author-  
3 ized by this section and provided that the Bell oper-  
4 ating company does not own such teaming or busi-  
5 ness arrangement.

6       “(3) ELECTRONIC PUBLISHING JOINT VEN-  
7 TURES.—A Bell operating company or affiliate may  
8 participate on a nonexclusive basis in electronic pub-  
9 lishing joint ventures with entities that are not any  
10 Bell operating company, affiliate, or separated affili-  
11 ate to provide electronic publishing services, provided  
12 that the Bell operating company or affiliate has not  
13 more than a 50 percent direct or indirect equity in-  
14 terest (or the equivalent thereof) or the right to  
15 more than 50 percent of the gross revenues under  
16 a revenue sharing or royalty agreement in any elec-  
17 tronic publishing joint venture. Officers and employ-  
18 ees of a Bell operating company or affiliate partici-  
19 pating in an electronic publishing joint venture may  
20 not have more than 50 percent of the voting control  
21 over the electronic publishing joint venture. In the  
22 case of joint ventures with small, local electronic  
23 publishers, the Commission for good cause shown  
24 may authorize the Bell operating company or affili-  
25 ate to have a larger equity interest, revenue share,

1 or voting control but not to exceed 80 percent. A  
2 Bell operating company participating in an elec-  
3 tronic publishing joint venture may provide pro-  
4 motion, marketing, sales, or advertising personnel  
5 and services to such joint venture.

6 “(i) TRANSACTIONS RELATED TO THE PROVISION OF  
7 ELECTRONIC PUBLISHING BETWEEN A TELEPHONE OP-  
8 ERATING COMPANY AND ANY AFFILIATE.—

9 “(1) Any provision of facilities, services or basic  
10 telephone service information or any transfer of as-  
11 sets, personnel, or anything of commercial or com-  
12 petitive value from a Bell operating company to any  
13 affiliate related to the provision of electronic publish-  
14 ing shall be—

15 “(A) recorded in the books and records of  
16 each entity;

17 “(B) auditable in accordance with gen-  
18 erally accepted accounting principles; and

19 “(C) pursuant to written contracts or tar-  
20 iffs filed with the Commission or a State and  
21 made publicly available.

22 “(2) Any transfer of assets directly related to  
23 the provision of electronic publishing from a Bell op-  
24 erating company to an affiliate shall be valued at the  
25 greater of net book cost or fair market value. Any

11 transfer of assets related to the provision of elec-  
 22 tronic publishing from an affiliate to the Bell operat-  
 33 ing company shall be valued at the lesser of net book  
 44 cost or fair market value.

53 “(3) A Bell operating company shall not pro-  
 66 vide an affiliate any facilities, services, or basic telep-  
 77 hone service information related to the provision of  
 83 electronic publishing, which such affiliate then di-  
 99 rectly or indirectly provides to a separated affiliate,  
 100 and which is not made available to unaffiliated com-  
 111 panies on the same terms and conditions.

122 “(J) TRANSACTIONS RELATED TO THE PROVISION OF  
 133 ELECTRONIC PUBLISHING BETWEEN AN AFFILIATE AND  
 144 A SEPARATED AFFILIATE.—

153 “(1) Any facilities, services, or basic telephone  
 165 service information provided or any assets, person-  
 177 nel, or anything of commercial or competitive value  
 188 transferred, from a Bell operating company to any  
 199 affiliate as described in subsection (I) and then pro-  
 200 vided or transferred to a separated affiliate shall  
 211 be—

222 “(A) recorded in the books and records of  
 233 each entity;

244 “(B) audited in accordance with gener-  
 255 ally accepted accounting principles; and



1           “(C) pursuant to written contracts or tar-  
2           iffs filed with the Commission or a State and  
3           made publicly available.

4           “(2) Any transfer of assets directly related to  
5           the provision of electronic publishing from a Bell op-  
6           erating company to any affiliate as described in sub-  
7           section (i) and then transferred to a separated affili-  
8           ate shall be valued at the greater of net book cost  
9           or fair market value. Any transfer of assets related  
10          to the provision of electronic publishing from a separ-  
11          ated affiliate to any affiliate and then transferred  
12          to the Bell operating company as described in sub-  
13          section (i) shall be valued at the lesser of net book  
14          cost or fair market value.

15          “(3) An affiliate shall not provide a separated  
16          affiliate any facilities, services, or basic telephone  
17          service information related to the provision of elec-  
18          tronic publishing, which were provided to such affili-  
19          ate directly or indirectly by a Bell operating com-  
20          pany, and which is not made available to unaffiliated  
21          companies on the same terms and conditions.

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

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

1 common with any entity whose principal business is  
2 publishing of which a part is electronic publishing.

3 “(2) No officer or employee of a Bell operating  
4 company shall serve as a director of any entity  
5 whose principal business is publishing of which a  
6 part is electronic publishing.

7 “(3) For the purposes of paragraphs (1) and  
8 (2), a Bell operating company or an affiliate that  
9 owns an electronic publishing joint venture shall not  
10 be deemed to be engaged in the electronic publishing  
11 business solely because of such ownership.

12 “(4) A Bell operating company shall not carry  
13 out—

14 “(A) any marketing or sales for any entity  
15 that engages in electronic publishing; or

16 “(B) any hiring of personnel, purchasing,  
17 or production,

18 for any entity that engages in electronic publishing.

19 “(5) The Bell operating company shall not pro-  
20 vide any facilities, services, or basic telephone service  
21 information to any entity that engages in electronic  
22 publishing, for use with or in connection with the  
23 provision of electronic publishing that is dissemi-  
24 nated by means of such Bell operating company’s or  
25 any of its affiliates’ basic telephone service, unless

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

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

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

13 “(n) PRIVATE RIGHT OF ACTION.—

14 “(1) Any person claiming that any act or prac-  
15 tice of any Bell operating company, affiliate, or sep-  
16 arated affiliate constitutes a violation of this section  
17 may file a complaint with the Commission or bring  
18 suit as provided in section 207 of the Communica-  
19 tions Act of 1934 (47 U.S.C. 207), and such Bell  
20 operating company, affiliate, or separated affiliate  
21 shall be liable as provided in section 206 of the  
22 Communications Act of 1934, (47 U.S.C. 207): *Pro-*  
23 *vided, however,* That damages may not be awarded  
24 for a violation that is discovered by a compliance re-

1 view as required by subsection (b)(8) or (c)(9) of  
2 this section and corrected within 90 days.

3       “(2) In addition to the provisions of paragraph  
4 (1), any person claiming that any act or practice of  
5 any Bell operating company, affiliate, or separated  
6 affiliate constitutes a violation of this section may  
7 make application to the Commission for an order to  
8 cease and desist such violation or may make applica-  
9 tion in any district court of the United States of  
10 competent jurisdiction for an order enjoining such  
11 acts or practices or for an order compelling compli-  
12 ance with such requirement.

13       “(o) ANTITRUST LAWS.—Nothing in this section  
14 shall be construed to modify, impair, or supersede the ap-  
15 plicability of any of the antitrust laws.

16       “(p) DEFINITIONS.—As used in this section—

17       “(1) The term ‘affiliate’ means any entity that,  
18 directly or indirectly, owns or controls, is owned or  
19 controlled by, or is under common ownership or con-  
20 trol with, a Bell operating company. Such term shall  
21 not include a separated affiliate.

22       “(2) The term ‘basic telephone service’ means  
23 wireline telephone exchange service provided by a  
24 Bell operating company in a telephone exchange  
25 area, except

1           “(A) a competitive wireline telephone ex-  
2           change service provided in a telephone exchange  
3           area where another entity provides a wireline  
4           telephone exchange service that was provided on  
5           January 1, 1984, and

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

10          “(3) The term ‘basic telephone service informa-  
11          tion’ means network and customer information of a  
12          Bell operating company and other information ac-  
13          quired by a Bell operating company as a result of  
14          its engaging in the provision of basic telephone  
15          service.

16          “(4) The term ‘control’ has the meaning that it  
17          has in 17 C.F.R. 240.12b-2, the regulations promul-  
18          gated by the Securities and Exchange Commission  
19          pursuant to the Securities Exchange Act of 1934  
20          (15 U.S.C. 78a et seq.) or any successor provision  
21          to such section.

22          “(5) The term ‘customer proprietary network  
23          information’ means—

24                 “(A) information which—

1           “(i) relates to the quantity, technical  
2           configuration, type, destination, and  
3           amount of use of telephone exchange serv-  
4           ice or interexchange telephone service sub-  
5           scribed to by any customer of a Bell oper-  
6           ating company, and

7           “(ii) is available to the Bell operating  
8           company by virtue of the telephone com-  
9           pany-customer relationship; and

10          “(B) information contained in the bills for  
11          telephone exchange service or interexchange  
12          telephone service received by a customer of a  
13          Bell operating company.

14          “(6)(A) The term ‘electronic publishing’ means  
15          the dissemination, provision, publication, or sale to  
16          an unaffiliated entity or person, using a Bell operat-  
17          ing company’s basic telephone service, of—

18                 “(i) news;

19                 “(ii) business and financial reports;

20                 “(iii) editorials;

21                 “(iv) columns;

22                 “(v) sports reporting;

23                 “(vi) features;

24                 “(vii) advertising;

1           “(viii) photos and images used in publish-  
2           ing;

3           “(ix) archival material used in publishing;

4           “(x) legal notices; or

5           “(xi) other like or similar information.

6           “(B) The term ‘electronic publishing’ shall not  
7           include the following network services:

8           “(i) Information access as that term is de-  
9           fined by the Modification of Final Judgment.

10          “(ii) The transmission of information as a  
11          common carrier.

12          “(iii) The transmission of information as  
13          part of a gateway to an information service that  
14          does not involve the generation or alteration of  
15          the content of information, including data  
16          transmission, address translation, protocol con-  
17          version, billing management, introductory infor-  
18          mation content, and navigational systems that  
19          enable users to access electronic publishing  
20          services, which do not affect the presentation of  
21          such electronic publishing services to users.

22          “(iv) Voice storage and retrieval services,  
23          including voice messaging and electronic mail  
24          services.

1           “(v) Level 2 gateway services as those  
2           services are defined by the Commission's Sec-  
3           ond Report and Order, Recommendation to  
4           Congress and Second Further Notice of Pro-  
5           posed Rulemaking in CC Docket No. 87-266  
6           dated August 14, 1992.

7           “(vi) Data processing services that do not  
8           involve the generation or alteration of the con-  
9           tent of information.

10           “(vii) Transaction processing systems that  
11           do not involve the generation or alteration of  
12           the content of information.

13           “(viii) Electronic billing or advertising of a  
14           Bell operating company's regulated tele-  
15           communications services.

16           “(ix) Language translation.

17           “(x) Conversion of data from one format  
18           to another.

19           “(xi) The provision of information nec-  
20           essary for the management, control, or oper-  
21           ation of a telephone company telecommuni-  
22           cations system.

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



1           “(xiii) Caller identification services.

2           “(xiv) Repair and provisioning databases  
3 for telephone company operations.

4           “(xv) Credit card and billing validation for  
5 telephone company operations.

6           “(xvi) 911-E and other emergency assist-  
7 ance databases.

8           “(xvii) Any other network service of a type  
9 that is like or similar to these network services  
10 and that does not involve the generation or al-  
11 teration of the content of information.

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

15           “(C) The term ‘electronic publishing’ also shall  
16 not include—

17           “(i) full motion video entertainment on de-  
18 mand; and

19           “(ii) video programming as defined in sec-  
20 tion 602 of the Communications Act of 1934.

21           “(7) The term ‘electronic publishing joint ven-  
22 ture’ means a joint venture owned by a Bell operat-  
23 ing company or affiliate that engages in the provi-  
24 sion of electronic publishing which is disseminated

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

3 "(8) The term 'entity' means any organization,  
4 and includes corporations, partnerships, sole propri-  
5 etorships, associations, and joint ventures.

6 "(9) The term 'inbound telemarketing' means  
7 the marketing of property, goods, or services by tele-  
8 phone to a customer or potential customer who initi-  
9 ated the call.

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

16 "(11) The term 'separated affiliate' means a  
17 corporation under common ownership or control with  
18 a Bell operating company that does not own or con-  
19 trol a Bell operating company and is not owned or  
20 controlled by a Bell operating company and that en-  
21 gages in the provision of electronic publishing which  
22 is disseminated by means of such Bell operating  
23 company's or any of its affiliates' basic telephone  
24 service.

1           “(12) The term ‘Bell operating company’ means  
2           the corporations subject to the Modification of Final  
3           Judgment and listed in Appendix A thereof, or any  
4           entity owned or controlled by such corporation, or  
5           any successor or assign of such corporation, but  
6           does not include an electronic publishing joint ven-  
7           ture owned by such corporation or entity.”.

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## **Document No. 110**

