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103D CONGRESS
1ST SESSION **H.R.** ____________

IN THE HOUSE OF REPRESENTATIVES

Mr. BROOKS (for himself and Mr. DINGELL) introduced the following bill: which was referred to the Committee on ____________

A BILL

To supersede the Modification of Final Judgment entered August 24, 1982, in the antitrust action styled U.S. v. Western Electric, Civil Action No. 82-0192, United States District Court for the District of Columbia; to amend the Communications Act of 1934 to regulate the manufacturing of Bell operating companies, and for other purposes.

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

SECTION 1. SHORT TITLES.

(a) TITLE I –Title I of this Act may be cited as the "Antitrust Reform Act of 1993".

(B) TITLE II –Title II of this Act may be cited as the Communications Reform Act of 1993".

TITLE I – SUPERSESSION OF THE MODIFICATION OF FINAL JUDGMENT

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

(a) APPLICATION. —

(1) IN GENERAL.— ~~After the applicable date specified in paragraph (2)~~ After 180 days after the enactment of this Act, a Bell operating company may apply simultaneously to the Attorney General and the Federal Communications Commission for authorization, notwithstanding the Modification of Final Judgment —

(A) to provide alarm monitoring services, or

(B) to provide interexchange telecommunications.

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

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

~~operating company may apply for authorization shall be—~~

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

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

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

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

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

~~acquisition and resale of telecommunications services,~~

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

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

~~(3)~~ (2) INTERAGENCY NOTIFICATION. — Whenever the Attorney General or the Federal Communications Commission receives an application made under paragraph (1), the recipient of the application shall notify the other of such receipt.

~~(4)~~ (3) PUBLICATION. — Not later than 10 days after receiving an application made under paragraph (1), the Attorney General and the Federal Commuications Commission jointly shall publish ~~the application~~ notice of the application that identifies the applicant and describes the activity for which authorization is sought in the Federal Register.

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

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

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

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

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

~~(C) A person who might be injured in its business or property as a result of the approval of the~~

~~authorization requested shall be permitted to participate as a party in the proceeding on which the determination is based.~~

~~(D)~~ (B)(i) No authorization shall be approved by the Attorney General or the Federal Communications Commission unless the application contains a certification by the Commission that the applicant has complied with unbundling, interconnection, and equal access requirements which shall be prescribed by the Commission.

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

(b) If the applicant has established a separate affiliate, pursuant to regulations that the Federal Communications Commission shall prescribe, to own and operate facilities used to provide

(1) local loop transport, including connections between end users and local end office switches;

(2) local end office switching;

(3) transport between local end offices and

between local end offices and interexchange carrier points of presence;

(4) network control signaling; and

(5) administration of assignment of telephone numbers,

then the Attorney General shall approve the granting of the authorization requested in the application unless the Attorney General finds a reasonable probability that the effectof such authorization would be substantially to lessen competition or to tend to create a monopoly in any product or service market in any geographic market. To the extent the Attorney General finds such a probability, the Attorney General shall deny the requested authorization and approve the remainder. Any separate affiliate established in accordance with this subsection shall provide services only to providers of telecommunications services, including other affiliates of the Bell operating company with which it is affiliated, shall be maintained and operated at arms length from such other affiliates, and shall not provide any telecommunications services directly to end users. At any time after three years after enactment of this Act, the Commission shall have the authority to exclude any of the services enumerated in clauses (1)-(5) above from the requirements of this subsection with respect to any Bell operating company to the extent that the Commission finds that such company faces effective competition in providing such service.

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

~~(iii) Notwithstanding clauses (i) and (ii), within 180 days after the date of enactment of this Act, the Attorney General and the Federal Communications Commission shall jointly prescribe regulations to establish procedures and criteria for the expedited determination and approval of applications for proposed interexchange telecommunications services that are incidental to the provision of another service which the Bell operating company may lawfully provide.~~

~~(E)~~ (C) In making any determination under subparagraph ~~(D)(ii)~~ (B)(iii) of the public interest, convenience, and necessity, the Commission shall take into account—

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(c) JUDICIAL REVIEW. —

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

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

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

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

(B) A judgment—

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

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

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

SEC. 102. AUTHORIZATION AS PREREQUISITE

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

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

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

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

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

~~(2) in providing interexchange telecommunications on~~

~~an intrastate basis if, after the date of enactment of this Act, such telecommunications have been approved by, or are authorized under the laws of, the State involved, and public notice of the availability of such authority has occurred at least 60 days before the offering of such interexchange telecommunications, or~~

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

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

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

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

~~and~~

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

(2) A Bell operating company may, solely for the purpose of providing cable television service, own and operate receive-only antennas, satellite master antenna television facilities, and satellite earth stations, and may provide cable service across exchange area boundaries within any cable system whose franchised territory includes part of separate exchange areas. Such company may use such interexchange distribution facilities only insofar as such use is necessary to provide cable television service across exchange area boundaries. Such company may neither select nor recommend the satellite uplink service, or the satellite transponder service that receives the uplink transmission and provides the downlink transmission, used for any of the receive-only antennas, satellite master antenna television facilities, or satellite earth stations owned and operated by such company as authorized by this section.

(3) A Bell operating company or its wireless affiliate (a) may provide intersystem handoff, across exchange area boundaries, of wireless mobile radio transmission between adjacent wireless systems, including the provision of such transmission facilities as are necessary to allow the

continuation of calls in progress without interruption or degradation of service due to the movement of the mobile telephone unit or the characteristics of radio propagation, and (b) may carry data concerning the location and status of a customer's wireless mobile radio unit and the customer's instructions for the handling of incoming communications between its wireless mobile radio system and a wireless system located in another exchange area when one of its wireless customers is located beyond the boundaries of the wireless system to which such customer is subscribed. Interexchange facilities used to provide the services authorized by this paragraph shall be leased by such company from an unaffiliated carrier authorized to provide interexchange telecommunications.

(4) A Bell operating company may provide interexchange telecommunications for the purpose of providing customers of electronic publishing services with access to such services. Such company shall obtain all interexchange facilities used in providing such interexchange telecommunications, including circuit and packet switching, from interexchange carriers that are not affiliated with such company.

(5) A Bell operating company may provide interexchange telecommunications for the purpose of delivering network control signaling to, and receiving such signaling from, interexchange carriers at any location within

the area in which such Bell operating company or any affiliate provides exchange service.

SEC. 103. LIMITATIONS ON MANUFACTURING AND PROVIDING EQUIPMENT

(a) Absolute Limitation.—Until the expiration of the 1-year period beginning on the date of the enactment of this Act, it shall be unlawful for a Bell operating company, directly or through an affiliated enterprise, to manufacture or provide telecommunications equipment, or to manufacture customer premises equipment.

(b) Qualified Limitation.—

(1) Required Conditions.—After the expiration of the 1-year period beginning on the date of the enactment of this Act, it shall be lawful for a Bell operating company, directly or through an affiliated enterprise, to manufacture or provide telecommunications equipment, or to manufacture customer premises equipment, if—

(A) such company submits to the Attorney General the notification described in paragraph (2) and such additional material and information described in such paragraph as the Attorney General may request within 60 days, and complies with the waiting period specified in paragraph (3), and

(B) before the expiration of the waiting period specified in paragraph (3)—

(i) the Attorney General fails to

commence a civil action to enjoin such company from engaging in the activity described in such notification, or

(ii) the Attorney General notifies such company that for purposes of this subsection the Attorney General does not intend to commence such civil action before the expiration of such waiting period.

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

(3) WAITING PERIOD.—The waiting period referred to in paragraph (1) is the 1-year period beginning on the date the notification required by such paragraph is received by the Attorney General, provided, that if the Attorney General requests additional material or information pursuant to paragraph (1), the waiting period shall be tolled until the company substantially complies with such request.

(4) CIVIL ACTION.—Not later than 1 year after

receiving a notification required by paragraph (1), the Attorney General may commence a civil action in an appropriate district court of the United States to enjoin the Bell operating company from engaging in the activity described in such notification. If such a civil action is commenced, the Bell operating company may not engage in the activity described in the notification unless the court finds that there is no substantial possibility that such company or its affiliates could use monopoly power to impede competition in the market such company seeks to enter.

(c) EXCEPTION FOR PREVIOUSLY AUTHORIZED ACTIVITIES.—Subsections (a) and (b) shall not prohibit a Bell operating company from engaging, at any time after the date of enactment of this Act, in any activity as authorized by an order entered by the United States District Court for the District of Columbia pursuant to ~~section VIII(C) of~~ the Modification of Final Judgment, if—

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

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

SEC. 104. ANTICOMPETITIVE TYING ARRANGEMENTS.

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

SEC. 105. ENFORCEMENT.

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

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

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

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

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

~~The court may award under this section, pursuant to a motion by such person promptly made, simple interest on actual damages for~~

~~the period beginning on the date of service of such person's pleading setting forth a claim under this Act and ending on the date of judgment, or for any shorter period therein, if the court finds that the award of such interest for such period is just in the circumstances.~~

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

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

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

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

Communications Commission.

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

SEC. 106 DEFINITIONS.

For purposes of this Act:

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

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

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

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

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

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

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

(A) Bell Telephone Company of Nevada, Illinois Bell Telephone Company, Indiana Bell Telephone Company, Incorporated, Michigan Bell Telephone Company, New England Telephone and Telegraph Company, New Jersey Bell Telephone Company, New York Telephone Company, US West Communications Company, South Central Bell Telephone Company, Southern Bell Telephone and Telegraph Company, Southwestern Bell Telephone Company, The Bell Telephone Company of Pennsylvania. The Chesapeake and Potomac Telephone Company, The Chesapeake and Potomac Telephone Company of Maryland, The Chesapeake and Potomac Telephone Company of

Virginia, The Chesapeake and Potomac Telephone Company of West Virginia, The Diamond State Telephone Company, The Ohio Bell Telephone Company, The Pacific Telephone and Telegraph Company, or Wisconsin Telephone Company, or

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

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

(5) CUSTOMER PREMISES EQUIPMENT.—The term "customer premises equipment" means equipment employed on the premises of a person (other than a carrier) to originate, route, or terminate telecommunications, and includes software integral to such equipment (including upgrades), but does not include equipment used to multiplex, maintain, or terminate access lines.

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

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

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

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

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

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

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

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

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

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

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

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

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

(16) TRANSMISSION FACILITIES.—The term

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

SEC. 107. RELATIONSHIP TO OTHER LAWS.

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

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

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

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

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

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

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

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

of this Act,

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

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

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

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

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

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

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

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

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

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

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

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

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

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

SEC. 201. REGULATION OF MANUFACTURING BY BELL OPERATING COMPANIES

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

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

"(a) GENERAL AUTHORITY.—Subject to the requirements of this section and the regulations prescribed thereunder, and to the requirements of the Antitrust Reform Act of 1993, but notwithstanding any restriction or obligation imposed before the date of enactment of this section pursuant to the Modification of Final Judgment on the lines of business in which a Bell operating company may engage, a Bell operating company, through an affiliate of that company, may manufacture and provide telecommunications equipment and manufacture customer premises equipment.

"(b) SEPARATE MANUFACTURING AFFILIATE.—Any manufacturing or provision authorized under subsection (a) shall be conducted only through an affiliate that is separate from any Bell operating company, provided, however, that if the Bell operating company establishes a separate affiliate, pursuant to regulations that the Federal Communications Commission shall prescribe, to own and operate facilities used to provide

"(1) local loop transport, including connections between end users and local end office switches;

"(2) local end office switching;

"(3) transport between local end offices and between local end offices and interexchange carrier points of presence;

"(4) network control signaling; and

"(5) administration of assignment of telephone numbers,

the manufacturing affiliate shall be required to be separate only from such affiliate and not from the Bell operating company or its other affiliates. Any separate affiliate established in accordance with this subsection shall provide services only to providers of telecommunications services, including other affiliates of the Bell operating company with which it is affiliated, shall be maintained and operated at arms length from such other affiliates, and shall not provide any telecommunications services directly to end users. At any time after three years after enactment of this Act, the Commission shall have the authority to exclude any of the services enumerated in clauses (1)-(5) above from the requirements of this subsection with respect to any Bell operating company to the extent that the Commission finds that such company faces effective competition in providing such service.

"(c) COMMISSION REGULATION OF MANUFACTURING AFFILIATE.—

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

"(2) BOOKS, RECORDS, ACCOUNTS.—(A) A manufacturing affiliate required by subsection (b) shall maintain books, records, and accounts separate from its affiliated Bell operating company which identify all financial transactions between the manufacturing affiliate and its affiliated Bell operating company and, even if such manufacturing affiliate is not a publicly held corporation, prepare financial statements which are in compliance with financial reporting requirements under the Federal securities laws for publicly held corporations, file such statements with the Commission and any State Commission that exercises regulatory authority over any Bell operating company affiliated with such manufacturing affiliate, and make such statements available for public inspection. The Commission and any State Commission that exercises regulatory authority over any Bell operating company affiliated with such manufacturing affiliate shall have access to the books, records, and accounts required to be prepared under this subsection.

"(B) (i) A Bell operating company that manufactures or provides telecommunications equipment or manufactures customer premises equipment through an affiliate shall obtain and pay for an annual audit conducted by an independent auditor selected by and working at the direction of the State

Commission of each State in which such company provides local exchange service, to determine whether such company has complied with this section and the regulations promulgated under this section, and particularly whether the company has complied with the separate accounting requirements under paragraph (A).

"(ii) The auditor described in paragraph (i) shall submit the results of such audit to the Commission and to the State Commission of each State in which the company provides telephone exchange service. Any party may submit comments on the final audit report.

"(iii) The audit required under paragraph (i) shall be conducted in accordance with procedures established by regulation by the State Commission of the State in which such company provides local exchange service, including requirements that --

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

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

"(iv) The Commission shall periodically review and analyze the audits submitted to it under this subsection, and shall provide to the Congress every 2 years--

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

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

"(v) For purposes of conducting audits and reviews under this subsection, an independent auditor, the Commission, and the State Commission shall have access to the financial accounts and records of each Bell operating company and those of its affiliates necessary to verify transactions conducted with each Bell operating company that are relevant to the specific activities permitted under this section and that are necessary to the State's regulation of telephone rates. Each State Commission shall implement appropriate procedures to ensure the protection of any proprietary information submitted to it under this section."

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

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

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

~~"(4) DOMESTIC MANUFACTURING REQUIRED.—~~

~~"(A) GENERAL RULE. A manufacturing affiliate required by subsection (b) shall conduct all of its manufacturing within the United States and, except as otherwise provided in this paragraph, all component parts of customer premises equipment manufactured by such affiliate, and all component parts of telecommunications equipment manufactured by such affiliate, shall have been manufactured within the United States.~~

~~"(B) EXCEPTION. Such affiliate may use component parts manufactured outside the United States if—~~

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

~~"(ii) for the aggregate of telecommunications equipment and customer premises equipment manufactured and sold in the United States by such affiliate, the cost of the~~

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

~~"(C) CERTIFICATION REQUIRED. Any such afffiliate that uses component parts manufactured outside the United States in the manufacture of telecommunications equipment and customer premises equipment within the United States shall—~~

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

~~"(ii) certify to the Commission on an annual basis that such affiliate complied with the requirements of subparagraph (B)(ii), as adjusted in accordance with subparagraph (G).~~

~~"(D) REMEDIES FOR FAILURES. (i) If the Commission determines, after reviewing the certification required in subparagraph (C)(i), that such affiliate failed to make the good faith effort required in subparagraph (B)(i) or, after reviewing the certification required in subparagraph (C)(ii), such affiliate has exceeded the percentage specified in subparagraph (B)(ii),~~

~~the Commission may impose penalties or forfeitures as provided for in title V of this Act.~~

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

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

~~"(F) USE OF INTELLECTUAL PROPERTY IN MANUFACTURE.—Notwithstanding subparagraph (A), a manufacturing affiliate may use intellectual property created outside the United States in the manufacture of telecommunications equipment and customer premises equipment in the United States. A component manufactured using such intellectual property shall not~~

~~be treated for purposes of subparagraph (B)(ii) as a component manufactured outside the United States solely on the basis of the use of such intellectual property.~~

~~"(G) RESTRICTIONS ON COMMISSION AUTHORITY.—The Commission may not waive or alter the requirements of this paragraph, except that the Commission, on an annual basis, shall adjust the percentage specified in subparagraph (B)(ii) to the percentage determined by the Commission, in consultation with the Secretary of Commerce, pursuant to subparagraph (E).~~

"~~(5)~~ (4) INSULATION OF RATE PAYERS FROM MANUFACTURING AFFILIATE DEBT.—Any debt incurred by any such manufacturing affiliate may not be issued by its affiliated Bell operating company and such manufacturing affiliate shall be prohibited from incurring debt in a manner that would permit a creditor, on default, to have recourse to the assets of its affiliated Bell operating ~~company~~ company's telecommunications services business.

"~~(6)~~ (5) RELATION TO OTHER AFFILIATES.— A manufacturing affiliate required by subsection (b) shall not be required to operate separately from the other affiliates of its affiliated Bell operating company, but if an affiliate of a Bell operating company becomes affiliated with a manufacturing entity, such affiliate shall be treated as a manufacturing affiliate of that Bell operating company and shall comply with the requirements of this section.

"~~(7)~~ (6) AVAILABILITY OF EQUIPMENT TO OTHER CARRIERS.—A manufacturing affiliate required by subsection (b) shall make available, without discrimination or self-preference as to price, delivery, terms, or conditions, to any common carrier any telecommunications equipment that is used in the provision of telephone exchange service and that is manufacutured by such affiliate so long as each such purchasing carrier—

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

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

"~~(8)~~ (7) SALES PRACTICES OF MANUFACTURING AFFILIATES.—

"(A) PROHIBITION OF DISCONTINUATION OF EQUIPMENT FOR WHICH THERE IS REASONABLE DEMAND.—A manufacturing affiliate required by subsection (b) shall not discontinue or restrict sales to a common carrier of any telecommunications equipment that is used in the provision of telephone exchange service and that such affiliate manufactures for sale as long as there is reasonable demand for the equipment by such carriers; except that such sales may be discontinued or restricted if such manufacturing affiliate demonstrates to the Commission that it is not making a profit, under a marginal cost standard implementated by the Commission by regulation, on the sale of such equipment.

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

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

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

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

"(iv) whether alternatives to the

equipment are available in the market; and

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

"~~(9)~~ (8) JOINT PLANNING OBLIGATIONS.—Each Bell operating company shall, consistent with the antitrust laws, engage in joint network planning and design with other contiguous common carriers providing telephone exchange service, but agreement with such other carriers shall not be required as a prerequisite for such introduction or deployment.

"(d) INFORMATION REQUIREMENTS.—

"(1) FILING OF INFORMATION ON PROTOCOLS AND TECHNICAL REQUIREMENTS.—Each Bell operating company shall, in accordance with regulations prescribed by the Commission, maintain and file with the Commission full and complete information with respect to the protocols and technical requirements for connection with and use of its telephone exchange service facilities. Each such company shall report promptly to the Commission any material changes or planned changes to such protocols and requirements, and the schedule for implementation of such changes or planned changes.

"(2) FILING AS PREREQUISITE TO DISCLOSURE TO AFFILIATE.—A Bell operating company shall not disclose to any of its affiliates any information require to be filed under paragraph (1) unless that information is filed promptly, as required by regulation by the Commission.

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

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

"(e) ADDITIONAL COMPETITION REQUIREMENTS.—The Commission shall prescribe regulations requiring that any Bell operating company which has an affiliate that engages in any manufacturing authorized by subsection (a) shall—

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

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

"(3) only purchase equipment from its manufacturing affiliate at a price no less favorable than that granted to any other purchaser from that affiliate.

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

"(g) ACCESSIBILLITY REQUIREMENTS.—

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

"(2) NETWORK SERVICES.—The Commission shall, within 1 year after the date of enactment of this section, prescribe such regulations as are necessary to ensure that advances in network services deployed by a Bell operating company shall be accessible and usable by individuals whose access might otherwise be impeded by a disability or functional limitation, unless the costs of making the services accessible and usable would result in an undue burden or adverse competitive impact. Such regulations shall seek to permit the use of both standard and special equipment and seek to minimize the need of individuals to acquire additional devices beyond those used by the general public to obtain such access.

"(3) COMPATIBILITY.—The regulations prescribed under paragraphs (1) and (2) shall require that whenever an undue burden or adverse competitive impact would result from the manufacturing or network services requirements in such paragraphs, the manufacturing affiliate that designs, develops, or fabricates the equipment or the Bell operating company that deploys the network service shall ensure that the equipment or network service in question is compatible with existing peripheral devices or specialized customer premises equipment commonly used by persons with disabilities to achieve access, unless doing so would result in an undue burden or adverse competitive impact.

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

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

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

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

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

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

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

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

(i) whether such activity would raise the cost of the equipment or network service in question beyond the level at which there would be sufficient consumer demand by the general population to make the equipment or network service profitable; and

(ii) whether such activity would, with respect to the equipment or network service in question, put the manufacturing affiliate or Bell operating company, as applicable, at a competitive disadvantage in comparison with one or more providers of one or more competing products and services. This factor may only be considered so long as competing manufacturers and network service providers are not held to the same obligation with respect to access by persons with disabilities.

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

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

and

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

"(5) EFFECTIVE DATE.—The regulations required by this subsection shall become effective 18 months after the date of enactment of this section.

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

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

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

"(j) ADMINISTRATION AND ENFORCEMENT AUTHORITY.—

"(1) COMMISSION REGULATORY AUTHORITY.— For the purposes of administering and enforcing the provisions of this section and the regulations prescribed thereunder, the Commission shall have the same authority, power, and functions with respect to any Bell operating company as the Commission has in administering and enforcing the provisions of this title with respect to any common carrier subject to this Act.

"(2) PRIVATE ACTIONS.—Any common carrier that provides telephone exchange service and that is injured by an act or omission of a Bell operating company or its manufacturing affiliate which violates the requirements of paragraph (7) or (8) of subsection (c), or the Commission's regulations implementing such paragraphs, may initiate an action in a district court of the United States to recover the full amount of damages sustained in consequence of any such violation and obtain such orders from the court as are necessary to terminate existing violations and to prevent future violations; or such regulated local telephone exchange carrier may seek relief from the Commission pursuant to sections 206 through 209.

"(k) RULEMAKING REQUIRED.—The Commission shall prescribe regulations to implement this section within 180 days after the date of enactment of this section.

"(l) EXISTING MANUFACTURING AUTHORITY.—Nothing in this section shall prohibit any Bell operating company from engaging, directly or through any affiliate, in any manufacturing activity in which any Bell operating company or affiliate was authorized to engage on the date of enactment of this section.

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

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

"(1) The term 'affiliate' means any organization or entity that, directly or indirectly; owns or controls, is owned or controlled by, or is under common ownership with a Bell operating company. The terms 'owns', 'owned', and 'ownership' mean an equity interest of more than 10 percent.

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

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

"(4) The term 'manufacturing' has the same meaning as such term has in the Modification of Final Judgment, and includes research, design, development, and fabrication.

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

"(6) The term 'Modification of Final Judgment' means the decree entered August 24, 1982, in United States v. Western Electric, Civil Action No. 82-0192 (United States District Court, District of Columbia), and includes any judgment or order with respect to such action entered on or after August 24, 1982, and before the date of enactment of this section.

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

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

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

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

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

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

"(a) REGULATIONS REQUIRED.~~—Not later than 6 years~~ Within 180 days after the date of enactment of this section, the Commission shall prescribe regulations—

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

"(2) to prohibit Bell operating companies and their affiliates, at that or any earlier time after the date of enactment of this section, from recording in any fashion the occurrence or the contents of calls received by providers of alarm monitoring services for the purposes of marketing such services on behalf of the Bell operating company, any of its affiliates, or any other entity; and

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

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

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

"(d) DEFINITIONS.—As used in this section, the terms 'Bell operating company', 'affiliate', and 'alarm monitoring services' have the meanings provided in section 106 of thes Antitrust Reform Act of 1993."

SEC. 203. REGULATION OF ELECTRONIC PUBLISHING.

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

"SEC. 231. REGULATION OF ELECTRONIC PUBLISHING.

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

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

"(3) Nothing in this section shall prohibit a Bell operating company or affiliate from engaging in the provision of any lawful service other than electronic publishing in any area or from engaging in the provision of electronic publishing that is not disseminated by means of such Bell operating company's or any of its affiliates' basic telephone service.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

"(7) except for—

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

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

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

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

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

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

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

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

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

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

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

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

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

"(16) not directly or indirectly provide anything of monetary value to a separated affiliate unless in exchange for consideration at least equal to the greater of its net book cost or fair market value, except the investment by an affiliate of dividends or profits derived from a Bell operating company;

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

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

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

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

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

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

"(d) CUSTOMER PROPRIETARY NETWORK INFORMATION.—A Bell operating company or any affiliate shall not provide to any electronic publisher, including a separated affiliate or electronic publishing joint venture, customer proprietary network information for use with or in connection with the provision of electronic publishing that is disseminated by means of such Bell operating company's or any of its affiliates' basic telephone service that is not made available by the Bell operating company or affiliate to all electronic publishers on the same terms and conditions.

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

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

"(g) JOINT MARKETING, ETC.—Except as provided in subsection (h)—

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

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

"(h) PERMISSIBLE JOINT ACTIVITIES.—

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

"(2) TEAMING ARRANGEMENTS.—A Bell operating company may engage in nondiscriminatory teaming or business arrangements to engage in electronic publishing with any separated affiliate or with any other electronic publisher provided that the Bell operating company only provides facilities, services, and basic telephone service information as authorized by this section and provided that the Bell operating company does not own such teaming or business arrangement.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

"(1) A Bell operating company shall not have any officers, employees, property, or facilities in common with any entity whose principal business is publishing of which a part is electronic publishing.

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

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

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

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

"(B) any hiring of personnel, purchasing, or production,

for any entity that engages in electronic publishing.

"(5) The Bell operating company shall not provide any facilities, services, or basic telephone service information to any entity that engages in electronic publishing, for use with or in connection with the provision of electronic publishing that is disseminated by means of such Bell operating company's or any of its affiliates' basic telephone service, unless equivalent facilities, services, or information are made available on equivalent terms and conditions to all.

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

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

"(n) PRIVATE RIGHT OF ACTION.—

"(1) Any person claiming that any act or practice of any Bell operating company, affiliate, or separated affiliate constitutes a violation of this section may file a complaint with the Commission or bring suit as provided in section 207 of the Communications Act of 1934 (47 U.S.C. 207), and such

Bell operating company, affiliate, or separated affiliate shall be liable as provided in section 206 of the Communications Act of 1934, (47 U.S.C. 207): *Provided, however,* That damages may not be awarded for a violation that is discovered by a compliance review as required by subsection (b) (8) or (c) (9) of this section and corrected within 90 days.

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

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

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

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

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

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

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

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

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

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

"(A) information which—

"(i) relates to the quantity, technical configuration, type, destination, and amount of use of telephone exchange service or interexchange telephone service subscribed to by any customer of a Bell operating company, and "(ii) is available to the Bell operating company by virtue of the telephone company-customer relationship; and

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

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

"(i) news;

"(ii) business and financial reports;

"(iii) editorials;

"(iv) columns;

"(v) sports reporting;

"(vi) features;

"(vii) advertising;

"(viii) photos and images used in publishing;

"(ix) archival material used in publishing;

"(x) legal notices; or

"(xi) other like or similar information.

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

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

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

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

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

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

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

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

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

"(ix) Language translation.

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

"(xi) The provision of information necessary for the management, control, or operation of a telephone company telecommunications system.

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

"(xiii) Caller identification services.

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

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

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

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

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

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

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

"(ii) video programming as defined in section 602 of the Communications Act of 1934.

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

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

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

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

"(11) The term 'separated affiliate' means a corporation under common ownership or control with a Bell operating company that does not own or control a Bell operating company and is not owned or controlled by a Bell operating company and that engages in the provision of electronic publishing which is disseminated by means of such Bell operating company's or any of its affiliates' basic telephone service.

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