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103D CONGRESS
2D SESSION

H. R. 3626

AN ACT

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.

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

SECTION 1. SHORT TITLES; TABLE OF CONTENTS.

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

(b) SHORT TITLE OF TITLE I OF THIS ACT.—Title I of this Act may be cited as the ''Antitrust Reform Act of 1994''.

(c) TABLE OF CONTENTS.—

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TITLE I—SUPERSESSION OF THE MODIFICATION OF FINAL JUDGMENT

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

(a) APPLICATION.—

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

(A) to provide alarm monitoring services, or

(B) to provide interexchange telecommunications services.

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

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

(A) the date of the enactment of this Act, with respect to providing interexchange telecommunications services, and

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

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

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

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

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

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

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

(B) Such determination shall be based on a preponderance of the evidence.

(C) Any person who would be threatened with loss or damage as a result of the approval of the authorization requested shall be permitted to participate as a party in the proceeding on which the determination is based.

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

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

(iii) Notwithstanding clauses (i) and (ii), not later than 180 days after the date of the enactment of this Act, the Attorney General and the Federal

Communications Commission shall each prescribe regulations to establish procedures and criteria for the expedited determination and approval of applications for authorization to provide interexchange telecommunications services (other than services described in section 102(c)) that are incidental to the provision of another service which the Bell operating company may lawfully provide. Before prescribing such regulations, the Attorney General and the Commission shall consult with respect to such regulations, including consultation for the purpose of avoiding unnecessary inconsistencies in such regulations.

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

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

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

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

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

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

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

(vii) in the case of an application to provide alarm monitoring services, whether the Commission has the capability to enforce effectively the regulations established pursuant to

section 230 of the Communications Act of 1934 as added by this Act.

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

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

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

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

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

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

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

(c) JUDICIAL REVIEW.—

(1) COMMENCEMENT OF 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 would be threatened with loss or damage as a result of the determination regarding such company's engaging in the activity described in such company's application, may commence an action in the United States Court of Appeals for the District of Columbia Circuit against the Attorney General or the Federal Communications Commission, as the case may be, for judicial review of the determination regarding the application.

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

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

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

(B) A judgment—

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

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

shall describe with particularity the nature and scope of the 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) GENERAL EXCEPTIONS.—Except with respect to providing alarm monitoring services, subsection (a) shall not prohibit a Bell operating company from engaging, at any time after the date of the enactment of this Act—

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

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

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

(2) in providing intrastate interexchange telecommunications services if—

(A) after the date of the enactment of this Act, the State involved approves or authorizes such company to provide such services, after taking into account the potential effects of such

approval or authorization on competition and the public interest,

(B) not less than 90 days before such company offers to provide such services, such company gives notice to the public and the Attorney General that such approval or authorization has been granted by such State, and appoints an agent for the purpose of receiving service of process,

(C) the Attorney General—

(i) fails to commence a civil action in accordance with subsection (d), not later than 90 days after the Attorney General receives the notice described in subparagraph (B), to enjoin such company from providing such services, or

(ii) so commences such civil action but—

(I) fails to obtain an injunction from the district court involved enjoining such company from providing such services, or

(II) such injunction issued by such court is vacated on appeal, and

(D) the Bell operating company is required by regulations prescribed by the Federal Communications Commission and such State, for the services subject to their respective jurisdictions, to pay a nondiscriminatory access charge to the local exchange carrier (including itself) that provides the Bell operating company with telephone exchange access, and

(3) in providing interexchange telecommunications services through resale of telecommunications services purchased from a person who is not an affiliated enterprise of such company if—

(A) such interexchange telecommunications services involve only telecommunications that originate in a State in which, on the date of the enactment of this Act, such company provided wireline telephone exchange services,

(B) such State has approved or authorized persons that are not affiliated enterprises 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 pro-

vider of the customer's designation from among 2 or more telecommunications services providers (including such company),

(C) after the date of the enactment of this Act and not less than 90 days before such company offers to provide such interexchange telecommunications services, such company gives notice to the public and the Attorney General that such approval or authorization has been granted by such State, and

(D) the Attorney General—

(i) fails to commence a civil action in accordance with subsection (d), not later than 90 days after the Attorney General receives the notice described in subparagraph (C), to enjoin such company from providing such services, or

(ii) so commences such civil action but—

(I) fails to obtain an injunction from the district court involved enjoining such company from providing such services, or

(II) such injunction issued by such court is vacated on appeal.

(c) EXCEPTIONS FOR INCIDENTAL SERVICES.—Subsection (a) shall not prohibit a Bell operating company, at any time after the date of the enactment of this Act, from providing interexchange telecommunications services for the purpose of—

(1)(A) providing audio programming, video programming, or other programming services to subscribers to such services of such company,

(B) providing the capability for interaction by such subscribers to select or respond to such audio programming, video programming, or other programming services, or

(C) providing to distributors audio programming or video programming that such company owns, controls, or is licensed by the copyright owner of such programming, or by an assignee of such owner, to distribute,

(2) providing a telecommunications service, using the transmission facilities of a cable system that is an affiliate of such company, between exchange areas within a cable system franchise area in which such company is not, on the date of the enactment of this Act, a provider of wireline telephone exchange service,

(3) providing commercial mobile services in accordance with section 332(c) of the Communications Act of 1934 (47 U.S.C. 332(c)) and with the regulations prescribed by the Commission pursuant to paragraph (7) of such section,

(4) providing a service that permits a customer that is located in one exchange area to retrieve stored information from, or file information for storage in, information storage facilities of such company that are located in another exchange area,

(5) providing signaling information used in connection with the provision of exchange services to a local exchange carrier that, together with any affiliated local exchange carriers, has aggregate annual revenues of less than $100,000,000, or

(6) providing network control signaling information to, and receiving such signaling information from, interexchange carriers at any location within the area in which such company provides exchange services or exchange access.

(d) CIVIL ACTION.—(1) For the purpose of paragraph (2) or (3) of subsection (b), the Attorney General shall commence a civil action, not later than 90 days after receiving the notice required by paragraph (2)(B) or (3)(C) of such subsection, respectively, to enjoin such com-

pany from providing interexchange telecommunications services pursuant to such paragraph if the Attorney General determines that the standard specified in the first sentence of section 101(b)(3)(D)(i) is not satisfied with respect to providing such interexchange telecommunications services.

(2) With respect to a civil action commenced for the purpose of paragraph (2) or (3) of subsection (b), venue shall lie in any district court of the United States in the State that granted the approval or authorization referred to in such paragraph.

(3) If the Attorney General does not commence a civil action in accordance with paragraph (1) before the expiration of the 90-day period beginning on the date the Attorney General receives such notice, the Attorney General shall publish in the Federal Register a brief statement that the Attorney General has determined not to commence such civil action.

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 manu-

facture 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, to the extent described in a notification to the Attorney General that meets the requirements of paragraph (2) and only if—

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

(B)(i) the waiting period specified in paragraph (3) expires without the commencement of a civil action by the Attorney General in accordance with paragraph (4) to enjoin such com-

pany from engaging in the activity described in such notification, or

(ii) before the expiration of such waiting period, the Attorney General notifies such company in writing that the Attorney General does not intend to commence such a civil action with respect to such activity.

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

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

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

the activity described in such notification, if the Attorney General determines that there is a substantial possibility that such company or its affiliates could use monopoly power to impede competition in the market it seeks to enter with respect to such activity.

(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 the 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 VII or 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 title.

(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 title—

(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 title 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 title, when and under the same conditions and principles as injunctive relief is available under section 16 of the Clayton Act (15 U.S.C. 26). In any action under this subsection in which the plaintiff substantially prevails, the court shall award the cost of suit, including a reasonable attorney's fee, to such plaintiff.

(e) JURISDICTION.—(1) Subject to paragraph (2), the courts of the United States shall have exclusive jurisdiction to make determinations with respect to a duty, claim, or right arising under this title, 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 title shall be stayed pending any such determination by the Attorney General or the Federal Communications Commission.

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

(g) APPLICABILITY OF OTHER LAWS TO ENFORCEMENT OF THIS TITLE.—

(1) SECTION 5 OF THE CLAYTON ACT.—Section 5 of the Clayton Act (15 U.S.C. 16) shall apply with respect to actions under this section brought by or on behalf of the United States.

(2) ANTITRUST CIVIL PROCESS ACT.—Section 2(a) of the Antitrust Civil Process Act (15 U.S.C. 1311(a)) is amended—

(A) in paragraph (1) by striking ''and'' at the end,

(B) in paragraph (2) by striking the period at the end and inserting ''and'', and

(C) by adding at the end the following:

''(3) title I of the Antitrust and Communications Reform Act of 1994.''.

SEC. 106. DEFINITIONS.

For purposes of this title:

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

(2) ALARM MONITORING SERVICE.—The term ''alarm monitoring service'' means a service that uses a device located at a residence, place of business, or other fixed premises—

(A) to receive signals from other devices located at or about such premises regarding a possible threat at such premises to life, safety, or property, from burglary, fire, vandalism, bodily injury, or other emergency, and

(B) to transmit a signal regarding such threat by means of transmission facilities of a Bell operating company or one of its affiliates to a remote monitoring center to alert a person at such center of the need to inform the cus-

tomer or another person or police, fire, rescue, security, or public safety personnel of such threat,

but does not include a service that uses a medical monitoring device attached to an individual for the automatic surveillance of an ongoing medical condition.

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

(4) AUDIO PROGRAMMING.—The term ''audio programming'' means programming provided by, or generally considered comparable to programming provided by, a radio broadcast station.

(5) BELL OPERATING COMPANY.—The term ''Bell operating company'' means—

(A) Bell Telephone Company of Nevada, Illinois Bell Telephone Company, Indiana Bell Telephone Company, Incorporated, Michigan

Bell Telephone Company, New England Telephone and Telegraph Company, New Jersey Bell Telephone Company, New York Telephone Company, U S West Communications Company, South Central Bell Telephone Company, Southern Bell Telephone and Telegraph Company, Southwestern Bell Telephone Company, The Bell Telephone Company of Pennsylvania, The Chesapeake and Potomac Telephone Company, The Chesapeake and Potomac Telephone Company of Maryland, The Chesapeake and Potomac Telephone Company of Virginia, The Chesapeake and Potomac Telephone Company of West Virginia, The Diamond State Telephone Company, The Ohio Bell Telephone Company, The Pacific Telephone and Telegraph Company, or Wisconsin Telephone Company,

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

(C) any affiliate of any person described in subparagraph (A) or (B).

(6) CABLE SYSTEM.—The term ''cable system'' has the meaning given such term in section 602(7) of the Communications Act of 1934 (47 U.S.C. 522(7)).

(7) CARRIER.—The term ''carrier'' has the meaning given such term in section 3 of the Communications Act of 1934 (47 U.S.C. 153).

(8) COMMERCIAL MOBILE SERVICES.—The term ''commercial mobile services'' has the meaning given such term in section 332(d) of the Communications Act of 1934 (47 U.S.C. 332(d)).

(9) 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.

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

(11) 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.

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

(13) INFORMATION.—Except as provided in paragraph (17), the term ''information'' means knowledge or intelligence represented by any form of writing, signs, signals, pictures, sounds, or other symbols.

(14) INTEREXCHANGE TELECOMMUNICATIONS.—The term ''interexchange telecommunications'' means telecommunications between a point located in an exchange area and a point located outside such exchange area.

(15) MANUFACTURE.—The term ''manufacture'' has the meaning given such term under the Modification of Final Judgment.

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

(17) OTHER PROGRAMMING SERVICES.—The term ''other programming services'' means information (other than audio programming or video programming) that the person who offers a video programming service makes available to all subscribers generally. For purposes of the preceding sentence, the terms ''information'' and ''makes available to all subscribers generally'' have the same meaning such terms have under section 602(13) of the Communications Act of 1934 (47 U.S.C. 522(13)).

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

(19) STATE.—The term ''State'' means any of the several States, the District of Columbia, the Commonwealth of Puerto Rico, the Commonwealth of the Northern Mariana Islands, the Federated States of Micronesia, the Republic of the Marshall Islands, Palau, or any territory or possession of the United States.

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

(21) TELECOMMUNICATIONS EQUIPMENT.—The term ''telecommunications equipment'' means equip-

ment, other than customer premises equipment, used by a carrier to provide a telecommunications service, and includes software integral to such equipment.

(22) TELECOMMUNICATIONS SERVICE.—The term ''telecommunications service'' means the offering for hire of transmission facilities or of telecommunications by means of such facilities.

(23) 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.

(24) VIDEO PROGRAMMING.—The term ''video programming'' has the meaning given such term in section 602(19) of the Communications Act of 1934 (47 U.S.C. 522(19)).

SEC. 107. RELATIONSHIP TO OTHER LAWS.

(a) MODIFICATION OF FINAL JUDGMENT.—This title shall supersede the Modification of Final Judgment, except that this title 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, and

(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 and effect,

(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.—Except as provided in section 105(g), nothing in this Act shall be construed to modify, impair, or supersede the applicability of any of the antitrust laws.

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

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

(d) CUMULATIVE PENALTY.—Any penalty imposed, or relief granted, under this title 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 title.

SEC. 108. REQUIRED REGULATORY ACTIONS.

(a) REGULATIONS TO PROHIBIT CROSS-SUBSIDIES.—Not later than 180 days after the date of enactment of this Act, the Federal Communications Commission shall review its regulations and revise such regulations to the extent necessary to prevent a Bell operating company from engaging in any improper cross-subsidization in connection with any of the services described in paragraphs (1) through (6) of section 102(c).

(b) MOBILE SERVICE ACCESS.—

(1) AMENDMENT.—Section 332(c) of the Communications Act of 1934 (47 U.S.C. 332(c)) is amended by adding at the end the following new paragraph:

''(7) MOBILE SERVICES ACCESS.—Within 180 days after the date of enactment of this paragraph, the Commission shall review its regulations with respect to the access to interexchange services provided to subscribers to commercial mobile services and revise such regulations to the extent necessary to protect the public interest, convenience, and necessity. In revising such regulations, the Commission—

''(A) shall, until January 1, 1998, and may thereafter (i) require that each provider of two-way commercial mobile services afford its subscribers nondiscriminatory access to a provider of interexchange services of the subscriber's choice, and (ii) establish geographic service areas within which providers of two-way commercial mobile services shall be exempt from the access obligation under clause (i);

''(B) may establish or revise technical interconnection requirements on providers of two-way commercial mobile services;

''(C) subject to section 104 of the Antitrust and Communications Reform Act of 1994, and the provisions of paragraph (1) of this subsection and subparagraph (A) of this paragraph and the regulations prescribed thereunder, may permit (with or without conditions) or prohibit the bundling of two-way commercial mobile services with interexchange services; and

''(D) shall not, in establishing any requirement under subparagraph (A), (B), or (C) establish different requirements—

''(i) for providers of two-way commercial mobile services that also are, or are af-

filiated with, providers of wireline telephone exchange service; and

''(ii) for providers of two-way commercial mobile services that are not, and are not affiliated with, providers of wireline telephone exchange service.

The regulations prescribed pursuant to this paragraph shall supersede any inconsistent requirements imposed by the Modification of Final Judgment (as such term is defined in section 106 of the Antitrust and Communications Reform Act of 1994). Nothing in this paragraph shall affect the Commission's authority to establish the terms and conditions under which providers of telephone exchange services provide access to the local exchange networks for commercial mobile services or interexchange services.''.

(2) EFFECTIVE DATE CONFORMING AMENDMENT.—Section 6002(c)(2)(B) of the Omnibus Budget Reconciliation Act of 1993 is amended by striking ''section 332(c)(6)'' and inserting ''paragraphs (6) and (7) of section 332(c)''.

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

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

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

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

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

''(b) SEPARATE MANUFACTURING AFFILIATE.—Any manufacturing or provision authorized under subsection

(a) shall be conducted only through an affiliate that is separate from any Bell operating company.

''(c) COMMISSION REGULATION OF MANUFACTURING AFFILIATE.—

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

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

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

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

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

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

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

''(4) DOMESTIC MANUFACTURING REQUIRED.—

''(A) GENERAL RULE.—Except as otherwise provided in this paragraph, a manufacturing affiliate required by subsection (b) shall conduct all of its manufacturing within the United States and all component parts of customer premises equipment manufactured by such affiliate, and all component parts of tele-

communications equipment manufactured by such affiliate, shall have been manufactured within the United States.

''(B) EXCEPTION.—(i) 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.

''(ii) Subparagraph (A) shall apply except to the extent that any of its provisions are determined to be inconsistent with any multilateral or bilateral agreement to which the United States is a party.

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

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

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

''(D) REMEDIES FOR FAILURES.—(i) If the Commission determines, after reviewing the certification required in subparagraph (C)(i), that such affiliate failed to make the good faith effort required in subparagraph (B)(i) or, after

reviewing the certification required in subparagraph (C)(ii), that such affiliate has exceeded the percentage specified in subparagraph (B)(ii), the Commission may impose penalties or forfeitures as provided for in title V of this Act.

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

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

''(F) USE OF INTELLECTUAL PROPERTY IN MANUFACTURE.—Notwithstanding subparagraph (A), a manufacturing affiliate may use intellectual property created outside the United States in the manufacture of telecommunications equipment and customer premises equipment in the United States. A component manufactured using such intellectual property shall not be treated for purposes of subparagraph (B)(ii) as a component manufactured outside the United States solely on the basis of the use of such intellectual property.

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

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

incurring debt in a manner that would permit a creditor, on default, to have recourse to the assets of its affiliated Bell operating company.

''(6) RELATION TO OTHER AFFILIATES.—A manufacturing affiliate required by subsection (b) shall not be required to operate separately from the other affiliates of its affiliated Bell operating company, but if an affiliate of a Bell operating company becomes affiliated with a manufacturing entity, such affiliate shall be treated as a manufacturing affiliate of that Bell operating company (except for purposes of paragraph (3)) and shall comply with the requirements of this section.

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

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

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

''(8) SALES PRACTICES OF MANUFACTURING AFFILIATES.—

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

cost standard implemented by the Commission by regulation, on the sale of such equipment.

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

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

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

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

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

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

''(9) JOINT PLANNING OBLIGATIONS.—Each Bell operating company shall, consistent with the antitrust laws, (including title I of the Antitrust and Communications Reform Act of 1994), engage in joint network planning and design with other contig-

uous common carriers providing telephone exchange service, but agreement with such other carriers shall not be required as a prerequisite for the introduction or deployment of services pursuant to such joint network planning and design.

''(d) INFORMATION REQUIREMENTS.—

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

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

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

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

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

''(1) provide, to other manufacturers of telecommunications equipment and customer premises equipment that is functionally equivalent to equipment manufactured by the Bell operating company

manufacturing affiliate, opportunities to sell such equipment to such Bell operating company which are comparable to the opportunities which such Company provides to its affiliates; and

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

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

''(g) ACCESSIBILITY REQUIREMENTS.—

''(1) MANUFACTURING.—The Commission shall, within 1 year after the date of enactment of this section, prescribe such regulations as are necessary to ensure that telecommunications equipment and customer premises equipment designed, developed, and fabricated pursuant to the authority granted in this section shall be accessible and usable by individuals with disabilities, including individuals with functional limitations of hearing, vision, movement, ma-

nipulation, speech, and interpretation of information, unless the costs of making the equipment accessible and usable would result in an undue burden or an adverse competitive impact.

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

''(3) COMPATIBILITY.—The regulations prescribed under paragraphs (1) and (2) shall require that whenever an undue burden or adverse competitive impact would result from the manufacturing or network services requirements in such paragraphs, the manufacturing affiliate that designs, develops, or

fabricates the equipment or the Bell operating company that deploys the network service shall ensure that the equipment or network service in question is compatible with existing peripheral devices or specialized customer premises equipment commonly used by persons with disabilities to achieve access, unless doing so would result in an undue burden or adverse competitive impact.

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

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

''(i) The nature and cost of the activity.

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

''(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.

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

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

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

by the general population to make the equipment or network service profitable.

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

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

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

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

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

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

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

''(j) ADMINISTRATION AND ENFORCEMENT AUTHORITY.—

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

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

may seek relief from the Commission pursuant to sections 206 through 209.

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

''(l) ANTITRUST LAWS.—Nothing in this section shall be construed to modify, impair, or supersede the applicability of any of the antitrust laws (including title I of the Antitrust and Communications Reform Act of 1994).

''(m) DEFINITIONS.—As used in this section:

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

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

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

''(4) The term 'manufacturing' has the same meaning as such term has under the Modification of Final Judgment.

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

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

''(7) The term 'telecommunications' means the transmission, between or among points specified by the user, of information of the user's choosing, without change in the form or content of the information as sent and received, by means of an electromagnetic transmission medium, including all instrumentalities, facilities, apparatus, and services (including the col-

lection, 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 of 1934 is amended by adding at the end the following new section:

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

''(a) REGULATIONS REQUIRED.—The Commission shall prescribe regulations—

''(1) to establish such requirements, limitations, or conditions as are (A) necessary and appropriate in the public interest with respect to the provision of alarm monitoring services by Bell operating companies and their affiliates, and (B) effective at such

time as a Bell operating company or any of its affiliates is authorized to provide alarm monitoring services;

''(2) to prohibit Bell operating companies and their affiliates, at that or any earlier time after the date of enactment of this section, from recording or using 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 Com-

mission shall, within 60 days after receipt of the complaint, issue a cease and desist order to prevent the Bell operating company and its affiliates from continuing to engage in such violation pending such final determination.

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

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

''(e) DEFINITIONS.—As used in this section:

''(1) BELL OPERATING COMPANY.—The term 'Bell operating company' has the meaning provided in subparagraphs (A) or (B) of section 106(5) of the Antitrust and Communication Reform Act of 1994.

''(2) ALARM MONITORING SERVICES.—The term 'alarm monitoring services' has the meaning provided in section 106(2) of such Act.

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

SEC. 203. REGULATION OF ELECTRONIC PUBLISHING.

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

"**SEC. 231. REGULATION OF ELECTRONIC PUBLISHING.**

''(a) IN GENERAL.—

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

''(2) PERMITTED ACTIVITIES OF SEPARATED AFFILIATE.—Nothing in this section shall prohibit a separated affiliate or electronic publishing joint ven-

ture from engaging in the provision of electronic publishing or any other lawful service in any area.

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

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

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

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

''(3) prepare financial statements that are not consolidated with those of the Bell operating com-

pany or an affiliate, provided that consolidated statements may also be prepared;

''(4) file with the Commission annual reports in a form substantially equivalent to the Form 10–K required by regulations of the Securities and Exchange;

''(5) after 1 year from the effective date of this section, not hire—

''(A) 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;

''(B) network operations personnel whose responsibilities at the separated affiliate or electronic publishing joint venture would require dealing directly with the Bell operating company; or

''(C) any person who was employed by the Bell operating company during the year preceding their date of hire,

except that the requirements of this paragraph 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, trademarks, or service marks that are or were used in common with the entity that owns or controls the Bell operating company;

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

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

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

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

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

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

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

''(3) carry out transactions with a separated affiliate, which involve the transfer of personnel, assets, or anything of value, pursuant to written con-

tracts 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 auditing standards;

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

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

''(7) except for—

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

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

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

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

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

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

''(B) the results of which are maintained by the Bell operating company for a period of 5 years subject to review by any lawful authority;

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

''(11) if it provides facilities or services for telecommunication, transmission, billing and collection, or physical collocation to any electronic publisher,

including a separated affiliate, for use with or in connection with the provision of electronic publishing that is disseminated by means of such Bell operating company's or any of its affiliates' basic telephone service, provide to all other electronic publishers the same type of facilities and services on request, on the same terms and conditions or as required by the Commission or a State, and unbundled and individually tariffed to the smallest extent that is technically feasible and economically reasonable to provide;

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

''(13) if prices for network access and interconnection for basic telephone service are no longer subject to regulation, provide electronic publishers

such services on the same terms and conditions as a separated affiliate receives such services;

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

''(15) provide reasonable advance notification at the same time and on the same terms to all affected electronic publishers of information if such information is within any one or more of the following categories:

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

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

''(C) such information concerns changes in basic telephone service network design and technical standards which may affect the provision of electronic publishing;

''(16) not directly or indirectly provide anything of monetary value to a separated affiliate unless in

exchange for consideration at least equal to the greater of its net book cost or fair market value, except the investment by an affiliate of dividends or profits derived from a Bell operating company;

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

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

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

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

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

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

''(d) CUSTOMER PROPRIETARY NETWORK INFORMATION.—Consistent with section 232 of this Act, a Bell operating company or any affiliate shall not provide to any

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

''(e) COMPLIANCE WITH SAFEGUARDS.—No Bell operating company or affiliate thereof (including a separated affiliate) shall act in concert with another Bell operating company or any other entity in order to knowingly and willfully violate or evade the requirements of this section.

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

''(g) JOINT MARKETING.—Except as provided in subsection (h)—

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

''(2) a Bell operating company shall not carry out any promotion, marketing, sales, or advertising

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

''(h) PERMISSIBLE JOINT ACTIVITIES.—

''(1) JOINT TELEMARKETING.—A Bell operating company may provide inbound telemarketing or referral services related to the provision of electronic publishing for a separated affiliate, electronic publishing joint venture, affiliate, or 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) RECORDS OF TRANSACTIONS.—Any provision of facilities, services, or basic telephone service information, or any transfer of assets, personnel, or anything of commercial or competitive value, from a Bell operating company to any affiliate related to the provision of electronic publishing shall be—

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

''(B) auditable in accordance with generally accepted auditing standards; and

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

''(2) VALUATION OF TRANSFERS.—Any transfer of assets directly related to the provision of electronic publishing from a Bell operating company to an affiliate shall be valued at the greater of net book

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

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

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

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

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

''(B) auditable in accordance with generally accepted auditing standards; and

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

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

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

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

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

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

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

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

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

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

for any entity that engages in electronic publishing.

''(5) The Bell operating company shall not provide any facilities, services, or basic telephone service information to any entity that engages in electronic

publishing, for use with or in connection with the provision of electronic publishing that is disseminated by means of such Bell operating company's or any of its affiliates' basic telephone service, unless equivalent facilities, services, or information are made available on equivalent terms and conditions to all.

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

''(m) SUNSET.—The provisions of this section shall not apply to conduct occurring after June 30, 2000.

''(n) PRIVATE RIGHT OF ACTION.—

''(1) DAMAGES.—Any person claiming that any act or practice of any Bell operating company, affiliate, or separated affiliate constitutes a violation of this section may file a complaint with the Commission or bring suit as provided in section 207 of this Act, and such Bell operating company, affiliate, or separate±d affiliate shall be liable as provided in section 206 of this Act; except that damages may not be awarded for a violation that is discovered by a compliance review as required by subsection (b)(8)

or (c)(9) of this section and corrected within 90 days.

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

''(o) ANTITRUST LAWS.—Nothing in this section shall be construed to modify, impair, or supersede the applicability of any of the antitrust laws (including title I of the Antitrust and Communications Reform Act of 1994).

''(p) EQUAL EMPLOYMENT OPPORTUNITIES.—Any Bell operating company, and any affiliate or joint venture or other business partner of a Bell operating company, that is engaged in the provision of electronic publishing shall be subject to the provisions of section 634 of this Act, except that the Commission shall prescribe by regula-

tion appropriate job classifications in lieu of the job classifications in subsection (d)(3)(A) of such section.

''(q) DEFINITIONS.—As used in this section—

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

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

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

''(B) a commercial mobile service provided by an affiliate that is required by the Commission to be a corporate entity separate from the Bell operating company.

''(3) The term 'basic telephone service information' means network and customer information of a Bell operating company and other information ac-

quired by a Bell operating company as a result of its engaging in the provision of basic telephone service.

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

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

''(i) news,

''(ii) entertainment (other than interactive games),

''(iii) business, financial, legal, consumer, or credit material;

''(iv) editorials;

''(v) columns;

''(vi) sports reporting;

''(vii) features;

''(viii) advertising;

''(ix) photos or images;

''(x) archival or research material;

''(xi) legal notices or public records;

''(xii) scientific, educational, instructional, technical, professional, trade, or other literary materials; or

''(xiii) 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.

''(6) The term 'electronic publishing joint venture' means a joint venture owned by a Bell operating company or affiliate that engages in the provision of electronic publishing which is disseminated

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

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

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

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

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

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

SEC. 204. PRIVACY OF CUSTOMER INFORMATION.

(a) PRIVACY OF CUSTOMER PROPRIETARY NETWORK INFORMATION.—

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

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

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

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

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

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

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

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

''(D) disclose customer proprietary network information to any person except to the extent necessary to permit such person to pro-

vide services or products that are used in and necessary to the provision by such carrier of the services described in subparagraph (A);

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

''(3) shall, whenever such carrier provides any aggregate information, notify the Commission of the availability of such aggregate information and shall provide such aggregate information on reasonable terms and conditions to any other service or equipment provider upon reasonable request therefor; and

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

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

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

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

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

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

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

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

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

''(f) DEFINITION OF AGGREGATE INFORMATION.—For purposes of this section, the term 'aggregate informa-

tion' means collective data that relates to a group or category of services or customers, from which individual customer identities and characteristics have been removed.''.

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

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

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

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

''(3) such other information concerning the customer as is available to the local exchange carrier by virtue of the customer's use of the carrier's telephone exchange service or interexchange telephone services, and specified as within the definition of such term by such rules as the Commission shall prescribe consistent with the public interest;

except that such term does not include subscriber list information.

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

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

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

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

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

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

(B) to examine the impact that the globalization of such integrated communications networks has on the international dissemination

of consumer information and the privacy rights and remedies to protect consumers;

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

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

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

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

(A) to have knowledge that consumer information is being collected about them through

their utilization of various communications technologies;

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

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

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

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

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

SEC. 205. TELEMESSAGING SERVICES.

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. 233. TELEMESSAGING SERVICES.

''(a) NONDISCRIMINATION.—A common carrier engaged in the provision of telemessaging services shall—

''(1) provide nonaffiliated entities, upon reasonable request, with the network services it provides to its own telemessaging operations, on nondiscriminatory terms and conditions; and

''(2) not subsidize its telemessaging services with revenues from telephone exchange service.

''(b) EXPEDITED CONSIDERATION OF COMPLAINTS.—The Commission shall establish procedures for the receipt and review of complaints concerning violations of subsection (a) or the regulations thereunder that result in material financial harm to a provider of telemessaging service. Such procedures shall ensure that the Commission will make a final determination with respect to any such complaint 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, order the common carrier and its affiliates to cease engaging in such violation pending such final determination.

''(c) DEFINITIONS.—As used in this section, the term 'telemessaging services' means voice mail and voice storage and retrieval services provided over telephone lines for

telemessaging customers and any live operator services used to answer, record, transcribe, and relay messages (other than telecommunications relay services) from incoming telephone calls on behalf of the telemessaging customers (other than any service incidental to directory assistance).''.

SEC. 206. ENHANCED SERVICES SAFEGUARDS.

Within 60 days after the date of the enactment of this Act, the Commission shall initiate a proceeding to reconsider its decision in the Report and Order In the Matter of Computer III Remand Proceedings, CC Docket No. 90–623, released December 20, 1993, relieving the Bell operating companies of the obligation to provide enhanced services through fully separate affiliates. Within 180 days after the date of the enactment of this Act, the Commission shall, to the extent it determines necessary or appropriate in the public interest, adopt regulations prescribing the structural or nonstructural safeguards, or both, with which local exchange carriers shall comply when providing enhanced services.

TITLE III—TELECOMMUNICATIONS INFRASTRUCTURE AND COMPETITION

SEC. 301. POLICY; DEFINITIONS.

(a) POLICY.—Section 1 of the Communications Act of 1934 (47 U.S.C. 151) is amended—

(1) by inserting ''(a)'' after ''SECTION 1.''; and

(2) by adding at the end thereof the following new subsection:

''(b) The purposes described in subsection (a), as they relate to common carrier services, include—

''(1) to preserve and enhance universal telecommunications service at just and reasonable rates;

''(2) to encourage the continued development and deployment of advanced and reliable capabilities and services in telecommunications networks;

''(3) to make available, so far as possible, to all the people of the United States, regardless of location or disability, a switched, broadband telecommunications network capable of enabling users to originate and receive affordable high quality voice, data, graphics, and video telecommunications services;

''(4) to ensure that the costs of such networks and services are allocated equitably among users and are constrained by competition whenever possible;

''(5) to ensure a seamless and open nationwide telecommunications network through joint planning, coordination, and service arrangements between and among carriers; and

''(6) to ensure that common carriers' networks function at a high standard of quality in delivering advances in network capabilities and services.''.

(b) DEFINITIONS.—Section 3 of such Act (47 U.S.C. 153) is amended—

(1) in subsection (r)—

(A) by inserting ''(A)'' after ''means''; and

(B) by inserting before the period at the end the following: '', or (B) service provided through a system of switches, transmission equipment, or other facilities (or combination thereof) by which a subscriber can originate and terminate a telecommunications service within a State but which does not result in the subscriber incurring a telephone toll charge''; and

(2) by adding at the end thereof the following:

''(ii) 'Information service' means the offering of a capability for generating, acquiring, storing, transforming, processing, retrieving, utilizing, or making available information via telecommunications, and includes electronic publishing, but does not include any use of any such capability for the management, control, or operation of a telecommunications system or the management of a telecommunications service.

''(jj) 'Equal access' means to afford, to any person seeking to provide an information service or a telecommunications service, reasonable and nondiscriminatory access on an unbundled basis—

''(1) to databases, signaling systems, poles, ducts, conduits, and rights-of-way owned or controlled by a local exchange carrier, or other facilities, functions, or information (including subscriber numbers) integral to the efficient transmission, routing, or other provision of telephone exchange services or telephone exchange access services;

''(2) that is at least equal in type, quality, and price to the access which the carrier affords to itself or to any other person; and

''(3) that is sufficient to ensure the full interoperability of the equipment and facilities of the carrier and of the person seeking such access.

''(kk) 'Open platform service' means a switched, end-to-end digital telecommunications service that is subject to title II of this Act, and that (1) provides subscribers with sufficient network capability to access multimedia information services, (2) is widely available throughout a State, (3) is provided based on industry standards, and (4) is available to all subscribers on a single line basis upon reasonable request.

''(ll) 'Local exchange carrier' means any person that is engaged in the provision of telephone exchange service or telephone exchange access service. Such term does not include a person insofar as such person is engaged in the provision of a commercial mobile service under section 332(c), except to the extent that the Commission finds that such service as provided by such person in a State is a replacement for a substantial portion of the wireline telephone exchange service within such State.

''(mm) 'Telephone exchange access service' means the offering of telephone exchange services or facilities for the purpose of the origination or termination of interexchange telecommunications services to or from an exchange area.

''(nn) 'Telecommunications' means the transmission, between or among points specified by the subscriber, of information of the subscriber's choosing, without change in the form or content of the information as sent and re-

ceived, 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.

''(oo) 'Telecommunications service' means the offering, on a common carrier basis, of telecommunications facilities, or of telecommunications by means of such facilities. Such term does not include an information service.''.

SEC. 302. EQUAL ACCESS AND NETWORK FUNCTIONALITY AND QUALITY.

(a) AMENDMENT.—Section 201 of the Communications Act of 1934 (47 U.S.C. 201) is amended by adding at the end thereof the following new subsections:

''(c) EQUAL ACCESS.—

''(1) OPENNESS AND ACCESSIBILITY OBLIGATIONS.—

''(A) COMMON CARRIER OBLIGATIONS.—The duty of a common carrier under subsection (a) to furnish communications service includes the duty to interconnect with the facilities and equipment of other providers of telecommunications services and information services in accordance with such regulations as the Commission may prescribe as necessary or desirable in

the public interest with respect to the openness and accessibility of common carrier networks.

''(B) ADDITIONAL OBLIGATIONS OF LOCAL EXCHANGE CARRIERS.—The duty under subsection (a) of a local exchange carrier includes the duty—

''(i) to provide, in accordance with the regulations prescribed under paragraph (2), equal access to and interconnection with the facilities of the carrier's networks to any other carrier or person providing telecommunications services or information services reasonably requesting such equal access and interconnection, so that such networks are fully interoperable with such telecommunications services and information services; and

''(ii) to offer unbundled features, functions, and capabilities whenever technically feasible and economically reasonable, in accordance with requirements prescribed by the Commission pursuant to this subsection and other laws.

''(2) EQUAL ACCESS AND INTERCONNECTION REGULATIONS.—

''(A) REGULATIONS REQUIRED.—Within 1 year after the date of enactment of this subsection, the Commission shall establish regulations that require reasonable and nondiscriminatory equal access to and interconnection with the facilities of a local exchange carrier's network at any technically feasible and economically reasonable point within the carrier's network on reasonable terms and conditions, to any other carrier or person offering telecommunications services requesting such access. The Commission shall establish such regulations after consultation with the Joint Board established pursuant to subparagraph (D). Such regulations shall provide for actual collocation of equipment necessary for interconnection for telecommunications services at the premises of a local exchange carrier, except that the regulations shall provide for virtual collocation where the local exchange carrier demonstrates that actual collocation is not practical for technical reasons or because of space limitations.

''(B) COMPENSATION.—Within 1 year after the date of enactment of this subsection,

the Commission shall establish regulations requiring just and reasonable compensation to the exchange carrier providing such equal access and interconnection pursuant to subparagraph (A). Such regulations shall include regulations to require the carrier, to the extent it provides a telecommunications service or an information service, to impute such access and interconnection charges to itself as the Commission determines are reasonable and nondiscriminatory.

''(C) EXEMPTIONS AND MODIFICATIONS.—Notwithstanding paragraph (1) or subparagraph (A) of this paragraph, a rural telephone company shall not be required to provide equal access and interconnection to another local exchange carrier. The Commission shall not apply the requirements of this paragraph or impose requirements pursuant to paragraph (1)(B)(ii) to any rural telephone company, except to the extent that the Commission determines that compliance with such requirements would not be unduly economically burdensome, unfairly competitive, technologically infeasible, or otherwise not in the public interest. The Commission may modify the requirements of this paragraph

for any other local exchange carrier that has, in the aggregate nationwide, fewer than 500,000 access lines installed, to the extent that the Commission determines that compliance with such requirements (without such modification) would be unduly economically burdensome, technologically infeasible, or otherwise not in the public interest. The Commission may include, in the regulations prescribed pursuant to paragraph (1)(B), modified requirements for any feature, function, or capability that the Commission determines is generally available to competing providers of telecommunications services or information services at the same or better price, terms, and conditions.

''(D) JOINT BOARD ON EQUAL ACCESS AND INTERCONNECTION STANDARDS.—Within 30 days after the date of enactment of this subsection, the Commission shall convene a Federal-State Joint Board under section 410(c) for the purpose of preparing a recommended decision for the Commission with respect to the equal access and interconnection regulations required by this paragraph.

''(E) ENFORCEMENT OF EXISTING REGULATIONS.—Nothing in this section shall be construed to prohibit the Commission from enforcing regulations prescribed prior to the date of enactment of this subsection in fulfilling the requirements of this subsection, to the extent that such regulations are consistent with the provisions of this subsection.

''(F) DEFINITION OF RURAL TELEPHONE COMPANY.—For the purpose of subparagraph (C) of this paragraph, the term 'rural telephone company' means a local exchange carrier operating entity to the extent that such entity—

''(i) provides common carrier service to any local exchange carrier study area that does not include either—

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

''(II) any territory, incorporated or unincorporated, included in an urbanized area, as defined by the Bu-

reau of the Census as of August 10, 1993;

''(ii) provides telephone exchange service, including telephone exchange access service, to fewer than 50,000 access lines; or

''(iii) provides telephone exchange service to any local exchange carrier study area with fewer than 100,000 access lines.

''(3) PREEMPTION.—

''(A) LIMITATION.—Notwithstanding section 2(b), no State or local government may, after one year after the date of enactment of this subsection—

''(i) effectively prohibit any person or carrier from providing any interstate or intrastate telecommunications service or information service, or impose any restriction or condition on entry into the business of providing any such service;

''(ii) prohibit any carrier or other person providing interstate or intrastate telecommunications services or information services from exercising the access and

interconnection rights provided under this subsection; or

''(iii) impose any limitation on the exercise of such rights.

''(B) PERMITTED TERMS AND CONDITIONS.—Subparagraph (A) shall not be construed to prohibit a State from imposing a term or condition on providers of telecommunications services or information services if such term or condition does not effectively prohibit any person or carrier from providing any interstate or intrastate telecommunications service or information service and is necessary and appropriate to—

''(i) protect public safety and welfare;

''(ii) ensure the continued quality of intrastate telecommunications;

''(iii) ensure that rates for intrastate telecommunications services are just and reasonable; or

''(iv) ensure that the provider's business practices are consistent with consumer protection laws and regulations.

''(C) NORMAL CONSTRUCTION PERMITS PERMITTED.—Subparagraph (A) shall not be

construed to prohibit a local government from requiring a person or carrier to obtain ordinary and usual construction or similar permits for its operations if (i) such permit is required without regard to the nature of the business, and (ii) requiring such permit does not effectively prohibit any person or carrier from providing any interstate or intrastate telecommunications service or information service.

''(D) EXCEPTION.—In the case of commercial mobile services, the provisions of section 332(c)(3) shall apply in lieu of the provisions of this paragraph.

''(E) PARITY OF FRANCHISE AND OTHER CHARGES.—Notwithstanding section 2(b), no local government may, after 1 year after the date of enactment of this subsection, impose or collect any franchise, license, permit, or right-of-way fee or any assessment, rental, or any other charge or equivalent thereof as a condition for operating in the locality or for obtaining access to, occupying, or crossing public rights-of-way from any provider of telecommunications services that distinguishes between or among providers of telecommuni-

cations services, including the local exchange carrier. For purposes of this subsection, a franchise, license, permit, or right-of-way fee or an assessment, rental, or any other charge or equivalent thereof does not include any imposition of general applicability which does not distinguish between or among providers of telecommunications services, or any tax.

''(4) TARIFFS.—

''(A) GENERALLY.—Within 18 months after the date of enactment of this subsection, a local exchange carrier shall prepare and file tariffs in accordance with this Act with respect to the services or elements offered to comply with the equal access and interconnection regulations required under this subsection. The costs that a carrier incurs in providing such services or elements shall be borne solely by the users of the features and functions comprising such services or elements or of the feature or function that uses or includes such services or elements. The Commission shall review such tariffs to ensure that—

''(i) the charges for such services or elements are cost-based; and

''(ii) the terms and conditions contained in such tariffs unbundle any separable services, elements, features, or functions in accordance with paragraph (1)(B)(ii) and any regulations thereunder.

''(B) SUPPORTING INFORMATION.—A local exchange carrier shall submit supporting information with its tariffs for equal access and interconnection that is sufficient to enable the Commission and the public to determine the relationship between the proposed charges and the costs of providing such services or elements. The submission of such information shall be pursuant to regulations adopted by the Commission to ensure that similarly situated carriers provide such information in a uniform fashion.

''(5) PRICING FLEXIBILITY.—

''(A) ESTABLISHMENT OF CRITERIA.—Within 270 days after the date of enactment of this subsection, the Commission, by regulation, shall establish criteria for determining—

''(i) whether a telecommunications service or provider of such service has become, or is substantially certain to become,

subject to competition, either within a geographic area or within a class or category of service;

''(ii) whether such competition will effectively prevent rates for such service that are unjust or unreasonable or that are unjustly or unreasonably discriminatory; and

''(iii) appropriate flexible pricing procedures that can be used in lieu of the filing of tariff schedules, or in lieu of other pricing procedures established by the Commission, and that are consistent with the protection of subscribers and the public interest, convenience, and necessity.

''(B) DETERMINATIONS.—The Commission, with respect to rates for interstate or foreign communications, and State commissions, with respect to rates for intrastate communications, shall, upon application—

''(i) render determinations in accordance with the criteria established under clauses (i) and (ii) of subparagraph (A) concerning the services or providers that are the subject of such application; and

''(ii) upon a proper showing, establish appropriate flexible pricing procedures consistent with the criteria established under clause (iii) of such subparagraph.

The Commission shall approve or reject any such application within 180 days after the date of its submission.

''(C) EXCEPTION.—In the case of commercial mobile services, the provisions of section 332(c)(1) shall apply in lieu of the provisions of this paragraph.

''(6) JOINT BOARD TO PRESERVE UNIVERSAL SERVICE.—

''(A) ESTABLISHMENT; FUNCTIONS.—Within 30 days after the date of enactment of this subsection, the Commission shall convene a Federal-State Joint Board under section 410(c) for the purpose of recommending actions to the Commission and State commissions for the preservation of universal service. As a part of preparing such recommendations, the Joint Board shall survey providers and users of telephone exchange service and consult with State commissions in order to determine the pecuniary difference between the cost of providing

universal service and the prices determined to be appropriate for such service.

''(B) PRINCIPLES.—The Joint Board shall base policies for the preservation of universal service on the following principles:

''(i) A plan adopted by the Commission and the States should ensure the continued viability of universal service by maintaining quality services at just and reasonable rates.

''(ii) Such plan should define the nature and extent of the services encompassed within carriers' universal service obligations. Such plan should seek to promote access to advanced telecommunications services and capabilities, including open platform service, for all Americans by including access to advanced telecommunications services and capabilities in the definition of universal service while maintaining just and reasonable rates. Such plan should seek to promote reasonably comparable services for the general public in urban and rural areas.

''(iii) Such plan should establish specific and predictable mechanisms to provide adequate and sustainable support for universal service.

''(iv) All providers of telecommunications services should make an equitable and nondiscriminatory contribution to preservation of universal service.

''(v) Such plan should permit residential subscribers to continue to receive only basic voice-grade local telephone service, for a period of not more than 5 years, equivalent to the service generally available to residential subscribers on the date of enactment of this subsection, at just, reasonable, and affordable rates. Determinations concerning the affordability of rates for such services shall take into account the rates generally available to residential subscribers on such date of enactment and the pricing rules established by the States. If the plan would result in any increases in the rates for such services for residential subscribers that are not attributable to changes in consumer prices generally, such

plan should include a requirement that a rate increase shall be permitted in any proceeding commenced after March 16, 1994, only upon a showing that such increase is necessary to prevent competitive disadvantages for one or more service providers and is in the public interest. Such plan should provide that any such increase in rates shall be minimized to the greatest extent practical and shall be implemented over a time period of not less than 5 years after the date of enactment of this subsection.

''(vi) To the extent that a common carrier establishes advanced telecommunications services, such plan should include provisions to promote public access to advanced telecommunications services, other than a video platform, at a preferential rate that will recover only the added costs of providing such service, for public service institutions, both as producers and users of services, as soon as technically feasible and economically reasonable. Such plan shall provide that such preferential rates should only be made available to such institutions

for the purpose of providing noncommercial information services or telecommunications services to the general public and not for the internal telecommunications needs or commercial use of such institutions.

''(vii) Such plan should determine and establish mechanisms to ensure that rates charged by a provider of interexchange telecommunications services for services in rural areas are maintained at levels no higher than those charged by the same carrier to subscribers in urban areas.

''(viii) Such plan should, notwithstanding any other provision of law, require common carriers serving more than 1,800,000 access lines in the aggregate nationwide, to be subject to alternative or price regulation, and not cost-based rate-of-return regulation, for services that are subject to the jurisdiction of the Commission or the States, as applicable, when such carrier's network has been made open to competition as a result of its implementation of the equal access, interconnection,

and accessibility provisions of this subsection.

''(ix) Such other principles as the Board determines are necessary and appropriate for the protection of the public interest, convenience, and necessity and consistent with the purposes of this Act.

''(C) DEFINITION OF UNIVERSAL SERVICE; ACCESS TO ADVANCED SERVICES.—In defining the nature and extent of the services encompassed within carriers' universal service obligations under subparagraph (B)(ii), the Joint Board shall consider the extent to which—

''(i) a telecommunications service has, through the operation of market choices by customers, been subscribed to by a substantial majority of residential customers;

''(ii) denial of access to such service to any individual would unfairly deny that individual educational and economic opportunities;

''(iii) such service has been deployed in the public switched telecommunications network; and

''(iv) inclusion of such service within carriers' universal service obligations is otherwise consistent with the public interest, convenience, and necessity.

The Joint Board may, from time to time, recommend to the Commission modifications in the definition proposed under subparagraph (B).

''(D) REPORT; COMMISSION RESPONSE.—The Joint Board convened pursuant to subparagraph (A) shall report its recommendations within 270 days after the date of enactment of this subsection. The Commission shall complete any proceeding to act upon such recommendations within one year after such date of enactment. A State may adopt regulations to implement the Joint Board's recommendations, except that such regulations shall not, after 18 months after such date of enactment, be inconsistent with regulations prescribed by the Commission to implement such recommendations.

''(E) DEFINITION OF PUBLIC SERVICE INSTITUTION.—For the purposes of this paragraph, the term 'public service institution' means—

''(i) an agency or instrumentality of Federal, State, or local government;

''(ii) a nonprofit educational institution, health care institution, public library, public museum, or public broadcasting station or entity;

''(iii) a charitable organization that (I) is exempt from Federal income taxes under section 501(c)(3) of the Internal Revenue Code of 1986; (II) provides public services in conjunction with an agency, instrumentality, institution, or entity described in clause (i) or (ii); and (III) provides information that is useful to the public and that is related to the work of such an agency, instrumentality, institution, or entity.

''(7) CROSS SUBSIDIES PROHIBITION.—The Commission shall—

''(A) prescribe regulations to prohibit a common carrier from engaging in any practice that results in the inclusion in rates for telephone exchange service or telephone exchange access service of any operating expenses, costs, depreciation charges, capital investments, or

other expenses directly associated with the provision of competing telecommunications services, information services, or video programming services by the common carrier or affiliate; and

''(B) ensure such competing telecommunications services, information services or video programming services bear a reasonable share of the joint and common costs of facilities used to provide telephone exchange service or telephone exchange access service and competing telecommunications services, information services, or video programming services.

''(8) RESALE.—The resale or sharing of telephone exchange service (or unbundled services, elements, features, or functions of telephone exchange service) in conjunction with the furnishing of a telecommunications service or an information service shall not be prohibited nor subject to unreasonable conditions by the carrier, the Commission, or any State.

''(9) TELECOMMUNICATIONS NUMBER PORTABILITY.—The Commission shall prescribe regulations to ensure that—

''(A) telecommunications number portability shall be available, upon request, as soon as technically feasible and economically reasonable; and

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

The Commission shall have exclusive jurisdiction over those portions of the North American Numbering Plan that pertain to the United States. For the purpose of this paragraph, the term 'telecommunications number portability' means the ability of users of telecommunications services to retain existing telecommunications numbers without impairment of quality, reliability, or convenience when switching from one provider of telecommunications services to another.

''(10) REVIEW OF STANDARDS AND REQUIREMENTS.—At least once every three years, the Commission shall—

''(A) conduct a proceeding in which interested parties shall have an opportunity to comment on whether the standards and requirements established by or under this subsection have opened the networks of carriers to reason-

able and nondiscriminatory access by providers of telecommunications services and information services;

''(B) review the definition of, and the adequacy of support for, universal service, and evaluate the extent to which universal service has been protected and access to advanced services has been facilitated pursuant to this subsection and the plans and regulations thereunder; and

''(C) submit to the Congress a report containing a statement of the Commission's findings pursuant to such proceeding, and including an identification of any defects or delays observed in attaining the objectives of this subsection and a plan for correcting such defects and delays.

''(11) STUDY OF RURAL PHONE SERVICE.—Within 1 year after the date of enactment of this subsection, the Commission shall initiate an inquiry to examine the effects of competition in the provision of telephone exchange access service and telephone exchange service on the availability and rates for telephone exchange access service and telephone exchange service furnished by rural exchange carriers.

''(d) NETWORK FUNCTIONALITY AND QUALITY.—

''(1) FUNCTIONALITY AND RELIABILITY OBLIGATIONS.—The duty of a common carrier under subsection (a) to furnish communications service includes the duty to furnish that service in accordance with such regulations of functionality and reliability as the Commission may prescribe as necessary or desirable in the public interest pursuant to this subsection.

''(2) COORDINATED PLANNING FOR INTEROPERABILITY AND OTHER PURPOSES.—The Commission shall establish—

''(A) procedures for the conduct of coordinated network planning by common carriers and other providers of telecommunications services or information services, subject to Commission supervision, for the effective and efficient interconnection and interoperability of public and private networks; and

''(B) procedures for Commission oversight of the development by appropriate standards-setting organizations of—

''(i) standards for the interconnection and interoperability of such networks;

''(ii) standards that promote access to network capabilities and services by individuals with disabilities; and

''(iii) standards that promote access to information services by subscribers to telephone exchange service furnished by a rural telephone company (as such term is defined in subsection (c)(2)(F)).

''(3) OPEN PLATFORM SERVICE.—

''(A) STUDY.—Within 90 days after the date of enactment of this subsection, the Commission shall initiate an inquiry to consider the regulations and policies necessary to make open platform service available to subscribers at reasonable rates based on the reasonably identifiable costs of providing such service, utilizing existing facilities or new facilities with improved capability or efficiency. The inquiry required under this paragraph shall be completed within 180 days after the date of its initiation.

''(B) REGULATIONS.—On the basis of the results of the inquiry required under subparagraph (A), the Commission shall prescribe and make effective such regulations as are necessary to implement the inquiry's conclusions. Such

regulations may require a local exchange carrier to file, in the appropriate jurisdiction, tariffs for the origination and termination of open platform service as soon as such service is economically and technically feasible. In establishing any such regulations, the Commission shall take into account the proximate and long-term deployment plans of local exchange carriers.

''(C) TEMPORARY WAIVER.—The Commission shall also establish a procedure to waive temporarily specific provisions of the regulations prescribed under this paragraph if a local exchange carrier demonstrates that compliance with such requirement—

''(i) would be economically or technically infeasible, or

''(ii) would materially delay the deployment of new facilities with improved capabilities or efficiencies that will be used to meet the requirements of open platform services.

Such petitions shall be decided by the Commission within 180 days after the date of its submission.

''(D) COST ALLOCATION.—Any such regulations shall provide for the allocation of all costs of facilities jointly used to provide open platform service and telephone exchange service or telephone exchange access services.

''(E) STATE AUTHORITY.—Nothing in this paragraph shall be construed to limit a State's authority to continue to regulate any services subject to State jurisdiction under this Act.

''(F) COMMISSION INQUIRY.—Within 2 years after the date of enactment of this paragraph, the Commission shall conduct an inquiry concerning the deployment of open platform service and other advanced telecommunications network capabilities, including switched, broadband telecommunications facilities. In conducting such inquiry, the Commission shall seek to develop information concerning—

''(i) the availability of such network capabilities to all Americans;

''(ii) the availability of such network capabilities to different regions, States, and classes of subscribers;

''(iii) the availability of advanced network technology needed to deploy such network capabilities; and

''(iv) likely deployment schedules for such network capabilities by region, State, and classes of subscribers.

The Commission shall submit a report to the Congress on the results of such inquiry within 270 days after the commencement of such inquiry, and annually thereafter for the succeeding 5 years.

''(4) ACCESSIBILITY REGULATIONS.—

''(A) REGULATIONS.—Within 1 year after the date of enactment of this section, the Commission shall prescribe such regulations as are necessary to ensure that advances in network services deployed by local exchange carriers 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 cost 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. Throughout the process of developing such regulations, the Commission shall coordinate and consult with representatives of individuals with disabilities and interested equipment and service providers to ensure their concerns and interests are given full consideration in such process.

''(B) COMPATIBILITY.—Such regulations shall require that whenever an undue burden or adverse competitive impact would result from the requirements in subparagraph (A), the local exchange carrier that deploys the network service shall ensure that the 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.

''(C) UNDUE BURDEN.—The term 'undue burden' means significant difficulty or expense. In determining whether the activity necessary

to comply with the requirements of this paragraph would result in an undue burden, the factors to be considered include the following:

''(i) The nature and cost of the activity.

''(ii) The impact on the operation of the facility involved in the deployment of the network service.

''(iii) The financial resources of the local exchange carrier.

''(iv) The type of operations of the local exchange carrier.

''(D) ADVERSE COMPETITIVE IMPACT.—In determining whether the activity necessary to comply with the requirements of this paragraph would result in adverse competitive impact, the following factors shall be considered:

''(i) Whether such activity would raise the cost of the network service in question beyond the level at which there would be sufficient consumer demand by the general population to make the network service profitable.

''(ii) Whether such activity would, with respect to the network service in ques-

tion, put the local exchange carrier at a competitive disadvantage. This factor may be considered so long as competing network service providers are not held to the same obligation with respect to access by persons with disabilities.

''(E) REVIEW OF STANDARDS AND REQUIREMENTS.—At least once every 3 years, the Commission shall conduct a proceeding in which interested parties shall have an opportunity to comment on whether the regulations established under this paragraph have ensured that advances in network services by providers of telecommunications services and information services are accessible and usable by individuals with disabilities.

''(F) EFFECTIVE DATE.—The regulations required by this paragraph shall become effective 18 months after the date of enactment of this subsection.

''(5) QUALITY RULES.—

''(A) MEASURES OR BENCHMARKS REQUIRED.—The Commission shall designate or otherwise establish network reliability and quality performance measures or benchmarks for

common carriers for the purpose of ensuring the continued maintenance and evolution of common carrier facilities and service. Not later than 180 days after the date of enactment of this subsection, the Commission shall initiate a rulemaking proceeding to establish such performance measures or benchmarks.

''(B) CONTENTS OF REGULATIONS.—Such regulations shall include—

''(i) quantitative network reliability and service quality performance measures or benchmarks;

''(ii) procedures to monitor and evaluate common carrier efforts to increase network reliability and service quality; and

''(iii) procedures to resolve network reliability and service quality complaints.

''(C) COORDINATION AND CONSULTATION.—Throughout the process of developing network reliability and service quality performance measures or benchmarks, as required by subparagraphs (A) and (B), the Commission shall coordinate and consult with service and equipment providers and users and State regu-

latory bodies to ensure their concerns and interests are given full consideration in such process.

''(6) RURAL EXEMPTION.—The Commission may modify, or grant exemptions from, the requirements of this subsection in the case of a common carrier providing telecommunications services in a rural area.

''(e) INFRASTRUCTURE SHARING.—

''(1) REGULATIONS REQUIRED.—Within one year after the date of enactment of this subsection, the Commission shall prescribe regulations that require local exchange carriers to make available to qualifying carriers such public switched telecommunications network technology and information and telecommunications facilities and functions as may be requested by such a qualifying carrier for the purpose of enabling that carrier to provide telecommunications services, or to provide access to information services, in the geographic area in which that carrier has requested and obtained designation as the qualifying carrier.

''(2) QUALIFYING CARRIERS.—For purposes of paragraph (1), the term 'qualifying carrier' means a local exchange carrier that—

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

''(B) is a common carrier which offers telephone exchange service, telephone exchange access service, and any other service that is within the definition of universal service, to all customers without preference throughout one or more exchange areas in existence on the date of enactment of this subsection.

''(3) TERMS AND CONDITIONS OF REGULATIONS.—The regulations prescribed by the Commission pursuant to this subsection—

''(A) shall not require any local exchange carrier to take any action that is economically unreasonable or that is contrary to the public interest or to provide telecommunications facilities and functions to any qualifying carrier that is not reasonably proximate to such local exchange carrier;

''(B) shall permit, but shall not require, the joint ownership or operation of public switched telecommunications network facilities,

functions, and services by or among the local exchange carrier and the qualifying carrier;

''(C) shall ensure that a local exchange carrier shall not be treated by the Commission or any State commission as a common carrier for hire, or as offering common carrier services, with respect to any technology, information, facilities, or functions made available to a qualifying carrier pursuant to this subsection;

''(D) shall ensure that local exchange carriers make such technology, information, facilities, or functions available to qualifying carriers on fair and reasonable terms and conditions that permit such qualifying carriers to fully benefit from the economies of scale and scope of the providing local exchange carrier, as determined in accordance with guidelines prescribed by the Commission in such regulations;

''(E) shall establish conditions that promote cooperation between local exchange carriers and qualifying carriers; and

''(F) shall not require any local exchange carrier to engage in any infrastructure sharing agreement for any geographic area where such

carrier is required to provide services subject to State regulation.

''(4) INFORMATION CONCERNING DEPLOYMENT OF NEW SERVICES AND EQUIPMENT.—Any local exchange carrier that has entered into an agreement with a qualifying carrier under this subsection shall provide to each party to such agreement timely information on the planned deployment of telecommunications services and equipment, including software integral to such telecommunications services and equipment, including upgrades.''.

(b) PREEMPTION OF FRANCHISING AUTHORITY REGULATION OF TELECOMMUNICATIONS SERVICES.—

(1) TELECOMMUNICATIONS SERVICES.—Section 621(b) of the Communications Act of 1934 (47 U.S.C. 541(c)) is amended by adding at the end thereof the following new paragraph:

''(3)(A) To the extent that a cable operator or affiliate thereof is engaged in the provision of telecommunications services—

''(i) such cable operator or affiliate shall not be required to obtain a franchise under this title; and

''(ii) the provisions of this title shall not apply to such cable operator or affiliate.

''(B) A franchising authority may not impose any requirement that has the purpose or effect of prohibiting, limiting, restricting, or conditioning the provision of a telecommunications service by a cable operator or an affiliate thereof.

''(C) A franchising authority may not order a cable operator or affiliate thereof—

''(i) to discontinue the provision of a telecommunications service, or

''(ii) to discontinue the operation of a cable system, to the extent such cable system is used for the provision of a telecommunications service, by reason of the failure of such cable operator or affiliate thereof to obtain a franchise or franchise renewal under this title with respect to the provision of such telecommunications service.

''(D) A franchising authority may not require a cable operator to provide any telecommunications service or facilities as a condition of the initial grant of a franchise or a franchise renewal.''.

(2) FRANCHISE FEES.—Section 622(b) of the Communications Act of 1934 (47 U.S.C. 542(b)) is amended by inserting ''to provide cable services'' immediately before the period at the end of the first sentence thereof.

(c) CONFORMING AMENDMENT.—Section 2(b) of the Communications Act of 1934 (47 U.S.C. 152(b)) is amended by inserting ''201 (c) and (d),'' after ''Except as provided in sections''.

SEC. 303. TELECOMMUNICATIONS SERVICES FOR EDUCATIONAL INSTITUTIONS, HEALTH CARE INSTITUTIONS, AND LIBRARIES.

Title II of the Communications Act of 1934 is amended by adding at the end the following new section:

''SEC. 234. TELECOMMUNICATIONS SERVICES FOR EDUCATIONAL INSTITUTIONS, HEALTH CARE INSTITUTIONS, AND LIBRARIES.

''(a) PROMOTION OF DELIVERY OF ADVANCED SERVICES.—In fulfillment of its obligation under section 1 to make available to all the people of the United States a rapid, efficient, nationwide, and worldwide communications service, the Commission shall promote the provision of advanced telecommunications services by wire, wireless, cable, and satellite technologies to—

''(1) educational institutions;

''(2) health care institutions; and

''(3) public libraries.

''(b) ANNUAL SURVEY REQUIRED.—The National Telecommunications and Information Administration shall conduct a nationwide survey of the availability of advanced

telecommunications services to educational institutions, health care institutions, and public libraries. The Administration shall complete the survey and release publicly the results of such survey not later than one year after the date of enactment of this section. The results of such survey shall include—

''(1) the number of educational institutions and classrooms, health care institutions, and public libraries;

''(2) the number of educational institutions and classrooms, health care institutions, and public libraries that have access to advanced telecommunications services; and

''(3) the nature of the telecommunications facilities through which such educational institutions, health care institutions, and public libraries obtain access to advanced telecommunications services.

The National Telecommunications and Information Administration shall update annually the survey required by this section. The survey required under this subsection shall be prepared in consultation with the Department of Education, Department of Health and Human Services, and such other Federal, State, and local departments, agencies, and authorities that may maintain or have access to information concerning the availability of advanced

telecommunications services to educational institutions, health care institutions, and libraries.

''(c) RULEMAKING REQUIRED.—Within one year after the date of enactment of this section, the Commission shall issue a notice of proposed rulemaking for the purpose of adopting regulations that—

''(1) enhance, to the extent technically feasible and economically reasonable, the availability of advanced telecommunications services to all educational institutions and classrooms, health care institutions, and public libraries by the year 2000;

''(2) ensure that appropriate functional requirements or performance standards, or both, including interoperability standards, are established for telecommunications systems or facilities that interconnect educational institutions, health care institutions, and public libraries with the public switched telecommunications network;

''(3) define the circumstances under which a carrier may be required to interconnect its telecommunications network with educational institutions, health care institutions, and public libraries;

''(4) provide for either the establishment of preferential rates for telecommunications services, including advanced services, that are provided to

educational institutions, health care institutions, and public libraries, or the use of alternative mechanisms to enhance the availability of advanced services to these institutions; and

''(5) address such other related matters as the Commission may determine.

''(d) FEASIBILITY STUDY.—The Commission shall assess the feasibility of including postsecondary educational institutions in any regulations promulgated under this section.

''(e) DEFINITIONS.—For purposes of this section—

''(1) the term 'educational institutions' means elementary and secondary educational institutions; and

''(2) the term 'health care institutions' means not-for-profit health care institutions, including hospitals and clinics.''.

SEC. 304. DISCRIMINATORY INTERCONNECTION.

Section 208 of the Communications Act of 1934 is amended by adding at the end thereof the following new subsection:

''(c) EXPEDITED REVIEW OF CERTAIN COMPLAINTS.—The Commission shall issue a final order with respect to any complaint arising from alleged violations of the regulations and orders prescribed pursuant to sec-

tion 201(c) within 180 days after the date such complaint is filed.''.

SEC. 305. EXPEDITED LICENSING OF NEW TECHNOLOGIES AND SERVICES.

Section 7 of the Communications Act of 1934 (47 U.S.C. 157) is amended by adding at the end thereof the following new subsection:

''(c) LICENSING OF NEW TECHNOLOGIES.—

''(1) EXPEDITED RULEMAKING.—Within 24 months after making a determination under subsection (b) that a technology or service related to the furnishing of telecommunications services is in the public interest, the Commission shall, with respect to any such service requiring a license or other authorization from the Commission, adopt and make effective regulations for—

''(A) the provision of such technology or service; and

''(B) the filing of applications for the licenses or authorizations necessary to offer such technology or service to the public, and shall act on any such application within 24 months after it is filed.

''(2) REVIEW OF APPLICATIONS.—Any application filed by a carrier under this subsection for the

construction or extension of a line shall also be subject to section 214 and to any necessary approval by the appropriate State commissions.''.

SEC. 306. NEW OR EXTENDED LINES.

Section 214 of the Communications Act of 1934 (47 U.S.C. 214) is amended by adding at the end the following new subsection:

''(e) Any application filed under this section for authority to construct or extend a line shall address the means by which such construction or extension will meet the network access needs of individuals with disabilities.''.

SEC. 307. POLE ATTACHMENTS.

Section 224 of the Communications Act of 1934 (47 U.S.C. 244) is amended—

(1) in subsection (a)(4), by inserting after ''system'' the following: ''or a provider of telecommunications service'';

(2) in subsection (c)(2)(B), by striking ''cable television services'' and inserting ''the services offered via such attachments'';

(3) by redesignating subsection (d)(2) as subsection (d)(4); and

(4) by striking subsection (d)(1) and inserting the following:

''(d)(1) For purposes of subsection (b) of this section, the Commission shall, no later than 1 year after the date of enactment of the Antitrust and Communications Reform Act of 1994, prescribe regulations for ensuring that utilities charge just and reasonable and nondiscriminatory rates for pole attachments provided to all providers of telecommunications services, including such attachments used by cable television systems to provide telecommunications services (as defined in section 3(oo) of this Act). Such regulations shall—

''(A) recognize that the entire pole, duct, conduit, or right-of-way other than the usable space is of equal benefit to all attachments to the pole, duct, conduit, or right-of-way and therefore apportion the cost of the space other than the usable space equally among all such attachments,

''(B) recognize that the usable space is of proportional benefit to all entities attached to the pole, duct, conduit, or right-of-way and therefore apportion the cost of the usable space according to the percentage of usable space required for each entity, and

''(C) allow for reasonable terms and conditions relating to health, safety, and the provision of reliable utility service.

''(2) The final regulations prescribed by the Commission pursuant to subparagraphs (A), (B), and (C) of paragraph (1) shall not apply to a pole attachment used by a cable television system solely to provide cable service as defined in section 602(6) of this Act. The rates for pole attachments used for such purposes shall assure a utility the recovery of not less than the additional costs of providing pole attachments, nor more than an amount determined by multiplying the percentage of the total usable space, or the percentage of the total duct, conduit, or right-of-way capacity, which is occupied by the pole attachment by the sum of the operating expenses and actual capital costs of the utility attributable to the entire pole, duct, conduit, or right-of-way.

''(3) For all providers of telecommunications services except members of the exchange carrier association established in 47 C.F.R. 69.601 as of December 31, 1993, upon enactment of this paragraph and until the Commission promulgates its final regulations pursuant to subparagraphs (A), (B), and (C) of paragraph (1), the rate formula contained in any joint use pole attachment agreement between the electric utility and the largest local exchange carrier having such a joint use agreement in the utility's service area, in effect on January 1, 1994, shall also apply to the pole attachments in the utility's service

area, but if no such joint use agreement containing a rate formula exists, then the pole attachment rate shall be the rate applicable under paragraph (2) to cable television systems which solely provide cable service as defined in section 602(6) of this Act. Disputes concerning the applicability of a joint use agreement shall be resolved by the Commission or the States, as appropriate.''.

SEC. 308. CIVIC PARTICIPATION.

(a) POLICIES TO ENHANCE CIVIC DIALOGUE.—The Commission, in consultation with the National Telecommunications and Information Administration, shall study policies that will enhance civic participation through the national information infrastructure. The study shall request and record public comments on Federal policies that would enhance and expand democratic dialogue through national computer and data networks. The study shall examine, but not be limited to, the social benefits of flat rate pricing for access to computer and data networks, the policies which will determine how access to computer networks will be priced, including the access needs of individuals with disabilities, and the appropriate role of common carriers in the development of national computer and data networks. The Commission shall receive comments in both paper and electronic formats and shall establish an online discussion group accessed

through the national information infrastructure to encourage citizen participation in the study.

(b) PARTICIPATION IN REGULATORY AFFAIRS.—The Commission, in consultation with the Office of Consumer Affairs, shall conduct a study of how to encourage citizen participation in regulatory issues and, within 120 days from the date of enactment of this Act, report to Congress on the results of the study.

SEC. 309. COMPETITION BY SMALL BUSINESS AND MINORITY-OWNED BUSINESS CONCERNS.

Title II of the Communications Act of 1934 is amended by adding at the end the following new section:

"SEC. 235. POLICY AND RULEMAKING TO PROMOTE DIVERSITY OF OWNERSHIP.

''(a) FINDINGS.—The Congress finds that—

''(1) in furtherance of the purposes of this Act to make available to all people of the United States a rapid and efficient communications service, and for the purposes of promoting a diversity of opinion in the broadcasting service, the Commission has established regulations and policies to promote ownership of broadcasting services by members of minority groups;

''(2) these regulations have served to promote more vigorous communications on public issues, to

broaden the number and variety of stakeholders in the American economy, and to promote innovation by and creativity by Americans of different cultures and national origins, and thereby have served to build a more cohesive and productive society;

''(3) while the Commission has adopted regulations to promote participation by businesses owned by members of minority groups and women, and small businesses, in auctions for certain spectrum-based services which promote diversity of ownership in those services, no other regulations have been established to promote such diversity of participation in the provision of common carrier services or in the provision of other telecommunications and information services;

''(4) the goals of competitively priced services, service innovation, employment, and diversity of viewpoint can be advanced by promoting marketplace penetration by small business concerns, business concerns owned by women and members of minority groups, and nonprofit entities; and

''(5) it should be the policy of the Commission to promote whenever possible diversity of ownership in the provision of information services and tele-

communication services by such concerns and entities.

''(b) RULEMAKING REQUIRED.—Within 1 year after the date of enactment of this section, the Commission, in consultation with the National Telecommunications and Information Administration, shall initiate a rulemaking proceeding for the purpose of lowering market entry barriers for small business, business concerns owned by women and members of minority groups, and nonprofit entities that are seeking to provide telecommunication services and information services. The proceeding shall seek to provide remedies for, among other things, lack of access to capital and technical and marketing expertise on the part of such concerns and entities. Consistent with the broad policy and finding set forth in subsection (a), the Commission shall adopt such regulations and make such recommendations to Congress as the Commission deems appropriate. Not later than 2 years after the date of enactment of this section, the Commission shall complete the proceeding required by this subsection.''.

TITLE IV—COMMUNICATIONS COMPETITIVENESS

SEC. 401. CABLE SERVICE PROVIDED BY TELEPHONE COMPANIES.

(a) GENERAL REQUIREMENT.—

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

''(b)(1) Subject to the requirements of part V and the other provisions of this title, any common carrier subject in whole or in part to title II of this Act may, either through its own facilities or through an affiliate owned, operated, or controlled by, or under common control with, the common carrier, provide video programming directly to subscribers in its telephone service area.

''(2) Subject to the requirements of part V and the other provisions of this title, any common carrier subject in whole or in part to title II of this Act may provide channels of communications or pole, line, or conduit space, or other rental arrangements, to any entity which is directly or indirectly owned, operated, or controlled by, or under common control with, such common carrier, if such facilities or arrangements are to be used for, or in connection with, the provision of video programming directly to subscribers in its telephone service area.

''(3) Notwithstanding paragraphs (1) and (2), an affiliate that—

''(A) is, consistent with section 656, owned, operated, or controlled by, or under common control

with, a common carrier subject in whole or in part to title II of this Act, and

''(B) provides video programming to subscribers in the telephone service area of such carrier, but

''(C) does not utilize the local exchange facilities or services of any affiliated common carrier in distributing such programming,

shall not be subject to the requirements of part V, but shall be subject to the requirements of this part and parts III and IV.''.

(2) CONFORMING AMENDMENT.—Section 602 of the Communications Act of 1934 (47 U.S.C. 531) is amended—

(A) in paragraph (6)(B), by inserting ''or use'' after ''the selection'';

(B) by redesignating paragraphs (18) and (19) as paragraphs (19) and (20) respectively; and

(C) by inserting after paragraph (17) the following new paragraph:

''(18) the term 'telephone service area' when used in connection with a common carrier subject in whole or in part to title II of this Act means the area within which such carrier provides telephone exchange service as of November 20, 1993, but if any

common carrier after such date transfers its exchange service facilities to another common carrier, the area to which such facilities provide telephone exchange service shall be treated as part of the telephone service area of the acquiring common carrier and not of the selling common carrier;''.

(b) PROVISIONS FOR REGULATION OF CABLE SERVICE PROVIDED BY TELEPHONE COMPANIES.—Title VI of the Communications Act of 1934 (47 U.S.C. 521 et seq.) is amended by adding at the end the following new part:

"PART V—VIDEO PROGRAMMING SERVICES PROVIDED BY TELEPHONE COMPANIES

"SEC. 651. DEFINITIONS.

''For purposes of this part—

''(1) the term 'control' means—

''(A) an ownership interest in which an entity has the right to vote more than 50 percent of the outstanding common stock or other ownership interest; or

''(B) if no single entity directly or indirectly has the right to vote more than 50 percent of the outstanding common stock or other ownership interest, actual working control, in whatever manner exercised, as defined by the Commission by regulation on the basis of rel-

evant factors and circumstances, which shall include partnership and direct ownership interests, voting stock interests, the interests of officers and directors, and the aggregation of voting interests; and

''(2) the term 'rural area' means a geographic area that does not include either—

''(A) any incorporated or unincorporated place of 10,000 inhabitants or more, or any part thereof; or

''(B) any territory, incorporated or unincorporated, included in an urbanized area.

"SEC. 652. SEPARATE VIDEO PROGRAMMING AFFILIATE.

''(a) IN GENERAL.—Except as provided in subsection (d) of this section, a common carrier subject to title II of this Act shall not provide video programming directly to subscribers in its telephone service area unless such video programming is provided through a video programming affiliate that is separate from such carrier.

''(b) BOOKS AND MARKETING.—

''(1) IN GENERAL.—A video programming affiliate of a common carrier shall—

''(A) maintain books, records, and accounts separate from such carrier which identify all transactions with such carrier;

''(B) carry out directly (or through any nonaffiliated person) its own promotion, except that institutional advertising carried out by such carrier shall be permitted so long as each party bears its pro rata share of the costs; and

''(C) not own real or personal property in common with such carrier.

''(2) INBOUND TELEMARKETING AND REFERRAL.—Notwithstanding paragraph (1)(B), a common carrier may provide telemarketing or referral services in response to the call of a customer or potential customer related to the provision of video programming by a video programming affiliate of such carrier. If such services are provided to a video programming affiliate, such services shall be made available to any video programmer or cable operator on request, on nondiscriminatory terms, at just and reasonable prices, and subject to regulations of the Commission to ensure that the carrier's method of providing telemarketing or referral and its price structure do not competitively disadvantage any video programmer or cable operator, regardless of size, including those which do not use the carrier's telemarketing services.

''(3) JOINT TELEMARKETING.—Notwithstanding paragraph (1)(B), a common carrier may petition the Commission for permission to market video programming directly, upon a showing that a cable operator or other entity directly or indirectly provides telecommunications services within the telephone service area of the common carrier, and markets such telecommunications services jointly with video programming services. The common carrier shall specify the geographic region covered by the petition. Any such petition shall be granted or denied within 180 days after the date of its submission.

''(c) BUSINESS TRANSACTIONS WITH CARRIER SUBJECT TO REGULATION.—Any contract, agreement, arrangement, or other manner of conducting business, between a common carrier and its video programming affiliate, providing for—

''(1) the sale, exchange, or leasing of property between such affiliate and such carrier,

''(2) the furnishing of goods or services between such affiliate and such carrier, or

''(3) the transfer to or use by such affiliate for its benefit of any asset or resource of such carrier,

shall be pursuant to regulation prescribed by the Commission, shall be on a fully compensatory and auditable basis, shall be without cost to the telephone service ratepayers of the carrier, shall be filed with the Commission, and shall be in compliance with regulations established by the Commission that will enable the Commission to assess the compliance of any transaction.

''(d) WAIVER.—

''(1) CRITERIA FOR WAIVER.—The Commission may waive any of the requirements of this section for small telephone companies or telephone companies serving rural areas, if the Commission determines, after notice and comment, that—

''(A) such waiver will not affect the ability of the Commission to ensure that all video programming activity is carried out without any support from telephone ratepayers;

''(B) the interests of telephone ratepayers and cable subscribers will not be harmed if such waiver is granted;

''(C) such waiver will not adversely affect the ability of persons to obtain access to the video platform of such carrier; and

''(D) such waiver otherwise is in the public interest.

''(2) DEADLINE FOR ACTION.—The Commission shall act to approve or disapprove a waiver application within 180 days after the date it is filed.

''(3) CONTINUED APPLICABILITY OF SECTION 659.—In the case of a common carrier that obtains a waiver under this subsection, any requirement that section 659 applies to a video programming affiliate shall instead apply to such carrier.

"SEC. 653. ESTABLISHMENT OF VIDEO PLATFORM.

''(a) COMMON CARRIER OBLIGATIONS.—

''(1) IN GENERAL.—Any common carrier subject to title II of this Act, and that provides video programming directly or indirectly to subscribers in its telephone service area, shall establish a video platform.

''(2) IDENTIFICATION OF DEMAND FOR CARRIAGE.—Any common carrier subject to the requirements of paragraph (1) shall, prior to establishing a video platform, submit a notice to the Commission of its intention to establish channel capacity for the provision of video programming to meet the bona fide demand for such capacity. Such notice shall—

''(A) be in such form and contain such information as the Commission may require by regulations pursuant to subsection (b);

''(B) specify the methods by which any entity seeking to use such channel capacity should submit to such carrier a specification of its channel capacity requirements; and

''(C) specify the procedures by which such carrier will determine (in accordance with the Commission's regulations under subsection (b)(1)(B)) whether such request for capacity are bona fide.

The Commission shall submit any such notice for publication in the Federal Register within 5 working days.

''(3) RESPONSE TO REQUEST FOR CARRIAGE.—After receiving and reviewing the requests for capacity submitted pursuant to such notice, such common carrier shall, subject to approval of a certificate under section 214, establish channel capacity that is sufficient to provide carriage for—

''(A) all bona fide requests submitted pursuant to such notice,

''(B) any additional channels required pursuant to section 659, and

''(C) any additional channels required by the Commission's regulations under subsection (b)(1)(C).

''(4) RESPONSES TO CHANGES IN DEMAND FOR CAPACITY.—Any common carrier that establishes a video platform under this section shall—

''(A) immediately notify the Commission and each video programming provider of any delay in or denial of channel capacity or service, and the reasons therefor;

''(B) continue to receive and grant, to the extent of available capacity, carriage in response to bona fide requests for carriage from existing or additional video programming providers;

''(C) if at any time the number of channels required for bona fide requests for carriage may reasonably be expected soon to exceed the existing capacity of such video platform, immediately notify the Commission of such expectation and of the manner and date by which such carrier will provide sufficient capacity to meet such excess demand; and

''(D) construct, subject to approval of a certificate under section 214, such additional capacity as may be necessary to meet such excess demand.

''(5) DISPUTE RESOLUTION.—The Commission shall have the authority to resolve disputes under this section and the regulations prescribed thereunder. Any such dispute shall be resolved within 180 days after notice of such dispute is submitted to the Commission. At that time or subsequently in a separate damages proceeding, the Commission may award damages sustained in consequence of any violation of this section to any person denied carriage, or require carriage, or both. Any aggrieved party may seek any other remedy available under this Act.

''(b) COMMISSION REGULATIONS.—

''(1) IN GENERAL.—Within one year after the date of the enactment of this section, the Commission shall prescribe regulations that—

''(A) consistent with the requirements of section 659, prohibit a common carrier from discriminating among video programming providers with regard to carriage on its video platform, and ensure that the rates, terms, and conditions for such carriage are just, reasonable, and nondiscriminatory;

''(B) prescribe definitions and criteria for the purposes of determining whether a request

shall be considered a bona fide request for purposes of this section;

''(C) establish a requirement that video platforms contain a suitable margin of unused channel capacity to meet reasonable growth in bona fide demand for such capacity;

''(D) extend to video platforms the Commission's regulations concerning network nonduplication (47 C.F.R. 76.92 et seq.) and syndicated exclusivity (47 C.F.R. 76.151 et seq.);

''(E) require the video platform to provide service, transmission, interconnection, and interoperability for unaffiliated or independent video programming providers that is equivalent to that provided to the common carrier's video programming affiliate;

''(F)(i) prohibit a common carrier from discriminating among video programming providers with regard to material or information provided by the common carrier to subscribers for the purposes of selecting programming on the video platform, or in the way such material or information is presented to subscribers;

''(ii) require a common carrier to ensure that video programming providers or copyright

holders (or both) are able suitably and uniquely to identify their programming services to subscribers; and

''(iii) if such identification is transmitted as part of the programming signal, require the carrier to transmit such identification without change or alteration; and

''(G) prohibit a common carrier from excluding areas from its video platform service area on the basis of the ethnicity, race, or income of the residents of that area, and provide for public comments on the adequacy of the proposed service area on the basis of the standards set forth under this subparagraph.

''(2) EXTENSION OF REGULATIONS TO OTHER HIGH CAPACITY SYSTEMS.—The Commission shall extend the requirements of the regulations prescribed pursuant to this section, in lieu of the requirements of section 612, to any cable operator of a cable system that has installed a switched, broadband video programming delivery system, except that the Commission shall not extend the requirements of the regulations prescribed pursuant to subsection (b)(1)(D) or any other requirement that the Commission determines is clearly inappropriate.

''(c) COMMISSION INQUIRY.—The Commission shall conduct a study of whether it is in the public interest to extend the requirements of subsection (a) to any other cable operators in lieu of the requirements of section 612. The Commission shall submit to the Congress a report on the results of such study not later than 2 years after the date of enactment of this section.

"SEC. 654. EQUAL ACCESS COMPLIANCE.

''(a) CERTIFICATION REQUIRED.—

''(1) IN GENERAL.—A common carrier subject to title II of this Act shall not provide video programming directly to subscribers in its telephone service area unless such carrier has certified to the Commission that such carrier is in compliance with the requirements of paragraphs (1) and (2) of section 201(c) of this Act, and regulations prescribed pursuant to such paragraphs.

''(2) EXCEPTION.—Notwithstanding paragraph (1), a common carrier subject to title II of this Act may provide video programming directly to subscribers in its telephone service area during any period prior to the date the Commission first prescribes final regulations pursuant to paragraphs (1) and (2) of section 201(c) of this Act if such carrier has certified to the Commission that such carrier is in com-

pliance with State laws and regulations concerning equal access, interconnection, and unbundling that are substantially similar to and fully consistent with the requirements of such paragraphs or if there is no statutory prohibition against such carrier providing video programming directly to subscribers in its telephone service area on the date of enactment of this section. A common carrier that is permitted to provide video programming under this paragraph prior to the effective date of such regulations shall not be exempt from the requirements of paragraph (1) after the effective date of such final regulations.

''(b) CERTIFICATION AND APPLICATION APPROVAL.—A common carrier that submits a certification under paragraph (1) or (2) of subsection (a) shall be eligible to provide video programming to subscribers in accordance with the requirements of this part, subject to the approval of any necessary application under section 214 for authority to establish a video platform. An application under section 214 may be filed simultaneously with the filing of such certification or at any time after the date of enactment of this section, and the Commission shall act to approve (with or without modification) or reject such application within 180 days after the date of its submission. If the Commission acts to approve such an applica-

tion prior to the filing of such certification, such approval shall not be effective until such certification is filed.

"SEC. 655. PROHIBITION OF CROSS-SUBSIDIZATION.

''(a) CROSS SUBSIDIES PROHIBITION.—The Commission shall—

''(1) prescribe regulations to prohibit a common carrier from engaging in any practice that results in the inclusion in rates for telephone exchange service or telephone exchange access service of any operating expenses, costs, depreciation charges, capital investments, or other expenses directly associated with the provision of competing video programming services by the common carrier or affiliate; and

''(2) ensure such competing video programming services bear a reasonable share of the joint and common costs of facilities used to provide telephone exchange service or telephone exchange access service and competing video programming services.

''(b) CABLE OPERATOR PROHIBITIONS.—The Commission shall prescribe regulations to prohibit a cable operator from engaging in any practice that results in improper cross-subsidization between its regulated cable operations and its provision of telecommunications service, either directly or through an affiliate.

"SEC. 656. PROHIBITION ON BUYOUTS.

''(a) GENERAL PROHIBITION.—No common carrier that provides telephone exchange service, and no entity owned by or under common ownership or control with such carrier, may purchase or otherwise obtain control over any cable system that is located within its telephone service area and is owned by an unaffiliated person.

''(b) EXCEPTIONS.—Notwithstanding subsection (a), a common carrier may—

''(1) obtain a controlling interest in, or form a joint venture or other partnership with, a cable system that serves a rural area;

''(2) obtain, in addition to any interest, joint venture, or partnership obtained or formed pursuant to paragraph (1), a controlling interest in, or form a joint venture or other partnership with, any cable system or systems if—

''(A) such systems in the aggregate serve less than 10 percent of the households in the telephone service area of such carrier; and

''(B) no such system serves a franchise area with more than 35,000 inhabitants, except that a common carrier may obtain such interest or form such joint venture or other partnership with a cable system that serves a franchise area with more than 35,000 but not more than

50,000 inhabitants if such system is not affiliated (as such term is defined in section 602) with any other system whose franchise area is contiguous to the franchise area of the acquired system;

''(3) obtain, with the concurrence of the cable operator on the rates, terms, and conditions, the use of that part of the transmission facilities of such a cable system extending from the last multi-user terminal to the premises of the end user, if such use is reasonably limited in scope and duration, as determined by the Commission; or

''(4) obtain a controlling interest in, or form a joint venture or other partnership with, or provide financing to, a cable system (hereinafter in this paragraph referred to as 'the subject cable system'), if—

''(A) the subject cable system operates in a television market that is not in the top 25 markets, and that has more than 1 cable system operator, and the subject cable system is not the largest cable system in such television market;

''(B) the subject cable system and the largest cable system in such television market held

on March 1, 1994, cable television franchises from the largest municipality in the television market and the boundaries of such franchises were identical on such date;

''(C) the subject cable system is not owned by or under common ownership or control of any one of the 50 largest cable system operators as existed on March 1, 1994; and

''(D) the largest system in the television market is owned by or under common ownership or control of any one of the 10 largest cable system operators as existed on March 1, 1994.

''(c) WAIVER.—

''(1) CRITERIA FOR WAIVER.—The Commission may waive the restrictions in subsection (a) of this section only upon a showing by the applicant that—

''(A) because of the nature of the market served by the cable system concerned—

''(i) the incumbent cable operator would be subjected to undue economic distress by the enforcement of such subsection; or

''(ii) the cable system would not be economically viable if such subsection were enforced; and

''(B) the local franchising authority approves of such waiver.

''(2) DEADLINE FOR ACTION.—The Commission shall act to approve or disapprove a waiver application within 180 days after the date it is filed.

"SEC. 657. PENALTIES.

''If the Commission finds that any common carrier has knowingly violated any provision of this part, the Commission shall assess such fines and penalties as it deems appropriate pursuant to this Act.

"SEC. 658. CONSUMER PROTECTION.

''(a) JOINT BOARD REQUIRED.—Within 30 days after the date of enactment of this part, the Commission shall convene a Federal-State Joint Board under the provisions of section 410(c) for the purpose of recommending a decision concerning the practices, classifications, and regulations as may be necessary to ensure proper jurisdictional separation and allocation of the costs of establishing and providing a video platform. The Board shall issue its recommendations to the Commission within 270 days after the date of enactment of this part.

''(b) COMMISSION REGULATIONS REQUIRED.—The Commission, with respect to interstate switched access service, and the States, with respect to telephone exchange service and intrastate interexchange service, shall establish such regulations as may be necessary to implement section 655 within one year after the date of the enactment of this part.

''(c) NO EFFECT ON CARRIER REGULATION AUTHORITY.—Nothing in this section shall be construed to limit or supersede the authority of any State or the Commission with respect to the allocation of costs associated with intrastate or interstate communication services.

"SEC. 659. APPLICABILITY OF FRANCHISE AND OTHER REQUIREMENTS.

''(a) IN GENERAL.—Any provision that applies to a cable operator under—

''(1) sections 613, 616, 617, 628, 631, 632, and 634 of this title, shall apply,

''(2) sections 611, 612, 614, and 615 of this title, and section 325 of title III, shall apply in accordance with the regulations prescribed under subsection (b), and

''(3) parts III and IV (other than sections 628, 631, 632, and 634) of this title shall not apply,

to any video programming affiliate established by a common carrier in accordance with the requirements of this part.

''(b) IMPLEMENTATION OF REQUIREMENTS.—

''(1) REGULATIONS.—The Commission shall prescribe regulations to ensure that a video programming affiliate of a common carrier shall provide (A) capacity, services, facilities, and equipment for public, educational, and governmental use, (B) capacity for commercial use, (C) carriage of commercial and non-commercial broadcast television stations, and (D) an opportunity for commercial broadcast stations to choose between mandatory carriage and reimbursement for retransmission of the signal of such station. In prescribing such regulations, the Commission shall, to the extent possible, impose obligations that are no greater or lesser than the obligations contained in the provisions described in subsection (a)(2) of this section. Such regulations shall also require that, if a common carrier establishes a video platform but does not provide or ceases to provide video programming through a video programming affiliate, such carrier shall comply with the regulations prescribed under this paragraph and

with the provisions described in subsection (a)(1) in the operation of its video platform.

''(2) FEES.—A video programming affiliate of any common carrier that establishes a video platform under this part, and any multichannel video programming distributor offering a competing service using such video platform (as determined in accordance with regulations of the Commission), shall be subject to the payment of fees imposed by a local franchising authority, in lieu of the fees required under section 622. The rate at which such fees are imposed shall not exceed the rate at which franchise fees are imposed on any cable operator transmitting video programming in the same service area.

"**SEC. 660. RURAL AREA EXEMPTION.**

''The provisions of sections 652, 653, 654, and 656 shall not apply to video programming provided in a rural area by a common carrier that provides telephone exchange service in the same area.''.

SEC. 402. REVIEW OF BROADCASTERS' OWNERSHIP RESTRICTIONS.

Within one year after the date of enactment of this Act, the Commission shall, after a notice and comment proceeding, prescribe regulations to modify, maintain, or remove the ownership regulations on radio and television

broadcasters as necessary to ensure that broadcasters are able to compete fairly with other information providers while protecting the goals of diversity and localism.

SEC. 403. REVIEW OF STATUTORY OWNERSHIP RESTRICTION.

Within one year after the date of enactment of this Act, the Commission shall review the ownership restriction in section 613(a)(1) of the Communications Act of 1934 (47 U.S.C. 553(a)(1)) and report to Congress whether or not such restriction continues to serve the public interest.

SEC. 404. BROADCASTER SPECTRUM FLEXIBILITY.

(a) REGULATIONS REQUIRED.—If the Commission determines to issue additional licenses for advanced television services, and initially limits the eligibility for such licenses to persons that, as of the date of such issuance, are licensed to operate a television broadcast station or hold a permit to construct such a station (or both), the Commission shall adopt regulations that allow such licensees or permittees to offer such ancillary or supplementary services on designated frequencies as may be consistent with the public interest, convenience, and necessity.

(b) CONTENTS OF REGULATIONS.—In prescribing the regulations required by subsection (a), the Commission shall—

(1) only permit such licensee or permittee to offer ancillary or supplementary services if the use of a designated frequency for such services is indivisible from the use of such designated frequency for the provision of advanced television services;

(2) limit the broadcasting of ancillary or supplementary services on designated frequencies so as to avoid derogation of any advanced television services, including high definition television broadcasts, that the Commission may require using such frequencies;

(3) treat any such ancillary or supplementary services for which the licensee or permittee solicits and receives compensation in return for transmitting commercial advertising as broadcast services for the purposes of the Communications Act of 1934 and the Children's Television Act of 1990 (47 U.S.C. 303a), and the Commission's regulations thereunder, including regulations promulgated pursuant to section 315 of the Communications Act of 1934 (47 U.S.C. 315);

(4) apply to any other ancillary or supplementary service such of the Commission's regulations as are applicable to the offering of analogous services by any other person;

(5) adopt such technical and other requirements as may be necessary or appropriate to assure the quality of the signal used to provide advanced television services, including regulations that stipulate the minimum number of hours per day that such signal must be transmitted; and

(6) prescribe such other regulations as may be necessary for the protection of the public interest, convenience, and necessity.

(c) RECOVERY OF LICENSE.—

(1) CONDITIONS REQUIRED.—If the Commission limits the eligibility for licenses to provide advanced television services in the manner described in subsection (a), the Commission shall, as a condition of such license, require that, upon a determination by the Commission pursuant to the regulations prescribed under paragraph (2), either the additional license or the original license held by the licensee be surrendered to the Commission in accordance with such regulations for reallocation or reassignment (or both) pursuant to Commission regulation.

(2) REGULATIONS.—The Commission shall prescribe regulations establishing criteria for rendering determinations concerning license surrender pursu-

ant to license conditions required by paragraph (1). Such regulations shall—

(A) require such determinations to be based on whether the substantial majority of the public have obtained television receivers that are capable of receiving advanced television services; and

(B) not require the cessation of the broadcasting if such cessation would render the television receivers of a substantial portion of the public useless, or otherwise cause undue burdens on the owners of such television receivers.

(d) FEES REQUIRED.—

(1) SERVICES TO WHICH FEES APPLY.—If the regulations prescribed pursuant to subsection (a) permit a licensee to offer ancillary or supplementary services on a designated frequency—

(A) for which the payment of a subscription fee is required in order to receive such services, or

(B) for which the licensee directly or indirectly receives compensation from a third party in return for transmitting material furnished by such third party (other than commercial adver-

tisements used to support broadcasting for which a subscription fee is not required),

the Commission shall establish by regulation a program to assess and collect an annual fee or royalty payment.

(2) CRITERIA FOR REGULATIONS.—The regulations required by paragraph (1) shall—

(A) be designed (i) to recover for the public a portion of the value of the public spectrum resource made available for such commercial use, and (ii) to avoid unjust enrichment through the method employed to permit such uses of that resource;

(B) recover for the public an amount that is, to maximum extent feasible, equal (over the term of the license) to the amount that would have been recovered had such services been licensed pursuant to the provisions of section 309(j) of the Communications Act of 1934 (47 U.S.C. 309(j)) and the Commission's regulations thereunder; and

(C) be adjusted by the Commission from time to time in order to continue to comply with the requirements of this paragraph.

(3) TREATMENT OF REVENUES.—

(A) GENERAL RULE.—Except as provided in subparagraph (B), all proceeds obtained pursuant to the regulations required by this subsection shall be deposited in the Treasury in accordance with chapter 33 of title 31, United States Code.

(B) RETENTION OF REVENUES.—Notwithstanding subparagraph (A), the salaries and expenses account of the Commission shall retain as an offsetting collection such sums as may be necessary from such proceeds for the costs of developing and implementing the program required by this section and regulating and supervising advanced television services. Such offsetting collections shall be available for obligation subject to the terms and conditions of the receiving appropriations account, and shall be deposited in such accounts on a quarterly basis.

(4) REPORT.—Within 5 years after the date of the enactment of this section, the Commission shall report to the Congress on the implementation of the program required by this subsection, and shall annually thereafter advise the Congress on the amounts collected pursuant to such program.

(e) EVALUATION REQUIRED.—Within 10 years after the date the Commission first issues additional licenses for advanced television services, the Commission shall conduct an evaluation of the advanced television services program. Such evaluation shall include—

(1) an assessment of the willingness of consumers to purchase the television receivers necessary to receive broadcasts of advanced television services;

(2) an assessment of alternative uses, including public safety use, of the frequencies used for such broadcasts; and

(3) the extent to which the Commission has been or will be able to reduce the amount of spectrum assigned to licensees in order to issue additional licenses for the provision of advanced television services.

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

(1) ADVANCED TELEVISION SERVICES.—The term ''advanced television services'' means television services provided using digital or other advanced technology to enhance audio quality and video resolution, as further defined in the opinion, report, and order of the Commission entitled ''Advanced Television Systems and Their Impact Upon the Existing Television Broadcast Service'', MM Docket 87–268,

adopted September 17, 1992, and successor proceedings.

(2) DESIGNATED FREQUENCIES.—The term ''designated frequency'' means each of the frequencies designated by the Commission for licenses for advanced television services.

(3) HIGH DEFINITION TELEVISION.—The term ''high definition television'' refers to systems that offer approximately twice the vertical and horizontal resolution of receivers generally available on the date of enactment of this section, as further defined in the proceedings described in paragraph (1) of this subsection.

SEC. 405. INTERACTIVE SERVICES AND CRITICAL INTERFACES.

(a) FINDINGS.—The Congress finds that—

(1) the convergence of communications, computing, and video technologies will permit improvements in interoperability between and among those technologies;

(2) in the public switched telecommunications network, open protocols and technical requirements for connection between the network and the consumer, and the availability of unbundled customer equipment through retailers and other third

party vendors, have served to broaden consumer choice, lower prices, and spur competition and innovation in the customer equipment industry;

(3) set-top boxes and other interactive communications devices could similarly serve as a critical gateway between American homes and businesses and advanced telecommunications and video programming networks;

(4) American consumers have benefited from the ability to own or rent customer premises equipment obtained from retailers and other vendors and the ability to access the network with portable, compatible equipment;

(5) in order to promote diversity, competition, and technological innovation among suppliers of equipment and services, it may be necessary to make certain critical interfaces with such networks open and accessible to a broad range of equipment manufacturers and information providers;

(6) the identification of critical interfaces with such networks and the assessment of their openness must be accomplished with due recognition that open and accessible systems may include standards that involve both nonproprietary and proprietary technologies;

(7) such identification and assessment must also be accomplished with due recognition of the need for owners and distributors of video programming and information services to ensure system and signal security and to prevent theft of service;

(8) whenever possible, standards in dynamic industries such as interactive systems are best set by the marketplace or by private sector standard-setting bodies; and

(9) the role of the Commission in this regard is—

(A) to identify, in consultation with industry groups, consumer interests, and independent experts, critical interfaces with such networks (i) to ensure that end users can connect information devices to such networks, and (ii) to ensure that information service providers are able to transmit information to end users, and

(B) as necessary, to take steps to ensure these networks and services are accessible to a broad range of equipment manufacturers, information providers, and program suppliers.

(b) INQUIRY REQUIRED.—Within 6 months after the date of the enactment of this Act, the Commission shall commence an inquiry—

(1) to examine the impact of the convergence of technologies on cable, telephone, satellite, and wireless and other communications technologies likely to offer interactive communications services;

(2) to ascertain the importance of maintaining open and accessible systems in interactive communications services;

(3) to examine the costs and benefits of maintaining varying levels of interoperability between and among interactive communications services;

(4) to examine the costs and benefits of establishing open interfaces (A) between the network provider and the set-top box or other interactive communications devices used in the home or office, and (B) between network providers and information service providers, and to determine how best to establish such interfaces;

(5) to determine methods by which converter boxes or other interactive communications devices may be sold through retailers and other third party vendors and to determine the vendors' responsibilities for ensuring that their devices are interoperable with interactive networks;

(6) to assess how the security of cable, satellite, and other interactive systems or their services can

continue to be ensured with the establishment of an interface between the network and a converter box or other interactive communications device, including those manufactured and distributed at retail by entities independent of network providers and information service providers, and to determine the responsibilities of such independent entities for assuring network security and for conforming to signal interference standards;

(7) to ascertain the conditions necessary to ensure that any critical interface is available to information and content providers and others who seek to design, build, and distribute interoperable devices for these networks so as to ensure network access and fair competition for independent information providers and consumers;

(8) to assess the impact of the deployment of digital technologies on individuals with disabilities, with particular emphasis on any regulatory, policy, or design barriers which would limit functionally equivalent access by such individuals;

(9) to assess current regulation of telephone, cable, satellite, and other communications delivery systems to ascertain how best to ensure interoperability between those systems;

(10) to assess the adequacy of current regulation of telephone, cable, satellite, and other communications delivery systems with respect to bundling of equipment and services and to identify any changes in unbundling regulations necessary to assure effective competition and encourage technological innovation, consistent with the finding in subsection (a)(6) and the objectives of paragraph (6) of this subsection, in the market for converter boxes or interactive communications devices and for other customer premises equipment;

(11) to solicit comment on any changes in the Commission's regulations that are necessary to ensure that diversity, competition, and technological innovation are promoted in communications services and equipment; and

(12) to prepare recommendations to the Congress for any legislative changes required.

(c) REPORT TO CONGRESS.—Within 12 months after the date of the enactment of this Act, the Commission shall submit to the Congress a report on the results of the inquiry required by subsection (b). Within 6 months after the date of submission of such report, the Commission shall prescribe such changes in its regulations as the

Commission determines are necessary pursuant to subsection (b)(10).

(d) PRESERVATION OF EXISTING AUTHORITY.—Nothing in this section shall be construed as limiting, superseding, or otherwise modifying the existing authority and responsibilities of the Commission or National Institute of Standards and Technology.

SEC. 406. VIDEO PROGRAMMING ACCESSIBILITY.

(a) INQUIRY REQUIRED.—Within 180 days after the date of enactment of this section, the Federal Communications Commission shall complete an inquiry to ascertain the level at which video programming is closed captioned. Such inquiry shall examine the extent to which existing or previously published programming is closed captioned, the size of the video programming provider or programming owner providing closed captioning, the size of the market served, the relative audience shares achieved, or any other related factors. The Commission shall submit to the Congress a report on the results of such inquiry.

(b) CONTENTS OF REGULATIONS.—Within 18 months after the date of enactment, the Commission shall prescribe such regulations as are necessary to implement this section. Such regulations shall ensure that—

(1) video programming first published or exhibited after the effective date of such regulations is

fully accessible through the provision of closed captions, except as provided in subsection (d); and

(2) video programming providers or owners maximize the accessibility of video programming first published or exhibited prior to the effective date of such regulations through the provision of closed captions, except as provided in subsection (d).

(c) CONTENTS OF REGULATIONS.—Such regulations shall include an appropriate schedule of deadlines for the provision of closed captioning of video programming.

(d) EXEMPTIONS.—Notwithstanding subsection (b)—

(1) the Commission may exempt by regulation programs, classes of programs, or services for which the Commission has determined that the provision of closed captioning would be economically burdensome to the provider or owner of such programming;

(2) a provider of video programming or the owner of any program carried by the provider shall not be obligated to supply closed captions if such action would be inconsistent with contracts in effect on the date of enactment of this Act, except that nothing in this section shall be construed to relieve a video programming provider of its obligations to provide services required by Federal law; and

(3) a provider of video programming or program owner may petition the Commission for an exemption from the requirements of this section, and the Commission may grant such petition upon a showing that the requirements contained in this section would result in an undue burden.

(e) UNDUE BURDEN.—The term 'undue burden' means significant difficulty or expense. In determining whether the closed captions necessary to comply with the requirements of this paragraph would result in an undue economic burden, the factors to be considered include—

(1) the nature and cost of the closed captions for the programming;

(2) the impact on the operation of the provider or program owner;

(3) the financial resources of the provider or program owner; and

(4) the type of operations of the provider or program owner.

(f) ADDITIONAL PROCEEDING ON VIDEO DESCRIPTIONS REQUIRED.—Within 6 months after the date of enactment of this Act, the Commission shall commence an inquiry to examine the use of video descriptions on video programming in order to ensure the accessibility of video programming to persons with visual impairments, and re-

port to Congress on its findings. The Commission's report shall assess appropriate methods and schedules for phasing video descriptions into the marketplace, technical and quality standards for video descriptions, a definition of programming for which video descriptions would apply, and other technical and legal issues that the Commission deems appropriate. Following the completion of such inquiry, the Commission may adopt regulation it deems necessary to promote the accessibility of video programming to persons with visual impairments.

(g) MODEL PROGRAM.—The National Telecommunications and Information Administration shall establish and oversee, and (to the extent of available funds) provide financial support for, marketplace tests of video descriptions on commercial and noncommercial video programming services.

(h) VIDEO DESCRIPTION.—For purposes of this section, ''video description'' means the insertion of audio narrated descriptions of a television program's key visual elements into natural pauses between the program's dialogue.

SEC. 407. PUBLIC ACCESS.

Within one year after the date of enactment of this Act, the Federal Communications Commission shall prescribe regulations to reserve appropriate capacity for the

public at preferential rates on cable systems and video platforms.

SEC. 408. AUTOMATED SHIP DISTRESS AND SAFETY SYSTEMS.

Notwithstanding any provision of the Communications Act of 1934, a ship documented under the laws of the United States operating in accordance with the Global Maritime Distress and Safety System provisions of the Safety of Life at Sea Convention shall not be required to be equipped with a radio station operated by one or more radio officers or operators.

SEC. 409. EXCLUSIVE FEDERAL JURISDICTION OVER DIRECT BROADCAST SATELLITE SERVICE.

Section 303 of the Communications Act of 1934 (47 U.S.C. 303) is amended by adding at the end thereof the following new subsection:

''(v) Have exclusive jurisdiction over the regulation of the direct broadcast satellite service.''.

SEC. 410. TECHNICAL AMENDMENTS.

(a) RETRANSMISSION.—Section 325(b)(2)(D) of the Communications Act of 1934 (47 U.S.C. 325(b)(2)(D)) is amended to read as follows:

''(D) retransmission by a cable operator or other multichannel video programming distributor of the signal of a superstation if (i) the customers

served by the cable operator or other multichannel video programming distributor reside outside the originating station's television market, as defined by the Commission for purposes of section 614(h)(1)(C); (ii) such signal was obtained from a satellite carrier or terrestrial microwave common carrier; and (iii) and the origination station was a superstation on May 1, 1991.

(b) MARKET DETERMINATIONS.—Section 614(h)(1)(C)(i) of the Communications Act of 1934 (47 U.S.C. 534(h)(1)(C)(i)) is amended by striking out ''in the manner provided in section 73.3555(d)(3)(i) of title 47, Code of Federal Regulations, as in effect on May 1, 1991,'' and inserting ''by the Commission by regulation or order using, where available, commercial publications which delineate television markets based on viewing patterns,''.

SEC. 411. AVAILABILITY OF SCREENING DEVICES TO PRECLUDE DISPLAY OF ENCRYPTED PROGRAMMING.

(a) CUSTOMER NOTICE.—Section 624(d)(2)(A) of the Communications Act of 1934 (47 U.S.C. 544(d)(2)(A)) is amended by adding at the end the following new sentence: ''Upon beginning service to any new subscriber and not less frequently than once each calendar

year for current subscribers, the cable operator shall inform subscribers of the right to request and obtain such device.''.

(b) SIGNAL LEAKAGE.—Section 624(d)(2) of such Act is further amended by adding at the end the following new subparagraph:

''(C) The Commission shall prescribe regulations to require, to the extent technically feasible, the transmission of programming described in subparagraph (A) by means of encrypted signals that permit subscribers to effectively and entirely prevent the display of both the audio and video portions of such programming with or without the use of a device described in subparagraph (A).''.

TITLE V—PROCUREMENT PRACTICES OF TELECOMMUNICATIONS PROVIDERS.

SEC. 501. FINDINGS.

The Congress finds the following:

(1) It is in the public interest for business enterprises owned by minorities and women to participate in procurement contracts of all providers of telecommunications services.

(2) The opportunity for full participation in our free enterprise system by business enterprises that are owned by minorities and women is essential if

this Nation is to attain social and economic equality for those businesses and improve the functioning of the national economy.

(3) It is in this Nation's interest to expeditiously improve the economically disadvantaged position of business enterprises that are owned by minorities and women.

(4) The position of these businesses can be improved through the development by the providers of telecommunications services of substantial long-range and annual goals, which are supported by training and technical assistance, for the purchase, to the maximum practicable extent, of technology, equipment, supplies, services, material and construction from minority business enterprises.

(5) Procurement policies which include participation of business enterprises that are owned by minorities and women also benefit the communication industry and its consumers by encouraging the expansion of the numbers of suppliers for procurement, thereby encouraging competition among suppliers and promoting economic efficiency in the process.

SEC. 502. PURPOSE.

The purposes of this title are—

(1) to encourage and foster greater economic opportunity for business enterprises that are owned by minorities and women;

(2) to promote competition among suppliers to providers of telecommunications services and their affiliates to enhance economic efficiency in the procurement of telephone corporation contracts and contracts of their State commission-regulated subsidiaries and affiliates;

(3) to clarify and expand a program for the procurement by State and federally-regulated telephone companies of technology, equipment, supplies, services, materials and construction work from business enterprises that are owned by minorities and women; and

(4) to ensure that a fair proportion of the total purchases, contracts, and subcontracts for supplies, commodities, technology, property, and services offered by the providers of telecommunications services and their affiliates are awarded to minority and women business enterprises.

SEC. 503. ANNUAL PLAN SUBMISSION.

(a) ANNUAL PLANS REQUIRED.—

(1) IN GENERAL.—The Commission shall require each provider of telecommunications services

to submit annually a detailed and verifiable plan for increasing its procurement from business enterprises that are owned by minorities or women in all categories of procurement in which minorities are under represented.

(2) CONTENTS OF PLANS.—The annual plans required by paragraph (1) shall include (but not be limited to) short- and long-term progressive goals and timetables, technical assistance, and training and shall, in addition to goals for direct contracting opportunities, include methods for encouraging both prime contractors and grantees to engage business enterprises that are owned by minorities and women in subcontracts in all categories in which minorities are under represented.

(3) IMPLEMENTATION REPORT.—Each provider of telecommunications services shall furnish an annual report to the Commission regarding the implementation of programs established pursuant to this title in such form as the Commission shall require, and at such time as the Commission shall annually designate.

(4) REPORT TO CONGRESS.—The Commission shall provide an annual report to Congress, beginning in January 1995, on the progress of activities

undertaken by each provider of telecommunications services regarding the implementation of activities pursuant to this title to develop business enterprises that are owned by minorities or women. The report shall evaluate the accomplishments under this title and shall recommend a program for enhancing the policy declared in this title, together with such recommendations for legislation as it deems necessary or desirable to further that policy.

(b) REGULATIONS AND CRITERIA FOR DETERMINING ELIGIBILITY OF MINORITY BUSINESS ENTERPRISES FOR PROCUREMENT CONTRACTS.—

(1) IN GENERAL.—The Commission shall establish regulations for implementing programs pursuant to this title that will govern providers of telecommunications services and their affiliates.

(2) VERIFYING CRITERIA.—The Commission shall develop and publish regulations setting forth criteria for verifying and determining the eligibility of business enterprises that are owned by minorities or women for procurement contracts.

(3) OUTREACH.—The Commission's regulations shall require each provider of telecommunications services and its affiliates to develop and to implement an outreach program to inform and recruit

business enterprises that are owned by minorities or women to apply for procurement contracts under this title.

(4) ENFORCEMENT.—The Commission shall establish and promulgate such regulations necessary to enforce the provisions of this title.

(c) WAIVER AUTHORITY.—The requirements of this section may be waived, in whole or in part, by the Commission with respect to a particular contract or subcontract in accordance with guidelines set forth in regulations which the Commission shall prescribe when it determines that the application of such regulations prove to result in undue hardship or unreasonable expense to a provider of telecommunications services.

SEC. 504. SANCTIONS AND REMEDIES.

(a) FALSE REPRESENTATION OF BUSINESSES; SANCTIONS.—

(1) IN GENERAL.—Any person or corporation, through its directors, officers, or agent, which falsely represents the business as a business enterprise that are owned by minorities or women in the procurement or attempt to procure contracts from telephone operating companies and their affiliates pursuant to this article, shall be punished by a fine of not more than $5,000, or by imprisonment for a period not to

exceed 5 years of its directors, officers, or agents responsible for the false statements, or by both fine and imprisonment.

(2) HOLDING COMPANIES.—Any provider of telecommunications services which falsely represents its annual report to the Commission or its implementation of its programs pursuant to this section shall be subject to a fine of $100,000 and be subject to a penalty of up to 5 years restriction from participation in lines of business activities provided for in this title.

(b) INDEPENDENT CAUSE OF ACTION, REMEDIES, AND ATTORNEY FEES.—

(1) DISCRIMINATION PROHIBITED.—No otherwise qualified business enterprise that are owned by minorities or women shall solely, by reason of its racial, ethnic, or gender composition be excluded from the participation in, be denied the benefits of, or be subjected to discrimination in procuring contracts from telephone utilities.

(2) CIVIL ACTIONS AUTHORIZED.—Whenever a qualified business enterprise that is owned by minorities or women has reasonable cause to believe that a provider of telecommunications services or its affiliate is engaged in a pattern or practice of resist-

ance to the full compliance of any provision of this title, the business enterprise may bring a civil action in the appropriate district court of the United States against the provider of telecommunications services or its affiliate requesting such monetary or injunctive relief, or both, as deemed necessary to ensure the full benefits of this title.

(3) ATTORNEYS' FEES AND COSTS.—In any action or proceeding to enforce or charge of a violation of a provision of this title, the court, in its discretion, may allow the prevailing party reasonable attorneys' fees and costs.

SEC. 505. DEFINITIONS.

For the purpose of this title, the following definitions apply:

(1) The term ''business enterprise owned by minorities or women'' means—

(A) a business enterprise that is at least 51 percent owned by a person or persons who are minority persons or women; or

(B) in the case of any publicly owned business, at least 51 percent of the stock of which is owned by one or more persons who are minority persons or women, and whose manage-

ment and daily business operations are controlled by one or more of those persons.

(2) The term ''minority person'' means persons who are Black Americans, Hispanic Americans, Native Americans, Asian Americans, and Pacific Americans.

(3) The term ''control'' means exercising the power to make financial and policy decisions.

(4) The term ''operate'' means the active involvement in the day-to-day management of the business and not merely being officers or directors.

(5) The term ''Commission'' means the Federal Communications Commission.

(6) The term ''telecommunications service'' has the meaning provided in section 3(oo) of the Communications Act of 1934 (as added by this Act).

TITLE VI—FEDERAL COMMUNICATIONS COMMISSION RESOURCES

SEC. 601. AUTHORIZATION OF APPROPRIATIONS.

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

(b) EFFECT ON FEES.—For purposes of section 9(b)(2) of the Communications Act of 1934 (47 U.S.C. 159(b)(2)), additional amounts appropriated pursuant to subsection (a) shall be construed to be changes in the amounts appropriated for the performance of activities described in section 9(a) of such Act.

Passed the House of Representatives June 28, 1994.

Attest:

Clerk.

103D CONGRESS
2D SESSION

H. R. 3626

AN ACT

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.