

103^D CONGRESS
2^D SESSION

H. R. 3626

IN THE SENATE OF THE UNITED STATES

JUNE 30 (legislative day, JUNE 7), 1994

Received; read twice and referred to the Committee on Commerce, Science,
and Transportation

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.

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

3 **SECTION 1. SHORT TITLES; TABLE OF CONTENTS.**

4 (a) SHORT TITLE OF THIS ACT.—This Act may be
5 cited as the “Antitrust and Communications Reform Act
6 of 1994”.

1 (b) SHORT TITLE OF TITLE I OF THIS ACT.—Title
2 I of this Act may be cited as the “Antitrust Reform Act
3 of 1994”.

4 (c) TABLE OF CONTENTS.—

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1 **TITLE I—SUPERSESSION OF THE**
 2 **MODIFICATION OF FINAL**
 3 **JUDGMENT**

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

7 (a) APPLICATION.—

8 (1) IN GENERAL.—After the applicable date
 9 specified in paragraph (2), a Bell operating company
 10 may apply to the Attorney General and the Federal
 11 Communications Commission for authorization, not-
 12 withstanding the Modification of Final Judgment—

13 (A) to provide alarm monitoring services,

14 or

15 (B) to provide interexchange telecommuni-
 16 cations services.

1 The application shall describe with particularity the
2 nature and scope of the activity, and of each product
3 market or service market, and each geographic mar-
4 ket, for which authorization is sought.

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

9 (A) the date of the enactment of this Act,
10 with respect to providing interexchange tele-
11 communications services, and

12 (B) the date that occurs 66 months after
13 the date of the enactment of this Act, with re-
14 spect to providing alarm monitoring services.

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

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

1 (b) SEPARATE DETERMINATIONS BY THE ATTORNEY
2 GENERAL AND THE FEDERAL COMMUNICATIONS COMMIS-
3 SION.—

4 (1) COMMENT PERIOD.—Not later than 45 days
5 after an application is published under subsection
6 (a)(4), interested persons may submit written com-
7 ments to the Attorney General, to the Federal Com-
8 munications Commission, or to both regarding the
9 application. Submitted comments shall be available
10 to the public.

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

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

1 (B) Such determination shall be based on a pre-
2 ponderance of the evidence.

3 (C) Any person who would be threatened with
4 loss or damage as a result of the approval of the au-
5 thorization requested shall be permitted to partici-
6 pate as a party in the proceeding on which the de-
7 termination is based.

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

16 (ii) The Federal Communications Commission
17 shall approve the granting of the requested author-
18 ization only to the extent that the Commission finds
19 that granting the requested authorization is consist-
20 ent with the public interest, convenience, and neces-
21 sity. The Commission shall deny the remainder of
22 the requested authorization.

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

1 Communications Commission shall each prescribe
2 regulations to establish procedures and criteria for
3 the expedited determination and approval of applica-
4 tions for authorization to provide interexchange tele-
5 communications services (other than services de-
6 scribed in section 102(c)) that are incidental to the
7 provision of another service which the Bell operating
8 company may lawfully provide. Before prescribing
9 such regulations, the Attorney General and the Com-
10 mission shall consult with respect to such regula-
11 tions, including consultation for the purpose of
12 avoiding unnecessary inconsistencies in such regula-
13 tions.

14 (E) In making its determination under subpara-
15 graph (D)(ii) regarding the public interest, conven-
16 ience, and necessity, the Commission shall take into
17 account—

18 (i) the probability that granting the re-
19 requested authorization will secure reduced rates
20 for consumers of the services that are the sub-
21 ject of the application, especially residential
22 subscribers,

23 (ii) whether granting the requested author-
24 ization will result in increases in rates for con-
25 sumers of exchange service,

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

4 (iv) the extent to which the Commission's
5 regulations, or other laws or regulations, will
6 preclude the applicant from engaging in preda-
7 tory pricing or other anticompetitive economic
8 practices with respect to the services that are
9 the subject of the application,

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

14 (vi) whether granting the requested au-
15 thorization will result, directly or indirectly, in
16 increasing concentration among providers of the
17 service that is the subject of the application to
18 such an extent that consumers will not be pro-
19 tected from rates that are unjust or unreason-
20 able or that are unjustly or unreasonably dis-
21 criminatory, and

22 (vii) in the case of an application to pro-
23 vide alarm monitoring services, whether the
24 Commission has the capability to enforce effec-
25 tively the regulations established pursuant to

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

3 (F) A determination that approves the granting
4 of any part of a requested authorization shall de-
5 scribe with particularity the nature and scope of the
6 activity, and of each product market or service mar-
7 ket, and each geographic market, to which approval
8 applies.

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

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

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

21 (A)(i) both the Attorney General and the
22 Federal Communications Commission approve
23 under paragraph (3) the granting of the au-
24 thorization, and

1 (ii) neither of their approvals is vacated or
2 reversed as a result of judicial review author-
3 ized by subsection (c), or

4 (B) as a result of such judicial review of
5 either or both determinations, both the Attor-
6 ney General and the Federal Communications
7 Commission approve the granting of the re-
8 quested authorization.

9 (c) JUDICIAL REVIEW.—

10 (1) COMMENCEMENT OF ACTION.—Not later
11 than 45 days after a determination by the Attorney
12 General or the Federal Communications Commission
13 is published under subsection (b)(4), the Bell operat-
14 ing company that applied to the Attorney General
15 and the Federal Communications Commission under
16 subsection (a), or any person who would be threat-
17 ened with loss or damage as a result of the deter-
18 mination regarding such company's engaging in the
19 activity described in such company's application,
20 may commence an action in the United States Court
21 of Appeals for the District of Columbia Circuit
22 against the Attorney General or the Federal Com-
23 munications Commission, as the case may be, for ju-
24 dicial review of the determination regarding the ap-
25 plication.

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

6 (3) CONSOLIDATION OF ACTIONS.—The court
7 shall consolidate for judicial review all actions com-
8 menced under this subsection with respect to the ap-
9 plication.

10 (4) JUDGMENT.—(A) The court shall enter a
11 judgment after reviewing the determination in ac-
12 cordance with section 706 of title 5 of the United
13 States Code.

14 (B) A judgment—

15 (i) affirming any part of the determination
16 that approves granting all or part of the re-
17 quested authorization, or

18 (ii) reversing any part of the determination
19 that denies all or part of the requested author-
20 ization,

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

1 **SEC. 102. AUTHORIZATION AS PREREQUISITE.**

2 (a) PREREQUISITE.—Until a Bell operating company
3 is so authorized in accordance with section 101, it shall
4 be unlawful for such company, directly or through an af-
5 filiated enterprise, to engage in an activity described in
6 section 101(a)(1).

7 (b) GENERAL EXCEPTIONS.—Except with respect to
8 providing alarm monitoring services, subsection (a) shall
9 not prohibit a Bell operating company from engaging, at
10 any time after the date of the enactment of this Act—

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

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

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

20 (2) in providing intrastate interexchange tele-
21 communications services if—

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

1 approval or authorization on competition and
2 the public interest,

3 (B) not less than 90 days before such com-
4 pany offers to provide such services, such com-
5 pany gives notice to the public and the Attorney
6 General that such approval or authorization has
7 been granted by such State, and appoints an
8 agent for the purpose of receiving service of
9 process,

10 (C) the Attorney General—

11 (i) fails to commence a civil action in
12 accordance with subsection (d), not later
13 than 90 days after the Attorney General
14 receives the notice described in subpara-
15 graph (B), to enjoin such company from
16 providing such services, or

17 (ii) so commences such civil action
18 but—

19 (I) fails to obtain an injunction
20 from the district court involved enjoin-
21 ing such company from providing such
22 services, or

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

1 (D) the Bell operating company is required
2 by regulations prescribed by the Federal Com-
3 munications Commission and such State, for
4 the services subject to their respective jurisdic-
5 tions, to pay a nondiscriminatory access charge
6 to the local exchange carrier (including itself)
7 that provides the Bell operating company with
8 telephone exchange access, and

9 (3) in providing interexchange telecommuni-
10 cations services through resale of telecommuni-
11 cations services purchased from a person who is not
12 an affiliated enterprise of such company if—

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

18 (B) such State has approved or authorized
19 persons that are not affiliated enterprises of
20 such company to provide intraexchange toll tele-
21 communications services in such a manner that
22 customers in such State have the ability to
23 route automatically, without the use of any ac-
24 cess code, their intraexchange toll telecommuni-
25 cations to the telecommunications services pro-

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

4 (C) after the date of the enactment of this
5 Act and not less than 90 days before such com-
6 pany offers to provide such interexchange tele-
7 communications services, such company gives
8 notice to the public and the Attorney General
9 that such approval or authorization has been
10 granted by such State, and

11 (D) the Attorney General—

12 (i) fails to commence a civil action in
13 accordance with subsection (d), not later
14 than 90 days after the Attorney General
15 receives the notice described in subpara-
16 graph (C), to enjoin such company from
17 providing such services, or

18 (ii) so commences such civil action
19 but—

20 (I) fails to obtain an injunction
21 from the district court involved enjoin-
22 ing such company from providing such
23 services, or

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

1 (c) EXCEPTIONS FOR INCIDENTAL SERVICES.—Sub-
2 section (a) shall not prohibit a Bell operating company,
3 at any time after the date of the enactment of this Act,
4 from providing interexchange telecommunications services
5 for the purpose of—

6 (1)(A) providing audio programming, video pro-
7 gramming, or other programming services to sub-
8 scribers to such services of such company,

9 (B) providing the capability for interaction by
10 such subscribers to select or respond to such audio
11 programming, video programming, or other pro-
12 gramming services, or

13 (C) providing to distributors audio program-
14 ming or video programming that such company
15 owns, controls, or is licensed by the copyright owner
16 of such programming, or by an assignee of such
17 owner, to distribute,

18 (2) providing a telecommunications service,
19 using the transmission facilities of a cable system
20 that is an affiliate of such company, between ex-
21 change areas within a cable system franchise area in
22 which such company is not, on the date of the enact-
23 ment of this Act, a provider of wireline telephone ex-
24 change service,

1 (3) providing commercial mobile services in ac-
2 cordance with section 332(c) of the Communications
3 Act of 1934 (47 U.S.C. 332(c)) and with the regula-
4 tions prescribed by the Commission pursuant to
5 paragraph (7) of such section,

6 (4) providing a service that permits a customer
7 that is located in one exchange area to retrieve
8 stored information from, or file information for stor-
9 age in, information storage facilities of such com-
10 pany that are located in another exchange area,

11 (5) providing signaling information used in con-
12 nection with the provision of exchange services to a
13 local exchange carrier that, together with any affili-
14 ated local exchange carriers, has aggregate annual
15 revenues of less than \$100,000,000, or

16 (6) providing network control signaling infor-
17 mation to, and receiving such signaling information
18 from, interexchange carriers at any location within
19 the area in which such company provides exchange
20 services or exchange access.

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

1 pany from providing interexchange telecommunications
2 services pursuant to such paragraph if the Attorney Gen-
3 eral determines that the standard specified in the first
4 sentence of section 101(b)(3)(D)(i) is not satisfied with
5 respect to providing such interexchange telecommuni-
6 cations services.

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

12 (3) If the Attorney General does not commence a civil
13 action in accordance with paragraph (1) before the expira-
14 tion of the 90-day period beginning on the date the Attor-
15 ney General receives such notice, the Attorney General
16 shall publish in the Federal Register a brief statement
17 that the Attorney General has determined not to com-
18 mence such civil action.

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

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

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

3 (b) QUALIFIED LIMITATION.—

4 (1) REQUIRED CONDITIONS.—After the expira-
5 tion of the 1-year period beginning on the date of
6 the enactment of this Act, it shall be lawful for a
7 Bell operating company, directly or through an af-
8 filiated enterprise, to manufacture or provide tele-
9 communications equipment, or to manufacture cus-
10 tomer premises equipment, to the extent described in
11 a notification to the Attorney General that meets the
12 requirements of paragraph (2) and only if—

13 (A) such company submits to the Attorney
14 General, at any time after the date of the en-
15 actment of this Act, the notification described
16 in paragraph (2) and such additional material
17 and information described in such paragraph as
18 the Attorney General may request, and complies
19 with the waiting period specified in paragraph
20 (3), and

21 (B)(i) the waiting period specified in para-
22 graph (3) expires without the commencement of
23 a civil action by the Attorney General in accord-
24 ance with paragraph (4) to enjoin such com-

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

3 (ii) before the expiration of such waiting
4 period, the Attorney General notifies such com-
5 pany in writing that the Attorney General does
6 not intend to commence such a civil action with
7 respect to such activity.

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

17 (3) WAITING PERIOD.—The waiting period re-
18 ferred to in paragraph (1) is the 1-year period be-
19 ginning on the date the notification required by such
20 paragraph is received by the Attorney General.

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

1 the activity described in such notification, if the At-
2 torney General determines that there is a substantial
3 possibility that such company or its affiliates could
4 use monopoly power to impede competition in the
5 market it seeks to enter with respect to such activ-
6 ity.

7 (c) EXCEPTION FOR PREVIOUSLY AUTHORIZED AC-
8 TIVITIES.—Subsections (a) and (b) shall not prohibit a
9 Bell operating company from engaging, at any time after
10 the date of the enactment of this Act, in any activity as
11 authorized by an order entered by the United States Dis-
12 trict Court for the District of Columbia pursuant to sec-
13 tion VII or VIII(C) of the Modification of Final Judg-
14 ment, if—

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

17 (2) a request for such authorization was pend-
18 ing before such court on the date of the enactment
19 of this Act.

20 **SEC. 104. ANTICOMPETITIVE TYING ARRANGEMENTS.**

21 A Bell operating company with monopoly power in
22 any exchange service market shall not tie (directly or indi-
23 rectly) in any relevant market the sale of any product or
24 service to the provision of any telecommunications service,
25 if the effect of such tying may be to substantially lessen

1 competition, or to tend to create a monopoly, in any line
2 of commerce.

3 **SEC. 105. ENFORCEMENT.**

4 (a) **EQUITABLE POWERS OF UNITED STATES ATTOR-**
5 **NEYS.**—It shall be the duty of the several United States
6 attorneys, under the direction of the Attorney General, to
7 institute proceedings in equity in their respective districts
8 to prevent and restrain violations of this title.

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

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

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

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

1 The court may award under this section, pursuant to a
2 motion by such person promptly made, simple interest on
3 actual damages for the period beginning on the date of
4 service of such person's pleading setting forth a claim
5 under this title and ending on the date of judgment, or
6 for any shorter period therein, if the court finds that the
7 award of such interest for such period is just in the
8 circumstances.

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

19 (e) JURISDICTION.—(1) Subject to paragraph (2),
20 the courts of the United States shall have exclusive juris-
21 diction to make determinations with respect to a duty,
22 claim, or right arising under this title, other than deter-
23 minations authorized to be made by the Attorney General
24 and the Federal Communications Commission under sec-
25 tion 101(b)(3).

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

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

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

12 (g) APPLICABILITY OF OTHER LAWS TO ENFORCE-
13 MENT OF THIS TITLE.—

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

18 (2) ANTITRUST CIVIL PROCESS ACT.—Section
19 2(a) of the Antitrust Civil Process Act (15 U.S.C.
20 1311(a)) is amended—

21 (A) in paragraph (1) by striking “and” at
22 the end,

23 (B) in paragraph (2) by striking the period
24 at the end and inserting “and”, and

25 (C) by adding at the end the following:

1 “(3) title I of the Antitrust and Commu-
2 nications Reform Act of 1994.”.

3 **SEC. 106. DEFINITIONS.**

4 For purposes of this title:

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

12 (2) **ALARM MONITORING SERVICE.**—The term
13 “alarm monitoring service” means a service that
14 uses a device located at a residence, place of busi-
15 ness, or other fixed premises—

16 (A) to receive signals from other devices lo-
17 cated at or about such premises regarding a
18 possible threat at such premises to life, safety,
19 or property, from burglary, fire, vandalism,
20 bodily injury, or other emergency, and

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

1 tomor or another person or police, fire, rescue,
2 security, or public safety personnel of such
3 threat,

4 but does not include a service that uses a medical
5 monitoring device attached to an individual for the
6 automatic surveillance of an ongoing medical condi-
7 tion.

8 (3) ANTITRUST LAWS.—The term “antitrust
9 laws” has the meaning given it in subsection (a) of
10 the first section of the Clayton Act (15 U.S.C.
11 12(a)), except that such term includes the Act of
12 June 19, 1936 (49 Stat. 1526; 15 U.S.C. 13 et
13 seq.), commonly known as the Robinson Patman
14 Act, and section 5 of the Federal Trade Commission
15 Act (15 U.S.C. 45) to the extent that such section
16 5 applies to unfair methods of competition.

17 (4) AUDIO PROGRAMMING.—The term “audio
18 programming” means programming provided by, or
19 generally considered comparable to programming
20 provided by, a radio broadcast station.

21 (5) BELL OPERATING COMPANY.—The term
22 “Bell operating company” means—

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

1 Bell Telephone Company, New England Tele-
2 phone and Telegraph Company, New Jersey
3 Bell Telephone Company, New York Telephone
4 Company, U S West Communications Com-
5 pany, South Central Bell Telephone Company,
6 Southern Bell Telephone and Telegraph Com-
7 pany, Southwestern Bell Telephone Company,
8 The Bell Telephone Company of Pennsylvania,
9 The Chesapeake and Potomac Telephone Com-
10 pany, The Chesapeake and Potomac Telephone
11 Company of Maryland, The Chesapeake and
12 Potomac Telephone Company of Virginia, The
13 Chesapeake and Potomac Telephone Company
14 of West Virginia, The Diamond State Tele-
15 phone Company, The Ohio Bell Telephone
16 Company, The Pacific Telephone and Telegraph
17 Company, or Wisconsin Telephone Company,

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

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

22 (6) CABLE SYSTEM.—The term “cable system”
23 has the meaning given such term in section 602(7)
24 of the Communications Act of 1934 (47 U.S.C.
25 522(7)).

1 (7) CARRIER.—The term “carrier” has the
2 meaning given such term in section 3 of the Commu-
3 nications Act of 1934 (47 U.S.C. 153).

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

8 (9) CUSTOMER PREMISES EQUIPMENT.—The
9 term “customer premises equipment” means equip-
10 ment employed on the premises of a person (other
11 than a carrier) to originate, route, or terminate tele-
12 communications, and includes software integral to
13 such equipment.

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

18 (11) EXCHANGE AREA.—The term “exchange
19 area” means a contiguous geographic area estab-
20 lished by a Bell operating company such that no ex-
21 change area includes points within more than 1 met-
22ropolitan statistical area, consolidated metropolitan
23 statistical area, or State, except as expressly per-
24 mitted under the Modification of Final Judgment
25 before the date of the enactment of this Act.

1 (12) EXCHANGE SERVICE.—The term “ex-
2 change service” means a telecommunications service
3 provided within an exchange area.

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

9 (14) INTEREXCHANGE TELECOMMUNI-
10 CATIONS.—The term “interexchange telecommuni-
11 cations” means telecommunications between a point
12 located in an exchange area and a point located out-
13 side such exchange area.

14 (15) MANUFACTURE.—The term “manufac-
15 ture” has the meaning given such term under the
16 Modification of Final Judgment.

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

1 (17) OTHER PROGRAMMING SERVICES.—The
2 term “other programming services” means informa-
3 tion (other than audio programming or video pro-
4 gramming) that the person who offers a video pro-
5 gramming service makes available to all subscribers
6 generally. For purposes of the preceding sentence,
7 the terms “information” and “makes available to all
8 subscribers generally” have the same meaning such
9 terms have under section 602(13) of the Commu-
10 nications Act of 1934 (47 U.S.C. 522(13)).

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

14 (19) STATE.—The term “State” means any of
15 the several States, the District of Columbia, the
16 Commonwealth of Puerto Rico, the Commonwealth
17 of the Northern Mariana Islands, the Federated
18 States of Micronesia, the Republic of the Marshall
19 Islands, Palau, or any territory or possession of the
20 United States.

21 (20) TELECOMMUNICATIONS.—The term “tele-
22 communications” means the transmission of infor-
23 mation between points by electromagnetic means.

24 (21) TELECOMMUNICATIONS EQUIPMENT.—The
25 term “telecommunications equipment” means equip-

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

4 (22) TELECOMMUNICATIONS SERVICE.—The
5 term “telecommunications service” means the offer-
6 ing for hire of transmission facilities or of tele-
7 communications by means of such facilities.

8 (23) TRANSMISSION FACILITIES.—The term
9 “transmission facilities” means equipment (including
10 wire, cable, microwave, satellite, and fiber-optics)
11 that transmits information by electromagnetic means
12 or that directly supports such transmission, but does
13 not include customer premises equipment.

14 (24) VIDEO PROGRAMMING.—The term “video
15 programming” has the meaning given such term in
16 section 602(19) of the Communications Act of 1934
17 (47 U.S.C. 522(19)).

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

19 (a) MODIFICATION OF FINAL JUDGMENT.—This title
20 shall supersede the Modification of Final Judgment, ex-
21 cept that this title shall not affect—

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

1 (2) section II(A) (including appendix B) and
2 II(B) of the Modification of Final Judgment, relat-
3 ing to equal access and nondiscrimination,

4 (3) section IV(F) and IV(I) of the Modification
5 of Final Judgment, with respect to the requirements
6 included in the definitions of “exchange access” and
7 “information access”,

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

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

12 (6) section VIII(F) of the Modification of Final
13 Judgment, relating to less than equal exchange ac-
14 cess,

15 (7) section VIII(G) of the Modification of Final
16 Judgment, relating to transfer of AT&T assets, in-
17 cluding all exceptions granted thereunder before the
18 date of the enactment of this Act, and

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

22 (A) section III of the Modification of Final
23 Judgment, relating to applicability and effect,

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

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

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

5 (E) section VII of the Modification of
6 Final Judgment, relating to retention of juris-
7 diction, and

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

11 (b) ANTITRUST LAWS.—Except as provided in sec-
12 tion 105(g), nothing in this Act shall be construed to mod-
13 ify, impair, or supersede the applicability of any of the
14 antitrust laws.

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

19 (2) This title shall supersede State and local law to
20 the extent that such law would impair or prevent the oper-
21 ation of this title.

22 (d) CUMULATIVE PENALTY.—Any penalty imposed,
23 or relief granted, under this title shall be in addition to,
24 and not in lieu of, any penalty or relief authorized by any

1 other law to be imposed with respect to conduct described
2 in this title.

3 **SEC. 108. REQUIRED REGULATORY ACTIONS.**

4 (a) REGULATIONS TO PROHIBIT CROSS-SUB-
5 SIDIES.—Not later than 180 days after the date of enact-
6 ment of this Act, the Federal Communications Commis-
7 sion shall review its regulations and revise such regula-
8 tions to the extent necessary to prevent a Bell operating
9 company from engaging in any improper cross-subsidiza-
10 tion in connection with any of the services described in
11 paragraphs (1) through (6) of section 102(c).

12 (b) MOBILE SERVICE ACCESS.—

13 (1) AMENDMENT.—Section 332(c) of the Com-
14 munications Act of 1934 (47 U.S.C. 332(c)) is
15 amended by adding at the end the following new
16 paragraph:

17 “(7) MOBILE SERVICES ACCESS.—Within 180
18 days after the date of enactment of this paragraph,
19 the Commission shall review its regulations with re-
20 spect to the access to interexchange services pro-
21 vided to subscribers to commercial mobile services
22 and revise such regulations to the extent necessary
23 to protect the public interest, convenience, and ne-
24 cessity. In revising such regulations, the Commis-
25 sion—

1 “(A) shall, until January 1, 1998, and
2 may thereafter (i) require that each provider of
3 two-way commercial mobile services afford its
4 subscribers nondiscriminatory access to a pro-
5 vider of interexchange services of the subscrib-
6 er’s choice, and (ii) establish geographic service
7 areas within which providers of two-way com-
8 mercial mobile services shall be exempt from
9 the access obligation under clause (i);

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

13 “(C) subject to section 104 of the Anti-
14 trust and Communications Reform Act of 1994,
15 and the provisions of paragraph (1) of this sub-
16 section and subparagraph (A) of this paragraph
17 and the regulations prescribed thereunder, may
18 permit (with or without conditions) or prohibit
19 the bundling of two-way commercial mobile
20 services with interexchange services; and

21 “(D) shall not, in establishing any require-
22 ment under subparagraph (A), (B), or (C) es-
23 tablish different requirements—

24 “(i) for providers of two-way commer-
25 cial mobile services that also are, or are af-

1 filiated with, providers of wireline tele-
2 phone exchange service; and

3 “(ii) for providers of two-way commer-
4 cial mobile services that are not, and are
5 not affiliated with, providers of wireline
6 telephone exchange service.

7 The regulations prescribed pursuant to this para-
8 graph shall supersede any inconsistent requirements
9 imposed by the Modification of Final Judgment (as
10 such term is defined in section 106 of the Antitrust
11 and Communications Reform Act of 1994). Nothing
12 in this paragraph shall affect the Commission’s au-
13 thority to establish the terms and conditions under
14 which providers of telephone exchange services pro-
15 vide access to the local exchange networks for com-
16 mercial mobile services or interexchange services.”.

17 (2) EFFECTIVE DATE CONFORMING AMEND-
18 MENT.—Section 6002(c)(2)(B) of the Omnibus
19 Budget Reconciliation Act of 1993 is amended by
20 striking “section 332(c)(6)” and inserting “para-
21 graphs (6) and (7) of section 332(c)”.

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

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

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

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

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

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

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

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

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

9 “(2) BOOKS, RECORDS, ACCOUNTS.—A manu-
10 facturing affiliate required by subsection (b) shall—

11 “(A) maintain books, records, and ac-
12 counts that are separate from the books,
13 records, and accounts of its affiliated Bell oper-
14 ating company and that identify all financial
15 transactions between the manufacturing affili-
16 ate and its affiliated Bell operating company,
17 and

18 “(B) even if such manufacturing affiliate
19 is not a publicly held corporation, prepare fi-
20 nancial statements which are in compliance
21 with financial reporting requirements under the
22 Federal securities laws for publicly held cor-
23 porations, file such statements with the Com-
24 mission, and make such statements available
25 for public inspection.

1 “(3) IN-KIND BENEFITS TO AFFILIATE.—Con-
2 sistent with the provisions of this section, neither a
3 Bell operating company nor any of its
4 nonmanufacturing affiliates shall perform sales, ad-
5 vertising, installation, production, or maintenance
6 operations for a manufacturing affiliate, except
7 that—

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

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

18 “(4) DOMESTIC MANUFACTURING REQUIRED.—

19 “(A) GENERAL RULE.—Except as other-
20 wise provided in this paragraph, a manufactur-
21 ing affiliate required by subsection (b) shall
22 conduct all of its manufacturing within the
23 United States and all component parts of cus-
24 tomer premises equipment manufactured by
25 such affiliate, and all component parts of tele-

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

4 “(B) EXCEPTION.—(i) Such affiliate may
5 use component parts manufactured outside the
6 United States if—

7 “(I) such affiliate first makes a good
8 faith effort to obtain equivalent component
9 parts manufactured within the United
10 States at reasonable prices, terms, and
11 conditions; and

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

21 “(ii) Subparagraph (A) shall apply except
22 to the extent that any of its provisions are de-
23 termined to be inconsistent with any multilat-
24 eral or bilateral agreement to which the United
25 States is a party.

1 “(C) CERTIFICATION REQUIRED.—Any
2 such affiliate that uses component parts manu-
3 factured outside the United States in the manu-
4 facture of telecommunications equipment and
5 customer premises equipment within the United
6 States shall—

7 “(i) certify to the Commission that a
8 good faith effort was made to obtain equiv-
9 alent parts manufactured within the
10 United States at reasonable prices, terms,
11 and conditions, which certification shall be
12 filed on a quarterly basis with the Commis-
13 sion and list component parts, by type,
14 manufactured outside the United States;
15 and

16 “(ii) certify to the Commission on an
17 annual basis that such affiliate complied
18 with the requirements of subparagraph
19 (B)(ii), as adjusted in accordance with
20 subparagraph (G).

21 “(D) REMEDIES FOR FAILURES.—(i) If the
22 Commission determines, after reviewing the cer-
23 tification required in subparagraph (C)(i), that
24 such affiliate failed to make the good faith ef-
25 fort required in subparagraph (B)(i) or, after

1 reviewing the certification required in subpara-
2 graph (C)(ii), that such affiliate has exceeded
3 the percentage specified in subparagraph
4 (B)(ii), the Commission may impose penalties
5 or forfeitures as provided for in title V of this
6 Act.

7 “(ii) Any supplier claiming to be damaged
8 because a manufacturing affiliate failed to
9 make the good faith effort required in subpara-
10 graph (B)(i) may make complaint to the Com-
11 mission as provided for in section 208 of this
12 Act, or may bring suit for the recovery of actual
13 damages for which such supplier claims such
14 affiliate may be liable under the provisions of
15 this Act in any district court of the United
16 States of competent jurisdiction.

17 “(E) ANNUAL REPORT.—The Commission,
18 in consultation with the Secretary of Commerce,
19 shall, on an annual basis, determine the cost of
20 component parts manufactured outside the
21 United States contained in all telecommuni-
22 cations equipment and customer premises
23 equipment sold in the United States as a per-
24 centage of the revenues from sales of such
25 equipment in the previous calendar year.

1 “(F) USE OF INTELLECTUAL PROPERTY IN
2 MANUFACTURE.—Notwithstanding subpara-
3 graph (A), a manufacturing affiliate may use
4 intellectual property created outside the United
5 States in the manufacture of telecommuni-
6 cations equipment and customer premises
7 equipment in the United States. A component
8 manufactured using such intellectual property
9 shall not be treated for purposes of subpara-
10 graph (B)(ii) as a component manufactured
11 outside the United States solely on the basis of
12 the use of such intellectual property.

13 “(G) RESTRICTIONS ON COMMISSION AU-
14 THORITY.—The Commission may not waive or
15 alter the requirements of this paragraph, except
16 that the Commission, on an annual basis, shall
17 adjust the percentage specified in subparagraph
18 (B)(ii) to the percentage determined by the
19 Commission, in consultation with the Secretary
20 of Commerce, pursuant to subparagraph (E).

21 “(5) INSULATION OF RATE PAYERS FROM MAN-
22 UFACTURING AFFILIATE DEBT.—Any debt incurred
23 by any such manufacturing affiliate may not be is-
24 sued by its affiliated Bell operating company and
25 such manufacturing affiliate shall be prohibited from

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

4 “(6) RELATION TO OTHER AFFILIATES.—A
5 manufacturing affiliate required by subsection (b)
6 shall not be required to operate separately from the
7 other affiliates of its affiliated Bell operating com-
8 pany, but if an affiliate of a Bell operating company
9 becomes affiliated with a manufacturing entity, such
10 affiliate shall be treated as a manufacturing affiliate
11 of that Bell operating company (except for purposes
12 of paragraph (3)) and shall comply with the require-
13 ments of this section.

14 “(7) AVAILABILITY OF EQUIPMENT TO OTHER
15 CARRIERS.—A manufacturing affiliate required by
16 subsection (b) shall make available, without discrimi-
17 nation or preference as to price, delivery, terms, or
18 conditions, to any common carrier any telecommuni-
19 cations equipment that is used in the provision of
20 telephone exchange service and that is manufactured
21 by such affiliate only if such purchasing carrier—

22 “(A) does not manufacture telecommuni-
23 cations equipment, and does not have an affili-
24 ated telecommunications equipment manufac-
25 turing entity; or

1 “(B) agrees to make available, to the Bell
2 operating company affiliated with such manu-
3 facturing affiliate or any common carrier affili-
4 ate of such Bell operating company, any tele-
5 communications equipment that is used in the
6 provision of telephone exchange service and that
7 is manufactured by such purchasing carrier or
8 by any entity or organization with which such
9 purchasing carrier is affiliated.

10 “(8) SALES PRACTICES OF MANUFACTURING
11 AFFILIATES.—

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

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

3 “(B) DETERMINATIONS OF REASONABLE
4 DEMAND.—Within 60 days after receipt of an
5 application under subparagraph (A), the Com-
6 mission shall reach a determination as to the
7 existence of reasonable demand for purposes of
8 such subparagraph. In making such determina-
9 tion the Commission shall consider—

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

12 “(ii) whether the equipment is func-
13 tionally or technologically obsolete;

14 “(iii) whether the components nec-
15 essary to manufacture the equipment con-
16 tinue to be available;

17 “(iv) whether alternatives to the
18 equipment are available in the market; and

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

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

1 uous common carriers providing telephone exchange
2 service, but agreement with such other carriers shall
3 not be required as a prerequisite for the introduction
4 or deployment of services pursuant to such joint net-
5 work planning and design.

6 “(d) INFORMATION REQUIREMENTS.—

7 “(1) FILING OF INFORMATION ON PROTOCOLS
8 AND TECHNICAL REQUIREMENTS.—Each Bell oper-
9 ating company shall, in accordance with regulations
10 prescribed by the Commission, maintain and file
11 with the Commission full and complete information
12 with respect to the protocols and technical require-
13 ments for connection with and use of its telephone
14 exchange service facilities. Each such company shall
15 report promptly to the Commission any material
16 changes or planned changes to such protocols and
17 requirements, and the schedule for implementation
18 of such changes or planned changes.

19 “(2) FILING AS PREREQUISITE TO DISCLOSURE
20 TO AFFILIATE.—A Bell operating company shall not
21 disclose to any of its affiliates any information re-
22 quired to be filed under paragraph (1) unless that
23 information is filed promptly, as required by regula-
24 tion by the Commission.

1 “(3) ACCESS BY COMPETITORS TO INFORMA-
2 TION.—The Commission may prescribe such addi-
3 tional regulations under this subsection as may be
4 necessary to ensure that manufacturers in competi-
5 tion with a Bell operating company’s manufacturing
6 affiliate have access to the information with respect
7 to the protocols and technical requirements for con-
8 nection with and use of its telephone exchange serv-
9 ice facilities required for such competition that such
10 company makes available to its manufacturing
11 affiliate.

12 “(4) PLANNING INFORMATION.—Each Bell op-
13 erating company shall provide, to contiguous com-
14 mon carriers providing telephone exchange service,
15 timely information on the planned deployment of
16 telecommunications equipment.

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

22 “(1) provide, to other manufacturers of tele-
23 communications equipment and customer premises
24 equipment that is functionally equivalent to equip-
25 ment manufactured by the Bell operating company

1 manufacturing affiliate, opportunities to sell such
2 equipment to such Bell operating company which are
3 comparable to the opportunities which such Com-
4 pany provides to its affiliates; and

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

8 “(f) COLLABORATION PERMITTED.—Nothing in this
9 section (other than subsection (l)) shall be construed to
10 limit or restrict the ability of a Bell operating company
11 and its affiliates to engage in close collaboration with any
12 manufacturer of customer premises equipment or tele-
13 communications equipment during the design and develop-
14 ment of hardware, software, or combinations thereof
15 related to such equipment.

16 “(g) ACCESSIBILITY REQUIREMENTS.—

17 “(1) MANUFACTURING.—The Commission shall,
18 within 1 year after the date of enactment of this sec-
19 tion, prescribe such regulations as are necessary to
20 ensure that telecommunications equipment and cus-
21 tomer premises equipment designed, developed, and
22 fabricated pursuant to the authority granted in this
23 section shall be accessible and usable by individuals
24 with disabilities, including individuals with func-
25 tional limitations of hearing, vision, movement, ma-

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

5 “(2) NETWORK SERVICES.—The Commission
6 shall, within 1 year after the date of enactment of
7 this section, prescribe such regulations as are nec-
8 essary to ensure that advances in network services
9 deployed by a Bell operating company shall be acces-
10 sible and usable by individuals whose access might
11 otherwise be impeded by a disability or functional
12 limitation, unless the costs of making the services
13 accessible and usable would result in an undue bur-
14 den or adverse competitive impact. Such regulations
15 shall seek to permit the use of both standard and
16 special equipment and seek to minimize the need of
17 individuals to acquire additional devices beyond
18 those used by the general public to obtain such
19 access.

20 “(3) COMPATIBILITY.—The regulations pre-
21 scribed under paragraphs (1) and (2) shall require
22 that whenever an undue burden or adverse competi-
23 tive impact would result from the manufacturing or
24 network services requirements in such paragraphs,
25 the manufacturing affiliate that designs, develops, or

1 fabricates the equipment or the Bell operating com-
2 pany that deploys the network service shall ensure
3 that the equipment or network service in question is
4 compatible with existing peripheral devices or spe-
5 cialized customer premises equipment commonly
6 used by persons with disabilities to achieve access,
7 unless doing so would result in an undue burden or
8 adverse competitive impact.

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

10 “(A) UNDUE BURDEN.—The term ‘undue
11 burden’ means significant difficulty or expense.
12 In determining whether an activity would result
13 in an undue burden, the following factors shall
14 be considered:

15 “(i) The nature and cost of the activ-
16 ity.

17 “(ii) The impact on the operation of
18 the facility involved in the manufacturing
19 of the equipment or deployment of the net-
20 work service.

21 “(iii) The financial resources of the
22 manufacturing affiliate in the case of man-
23 ufacturing of equipment, for as long as ap-
24 plicable regulatory rules prohibit cross-sub-
25 sidization of equipment manufacturing

1 with revenues from regulated telecommuni-
2 cations service or when the manufacturing
3 activities are conducted in a separate sub-
4 sidiary.

5 “(iv) The financial resources of the
6 Bell operating company in the case of net-
7 work services, or in the case of manufac-
8 turing of equipment if applicable regu-
9 latory rules permit cross-subsidization of
10 equipment manufacturing with revenues
11 from regulated telecommunications services
12 and the manufacturing activities are not
13 conducted in a separate subsidiary.

14 “(v) The type of operation or oper-
15 ations of the manufacturing affiliate or
16 Bell operating company as applicable.

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

21 “(i) Whether such activity would raise
22 the cost of the equipment or network serv-
23 ice in question beyond the level at which
24 there would be sufficient consumer demand

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

3 “(ii) Whether such activity would,
4 with respect to the equipment or network
5 service in question, put the manufacturing
6 affiliate or Bell operating company, as ap-
7 plicable, at a competitive disadvantage in
8 comparison with one or more providers of
9 one or more competing products and serv-
10 ices. This factor may only be considered so
11 long as competing manufacturers and net-
12 work service providers are not held to the
13 same obligation with respect to access by
14 persons with disabilities.

15 “(C) ACTIVITY.—For the purposes of this
16 paragraph, the term ‘activity’ includes—

17 “(i) the research, design, development,
18 deployment, and fabrication activities nec-
19 essary to comply with the requirements of
20 this section; and

21 “(ii) the acquisition of the related ma-
22 terials and equipment components.

23 “(5) EFFECTIVE DATE.—The regulations re-
24 quired by this subsection shall become effective 18
25 months after the date of enactment of this section.

1 “(h) PUBLIC NETWORK ENHANCEMENT.—A Bell op-
2 erating company manufacturing affiliate shall, as a part
3 of its overall research and development effort, establish
4 a permanent program for manufacturing research and de-
5 velopment of products and applications for the enhance-
6 ment of the public switched telephone network and to pro-
7 mote public access to advanced telecommunications serv-
8 ices. Such program shall focus its work substantially on
9 developing technological advancements in public telephone
10 network applications, telecommunication equipment and
11 products, and access solutions to new services and tech-
12 nology, including access by (1) public institutions, includ-
13 ing educational and health care institutions; and (2) peo-
14 ple with disabilities and functional limitations. Notwith-
15 standing the limitations in subsection (a), a Bell operating
16 company and its affiliates may engage in such a program
17 in conjunction with a Bell operating company not so affili-
18 ated or any of its affiliates. The existence or establishment
19 of such a program that is jointly provided by manufactur-
20 ing affiliates of Bell operating companies shall satisfy the
21 requirements of this section as it pertains to all such affili-
22 ates of a Bell operating company.

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

1 “(j) ADMINISTRATION AND ENFORCEMENT AUTHOR-
2 ITY.—

3 “(1) COMMISSION REGULATORY AUTHORITY.—

4 For the purposes of administering and enforcing the
5 provisions of this section and the regulations pre-
6 scribed thereunder, the Commission shall have the
7 same authority, power, and functions with respect to
8 any Bell operating company or any affiliate thereof
9 as the Commission has in administering and enforc-
10 ing the provisions of this title with respect to any
11 common carrier subject to this Act.

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

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

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

9 “(l) ANTITRUST LAWS.—Nothing in this section shall
10 be construed to modify, impair, or supersede the applica-
11 bility of any of the antitrust laws (including title I of the
12 Antitrust and Communications Reform Act of 1994).

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

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

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

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

5 “(4) The term ‘manufacturing’ has the same
6 meaning as such term has under the Modification of
7 Final Judgment.

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

11 “(6) The term ‘Modification of Final Judg-
12 ment’ means the decree entered August 24, 1982, in
13 United States v. Western Electric Civil Action No.
14 82-0192 (United States District Court, District of
15 Columbia), and includes any judgment or order with
16 respect to such action entered on or after August
17 24, 1982, and before the date of enactment of this
18 section.

19 “(7) The term ‘telecommunications’ means the
20 transmission, between or among points specified by
21 the user, of information of the user’s choosing, with-
22 out change in the form or content of the information
23 as sent and received, by means of an electromagnetic
24 transmission medium, including all instrumentalities,
25 facilities, apparatus, and services (including the col-

1 lection, storage, forwarding, switching, and delivery
2 of such information) essential to such transmission.

3 “(8) The term ‘telecommunications equipment’
4 means equipment, other than customer premises
5 equipment, used by a carrier to provide tele-
6 communications services, and includes software inte-
7 gral to such equipment (including upgrades).

8 “(9) The term ‘telecommunications service’
9 means the offering for hire of telecommunications
10 facilities, or of telecommunications by means of such
11 facilities.”.

12 **SEC. 202. REGULATION OF ENTRY INTO ALARM MONITOR-**
13 **ING SERVICES.**

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

17 **“SEC. 230. REGULATION OF ENTRY INTO ALARM MONITOR-**
18 **ING SERVICES.**

19 “(a) REGULATIONS REQUIRED.—The Commission
20 shall prescribe regulations—

21 “(1) to establish such requirements, limitations,
22 or conditions as are (A) necessary and appropriate
23 in the public interest with respect to the provision of
24 alarm monitoring services by Bell operating compa-
25 nies and their affiliates, and (B) effective at such

1 time as a Bell operating company or any of its affili-
2 ates is authorized to provide alarm monitoring serv-
3 ices;

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

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

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

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

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

11 “(d) RULEMAKING SCHEDULE.—The Commission
12 shall prescribe the regulations required by subsection
13 (a)(2) within 180 days after the date of enactment of this
14 section and shall prescribe the regulations required by
15 subsection (a)(1) and (a)(3) prior to the date on which
16 any Bell operating company may commence providing
17 alarm monitoring services pursuant to title I of the Anti-
18 trust and Communication Reform Act of 1994.

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

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

1 “(2) ALARM MONITORING SERVICES.—The term
2 ‘alarm monitoring services’ has the meaning pro-
3 vided in section 106(2) of such Act.

4 “(3) AFFILIATE.—The term ‘affiliate’ means a
5 person that (directly or indirectly) owns or controls,
6 is owned or controlled by, or is under common own-
7 ership or control with, another person. For purposes
8 of this paragraph, to own refers to owning an equity
9 interest (or the equivalent thereof) of more than 10
10 percent.”.

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

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

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

16 “(a) IN GENERAL.—

17 “(1) PROHIBITION.—A Bell operating company
18 and any affiliate shall not engage in the provision of
19 electronic publishing that is disseminated by means
20 of such Bell operating company’s or any of its affili-
21 ates’ basic telephone service.

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

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

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

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

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

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

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

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

3 “(4) file with the Commission annual reports in
4 a form substantially equivalent to the Form 10-K
5 required by regulations of the Securities and Ex-
6 change;

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

9 “(A) as corporate officers, sales and mar-
10 keting management personnel whose respon-
11 sibilities at the separated affiliate or electronic
12 publishing joint venture will include the geo-
13 graphic area where the Bell operating company
14 provides basic telephone service;

15 “(B) network operations personnel whose
16 responsibilities at the separated affiliate or elec-
17 tronic publishing joint venture would require
18 dealing directly with the Bell operating com-
19 pany; or

20 “(C) any person who was employed by the
21 Bell operating company during the year preced-
22 ing their date of hire,

23 except that the requirements of this paragraph shall
24 not apply to persons subject to a collective bargain-
25 ing agreement that gives such persons rights to be

1 employed by a separated affiliate or electronic pub-
2 lishing joint venture of the Bell operating company;

3 “(6) not provide any wireline telephone ex-
4 change service in any telephone exchange area where
5 a Bell operating company with which it is under
6 common ownership or control provides basic tele-
7 phone exchange service except on a resale basis;

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

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

16 “(A) that is conducted by an independent
17 entity that is subject to professional, legal, and
18 ethical obligations for the purpose of determin-
19 ing compliance during the preceding calendar
20 year with any provision of this section that im-
21 poses a requirement on such separated affiliate
22 or electronic publishing joint venture; and

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

1 “(9) within 90 days of receiving a review de-
2 scribed in paragraph (8), file a report of any excep-
3 tions and corrective action with the Commission and
4 allow any person to inspect and copy such report
5 subject to reasonable safeguards to protect any pro-
6 prietary information contained in such report from
7 being used for purposes other than to enforce or
8 pursue remedies under this section.

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

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

18 “(2) carry out transactions with a separated af-
19 filiate in a manner equivalent to the manner that
20 unrelated parties would carry out independent trans-
21 actions and not based upon the affiliation;

22 “(3) carry out transactions with a separated af-
23 filiate, which involve the transfer of personnel, as-
24 sets, or anything of value, pursuant to written con-

1 tracts or tariffs that are filed with the Commission
2 and made publicly available;

3 “(4) carry out transactions with a separated af-
4 filiate in a manner that is auditable in accordance
5 with generally accepted auditing standards;

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

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

12 “(7) except for—

13 “(A) instances where Commission or State
14 regulations permit in-arrears payment for
15 tariffed telecommunications services; or

16 “(B) the investment by an affiliate of divi-
17 dends or profits derived from a Bell operating
18 company,

19 not provide debt or equity financing directly or indi-
20 rectly to a separated affiliate;

21 “(8) comply fully with all applicable Commis-
22 sion and State cost allocation and other accounting
23 rules;

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

4 “(A) that is conducted by an independent
5 entity that is subject to professional, legal, and
6 ethical obligations for the purpose of determin-
7 ing compliance during the preceding calendar
8 year with any provision of this section that im-
9 poses a requirement on such Bell operating
10 company; and

11 “(B) the results of which are maintained
12 by the Bell operating company for a period of
13 5 years subject to review by any lawful author-
14 ity;

15 “(10) within 90 days of receiving a review de-
16 scribed in paragraph (9), file a report of any excep-
17 tions and corrective action with the Commission and
18 allow any person to inspect and copy such report
19 subject to reasonable safeguards to protect any pro-
20 prietary information contained in such report from
21 being used for purposes other than to enforce or
22 pursue remedies under this section;

23 “(11) if it provides facilities or services for tele-
24 communication, transmission, billing and collection,
25 or physical collocation to any electronic publisher,

1 including a separated affiliate, for use with or in
2 connection with the provision of electronic publishing
3 that is disseminated by means of such Bell operating
4 company's or any of its affiliates' basic telephone
5 service, provide to all other electronic publishers the
6 same type of facilities and services on request, on
7 the same terms and conditions or as required by the
8 Commission or a State, and unbundled and individ-
9 ually tariffed to the smallest extent that is tech-
10 nically feasible and economically reasonable to pro-
11 vide;

12 “(12) provide network access and interconnec-
13 tions for basic telephone service to electronic pub-
14 lishers at any technically feasible and economically
15 reasonable point within the Bell operating company's
16 network and at just and reasonable rates that are
17 tariffed (so long as rates for such services are sub-
18 ject to regulation) and that are not higher on a per-
19 unit basis than those charged for such services to
20 any other electronic publisher or any separated affil-
21 iate engaged in electronic publishing;

22 “(13) if prices for network access and inter-
23 connection for basic telephone service are no longer
24 subject to regulation, provide electronic publishers

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

3 “(14) if any basic telephone service used by
4 electronic publishers ceases to require a tariff, pro-
5 vide electronic publishers with such service on the
6 same terms and conditions as a separated affiliate
7 receives such service;

8 “(15) provide reasonable advance notification at
9 the same time and on the same terms to all affected
10 electronic publishers of information if such informa-
11 tion is within any one or more of the following cat-
12 egories:

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

16 “(B) such information is necessary to en-
17 sure the interoperability of an electronic pub-
18 lisher’s and the Bell operating company’s net-
19 works; or

20 “(C) such information concerns changes in
21 basic telephone service network design and
22 technical standards which may affect the provi-
23 sion of electronic publishing;

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

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

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

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

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

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

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

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

23 “(d) CUSTOMER PROPRIETARY NETWORK INFORMA-
24 TION.—Consistent with section 232 of this Act, a Bell op-
25 erating company or any affiliate shall not provide to any

1 electronic publisher, including a separated affiliate or elec-
2 tronic publishing joint venture, customer proprietary net-
3 work information for use with or in connection with the
4 provision of electronic publishing that is disseminated by
5 means of such Bell operating company's or any of its af-
6 filiates' basic telephone service that is not made available
7 by the Bell operating company or affiliate to all electronic
8 publishers on the same terms and conditions.

9 “(e) COMPLIANCE WITH SAFEGUARDS.—No Bell op-
10 erating company or affiliate thereof (including a separated
11 affiliate) shall act in concert with another Bell operating
12 company or any other entity in order to knowingly and
13 willfully violate or evade the requirements of this section.

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

19 “(g) JOINT MARKETING.—Except as provided in sub-
20 section (h)—

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

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

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

3 “(h) PERMISSIBLE JOINT ACTIVITIES.—

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

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

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

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

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

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

9 “(1) RECORDS OF TRANSACTIONS.—Any provi-
10 sion of facilities, services, or basic telephone service
11 information, or any transfer of assets, personnel, or
12 anything of commercial or competitive value, from a
13 Bell operating company to any affiliate related to
14 the provision of electronic publishing shall be—

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

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

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

22 “(2) VALUATION OF TRANSFERS.—Any transfer
23 of assets directly related to the provision of elec-
24 tronic publishing from a Bell operating company to
25 an affiliate shall be valued at the greater of net book

1 cost or fair market value. Any transfer of assets re-
2 lated to the provision of electronic publishing from
3 an affiliate to the Bell operating company shall be
4 valued at the lesser of net book cost or fair market
5 value.

6 “(3) PROHIBITION OF EVASIONS.—A Bell oper-
7 ating company shall not provide directly or indirectly
8 to a separated affiliate any facilities, services, or
9 basic telephone service information related to the
10 provision of electronic publishing that are not made
11 available to unaffiliated companies on the same
12 terms and conditions.

13 “(j) TRANSACTIONS RELATED TO THE PROVISION OF
14 ELECTRONIC PUBLISHING BETWEEN AN AFFILIATE AND
15 A SEPARATED AFFILIATE.—

16 “(1) RECORDS OF TRANSACTIONS.—Any facili-
17 ties, services, or basic telephone service information
18 provided or any assets, personnel, or anything of
19 commercial or competitive value transferred, from a
20 Bell operating company to any affiliate as described
21 in subsection (i) and then provided or transferred to
22 a separated affiliate shall be—

23 “(A) recorded in the books and records of
24 each entity;

1 “(B) auditable in accordance with gen-
2 erally accepted auditing standards; and

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

6 “(2) VALUATION OF TRANSFERS.—Any transfer
7 of assets directly related to the provision of elec-
8 tronic publishing from a Bell operating company to
9 any affiliate as described in subsection (i) and then
10 transferred to a separated affiliate shall be valued at
11 the greater of net book cost or fair market value.
12 Any transfer of assets related to the provision of
13 electronic publishing from a separated affiliate to
14 any affiliate and then transferred to the Bell operat-
15 ing company as described in subsection (i) shall be
16 valued at the lesser of net book cost or fair market
17 value.

18 “(3) PROHIBITION OF EVASIONS.—An affiliate
19 shall not provide directly or indirectly to a separated
20 affiliate any facilities, services, or basic telephone
21 service information related to the provision of elec-
22 tronic publishing that are not made available to un-
23 affiliated companies on the same terms and condi-
24 tions.

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

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

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

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

16 “(4) A Bell operating company shall not carry
17 out—

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

20 “(B) any hiring of personnel, purchasing,
21 or production,

22 for any entity that engages in electronic publishing.

23 “(5) The Bell operating company shall not pro-
24 vide any facilities, services, or basic telephone service
25 information to any entity that engages in electronic

1 publishing, for use with or in connection with the
2 provision of electronic publishing that is dissemi-
3 nated by means of such Bell operating company's or
4 any of its affiliates' basic telephone service, unless
5 equivalent facilities, services, or information are
6 made available on equivalent terms and conditions to
7 all.

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

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

15 “(n) PRIVATE RIGHT OF ACTION.—

16 “(1) DAMAGES.—Any person claiming that any
17 act or practice of any Bell operating company, affili-
18 ate, or separated affiliate constitutes a violation of
19 this section may file a complaint with the Commis-
20 sion or bring suit as provided in section 207 of this
21 Act, and such Bell operating company, affiliate, or
22 separate±d affiliate shall be liable as provided in sec-
23 tion 206 of this Act; except that damages may not
24 be awarded for a violation that is discovered by a
25 compliance review as required by subsection (b)(8)

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

3 “(2) CEASE AND DESIST ORDERS.—In addition
4 to the provisions of paragraph (1), any person claim-
5 ing that any act or practice of any Bell operating
6 company, affiliate, or separated affiliate constitutes
7 a violation of this section may make application to
8 the Commission for an order to cease and desist
9 such violation or may make application in any dis-
10 trict court of the United States of competent juris-
11 diction for an order enjoining such acts or practices
12 or for an order compelling compliance with such re-
13 quirement.

14 “(o) ANTITRUST LAWS.—Nothing in this section
15 shall be construed to modify, impair, or supersede the ap-
16 plicability of any of the antitrust laws (including title I
17 of the Antitrust and Communications Reform Act of
18 1994).

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

1 tion appropriate job classifications in lieu of the job classi-
2 fications in subsection (d)(3)(A) of such section.

3 “(q) DEFINITIONS.—As used in this section—

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

9 “(2) The term ‘basic telephone service’ means
10 any wireline telephone exchange service, or wireline
11 telephone exchange facility, provided by a Bell oper-
12 ating company in a telephone exchange area, ex-
13 cept—

14 “(A) a competitive wireline telephone ex-
15 change service provided in a telephone exchange
16 area where another entity provides a wireline
17 telephone exchange service that was provided on
18 January 1, 1984, and

19 “(B) a commercial mobile service provided
20 by an affiliate that is required by the Commis-
21 sion to be a corporate entity separate from the
22 Bell operating company.

23 “(3) The term ‘basic telephone service informa-
24 tion’ means network and customer information of a
25 Bell operating company and other information ac-

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

4 “(4) The term ‘control’ has the meaning that it
5 has in 17 C.F.R. 240.12b-2, the regulations promul-
6 gated by the Securities and Exchange Commission
7 pursuant to the Securities Exchange Act of 1934
8 (15 U.S.C. 78a et seq.) or any successor provision
9 to such section.

10 “(5)(A) The term ‘electronic publishing’ means
11 the dissemination, provision, publication, or sale to
12 an unaffiliated entity or person, using a Bell operat-
13 ing company’s basic telephone service, of—

14 “(i) news,

15 “(ii) entertainment (other than interactive
16 games),

17 “(iii) business, financial, legal, consumer,
18 or credit material;

19 “(iv) editorials;

20 “(v) columns;

21 “(vi) sports reporting;

22 “(vii) features;

23 “(viii) advertising;

24 “(ix) photos or images;

25 “(x) archival or research material;

1 “(xi) legal notices or public records;

2 “(xii) scientific, educational, instructional,
3 technical, professional, trade, or other literary
4 materials; or

5 “(xiii) other like or similar information.

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

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

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

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

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

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

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

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

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

16 “(ix) Language translation.

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

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

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

1 “(xiii) Caller identification services.

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

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

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

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

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

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

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

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

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

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

3 “(7) The term ‘entity’ means any organization,
4 and includes corporations, partnerships, sole propri-
5 etorships, associations, and joint ventures.

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

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

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

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

8 **SEC. 204. PRIVACY OF CUSTOMER INFORMATION.**

9 (a) PRIVACY OF CUSTOMER PROPRIETARY NETWORK
10 INFORMATION.—

11 (1) AMENDMENT.—Title II of the Communica-
12 tions Act of 1934 is amended by adding at the end
13 the following new section:

14 **“SEC. 232. PRIVACY OF CUSTOMER PROPRIETARY NET-**
15 **WORK INFORMATION.**

16 “(a) DUTY TO PROVIDE SUBSCRIBER LIST INFOR-
17 MATION.—Notwithstanding subsections (b), (c), and (d),
18 a carrier that provides subscriber list information to any
19 affiliated or unaffiliated service provider or person shall
20 provide subscriber list information on a timely and
21 unbundled basis, under nondiscriminatory and reasonable
22 rates, terms, and conditions, to any person upon request.

23 “(b) PRIVACY REQUIREMENTS FOR COMMON CAR-
24 RIERS.—A carrier—

1 “(1) shall not, except as required by law or with
2 the approval of the customer to which the informa-
3 tion relates—

4 “(A) use customer proprietary network in-
5 formation in the provision of any service except
6 to the extent necessary (i) in the provision of
7 common carrier communications services, (ii) in
8 the provision of a service necessary to or used
9 in the provision of common carrier communica-
10 tions services, including the publishing of direc-
11 tories, or (iii) to continue to provide a particu-
12 lar information service that the carrier provided
13 as of March 15, 1994, to persons who were cus-
14 tomers of such service on that date;

15 “(B) use customer proprietary network in-
16 formation in the identification or solicitation of
17 potential customers for any service other than
18 the service from which such information is de-
19 rived;

20 “(C) use customer proprietary network in-
21 formation in the provision of customer premises
22 equipment; or

23 “(D) disclose customer proprietary net-
24 work information to any person except to the
25 extent necessary to permit such person to pro-

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

4 “(2) shall disclose customer proprietary net-
5 work information, upon affirmative written request
6 by the customer, to any person designated by the
7 customer;

8 “(3) shall, whenever such carrier provides any
9 aggregate information, notify the Commission of the
10 availability of such aggregate information and shall
11 provide such aggregate information on reasonable
12 terms and conditions to any other service or equip-
13 ment provider upon reasonable request therefor; and

14 “(4) except for disclosures permitted by para-
15 graph (1)(D), shall not unreasonably discriminate
16 between affiliated and unaffiliated service or equip-
17 ment providers in providing access to, or in the use
18 and disclosure of, individual and aggregate informa-
19 tion made available consistent with this subsection.

20 “(c) RULE OF CONSTRUCTION.—This section shall
21 not be construed to prohibit the use or disclosure of cus-
22 tomer proprietary network information as necessary—

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

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

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

5 “(4) to protect users of any of those services
6 and other carriers from fraudulent, abusive, or un-
7 lawful use of or subscription to such service; or

8 “(5) to provide any inbound telemarketing, re-
9 ferral, or administrative services to the customer for
10 the duration of the call if such call was initiated by
11 the customer and the customer approves of the use
12 of such information to provide such service.

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

21 “(e) REGULATIONS.—The Commission shall pre-
22 scribe regulations to carry out this section within 1 year
23 after the date of its enactment.

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

1 tion' means collective data that relates to a group or cat-
2 egory of services or customers, from which individual cus-
3 tomer identities and characteristics have been removed.”.

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

7 “(gg) ‘Customer proprietary network information’
8 means—

9 “(1) information which relates to the quantity,
10 technical configuration, type, destination, and
11 amount of use of telephone exchange service or tele-
12 phone toll service subscribed to by any customer of
13 a carrier, and is made available to the carrier by the
14 customer solely by virtue of the carrier-customer re-
15 lationship;

16 “(2) information contained in the bills pertain-
17 ing to telephone exchange service or telephone toll
18 service received by a customer of a carrier; and

19 “(3) such other information concerning the cus-
20 tomer as is available to the local exchange carrier by
21 virtue of the customer’s use of the carrier’s tele-
22 phone exchange service or interexchange telephone
23 services, and specified as within the definition of
24 such term by such rules as the Commission shall
25 prescribe consistent with the public interest;

1 except that such term does not include subscriber list in-
2 formation.

3 “(hh) ‘Subscriber list information’ means any infor-
4 mation—

5 “(1) identifying the listed names of subscribers
6 of a carrier and such subscribers’ telephone num-
7 bers, addresses, or primary advertising classifica-
8 tions, or any combination of such listed names, num-
9 bers, addresses, or classifications; and

10 “(2) that the carrier or an affiliate has pub-
11 lished or accepted for future publication.”.

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

14 (1) PROCEEDING REQUIRED.—Within one year
15 after the date of enactment of this Act, the Commis-
16 sion shall commence a proceeding—

17 (A) to examine the impact of the integra-
18 tion into interconnected communications net-
19 works of wireless telephone, cable, satellite, and
20 other technologies on the privacy rights and
21 remedies of the consumers of those tech-
22 nologies;

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

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

3 (C) to propose changes in the Commis-
4 sion's regulations to ensure that the effect on
5 consumer privacy rights is considered in the in-
6 troduction of new telecommunications services
7 and that the protection of such privacy rights
8 is incorporated as necessary in the design of
9 such services or the rules regulating such serv-
10 ices;

11 (D) to propose changes in the Commis-
12 sion's regulations as necessary to correct any
13 defects identified pursuant to subparagraph (A)
14 in such rights and remedies; and

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

18 (2) SUBJECTS FOR EXAMINATION.—In conduct-
19 ing the examination required by paragraph (1), the
20 Commission shall determine whether consumers are
21 able, and, if not, the methods by which consumers
22 may be enabled—

23 (A) to have knowledge that consumer in-
24 formation is being collected about them through

1 their utilization of various communications
2 technologies;

3 (B) to have notice that such information
4 could be used, or is intended to be used, by the
5 entity collecting the data for reasons unrelated
6 to the original communications, or that such in-
7 formation could be sold (or is intended to be
8 sold) to other companies or entities; and

9 (C) to stop the reuse or sale of that infor-
10 mation.

11 (3) SCHEDULE FOR COMMISSION RESPONSES.—

12 The Commission shall, within 18 months after the
13 date of enactment of this Act—

14 (A) complete any rulemaking required to
15 revise Commission regulations to correct defects
16 in such regulations identified pursuant to para-
17 graph (1); and

18 (B) submit to the Congress a report con-
19 taining the recommendations required by para-
20 graph (1)(C).

21 **SEC. 205. TELEMESSAGING SERVICES.**

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

1 **“SEC. 233. TELEMESSAGING SERVICES.**

2 “(a) NONDISCRIMINATION.—A common carrier en-
3 gaged in the provision of telemessaging services shall—

4 “(1) provide nonaffiliated entities, upon reason-
5 able request, with the network services it provides to
6 its own telemessaging operations, on nondiscrim-
7 inatory terms and conditions; and

8 “(2) not subsidize its telemessaging services
9 with revenues from telephone exchange service.

10 “(b) EXPEDITED CONSIDERATION OF COM-
11 PLAINTS.—The Commission shall establish procedures for
12 the receipt and review of complaints concerning violations
13 of subsection (a) or the regulations thereunder that result
14 in material financial harm to a provider of telemessaging
15 service. Such procedures shall ensure that the Commission
16 will make a final determination with respect to any such
17 complaint within 120 days after receipt of the complaint.
18 If the complaint contains an appropriate showing that the
19 alleged violation occurred, as determined by the Commis-
20 sion in accordance with such regulations, the Commission
21 shall, within 60 days after receipt of the complaint, order
22 the common carrier and its affiliates to cease engaging
23 in such violation pending such final determination.

24 “(c) DEFINITIONS.—As used in this section, the term
25 ‘telemessaging services’ means voice mail and voice stor-
26 age and retrieval services provided over telephone lines for

1 telemessaging customers and any live operator services
2 used to answer, record, transcribe, and relay messages
3 (other than telecommunications relay services) from in-
4 coming telephone calls on behalf of the telemessaging cus-
5 tomers (other than any service incidental to directory as-
6 sistance).”.

7 **SEC. 206. ENHANCED SERVICES SAFEGUARDS.**

8 Within 60 days after the date of the enactment of
9 this Act, the Commission shall initiate a proceeding to re-
10 consider its decision in the Report and Order In the Mat-
11 ter of Computer III Remand Proceedings, CC Docket No.
12 90-623, released December 20, 1993, relieving the Bell
13 operating companies of the obligation to provide enhanced
14 services through fully separate affiliates. Within 180 days
15 after the date of the enactment of this Act, the Commis-
16 sion shall, to the extent it determines necessary or appro-
17 priate in the public interest, adopt regulations prescribing
18 the structural or nonstructural safeguards, or both, with
19 which local exchange carriers shall comply when providing
20 enhanced services.

1 **TITLE III—TELECOMMUNI-**
2 **CATIONS INFRASTRUCTURE**
3 **AND COMPETITION**

4 **SEC. 301. POLICY; DEFINITIONS.**

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

7 (1) by inserting “(a)” after “SECTION 1.”; and

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

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

12 “(1) to preserve and enhance universal tele-
13 communications service at just and reasonable rates;

14 “(2) to encourage the continued development
15 and deployment of advanced and reliable capabilities
16 and services in telecommunications networks;

17 “(3) to make available, so far as possible, to all
18 the people of the United States, regardless of loca-
19 tion or disability, a switched, broadband tele-
20 communications network capable of enabling users
21 to originate and receive affordable high quality voice,
22 data, graphics, and video telecommunications serv-
23 ices;

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

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

8 “(6) to ensure that common carriers’ networks
9 function at a high standard of quality in delivering
10 advances in network capabilities and services.”.

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

13 (1) in subsection (r)—

14 (A) by inserting “(A)” after “means”; and

15 (B) by inserting before the period at the
16 end the following: “, or (B) service provided
17 through a system of switches, transmission
18 equipment, or other facilities (or combination
19 thereof) by which a subscriber can originate
20 and terminate a telecommunications service
21 within a State but which does not result in the
22 subscriber incurring a telephone toll charge”;
23 and

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

1 “(ii) ‘Information service’ means the offering of a ca-
2 pability for generating, acquiring, storing, transforming,
3 processing, retrieving, utilizing, or making available infor-
4 mation via telecommunications, and includes electronic
5 publishing, but does not include any use of any such capa-
6 bility for the management, control, or operation of a tele-
7 communications system or the management of a tele-
8 communications service.

9 “(jj) ‘Equal access’ means to afford, to any person
10 seeking to provide an information service or a tele-
11 communications service, reasonable and nondiscriminatory
12 access on an unbundled basis—

13 “(1) to databases, signaling systems, poles,
14 ducts, conduits, and rights-of-way owned or con-
15 trolled by a local exchange carrier, or other facilities,
16 functions, or information (including subscriber num-
17 bers) integral to the efficient transmission, routing,
18 or other provision of telephone exchange services or
19 telephone exchange access services;

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

23 “(3) that is sufficient to ensure the full inter-
24 operability of the equipment and facilities of the car-
25 rier and of the person seeking such access.

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

9 “(ll) ‘Local exchange carrier’ means any person that
10 is engaged in the provision of telephone exchange service
11 or telephone exchange access service. Such term does not
12 include a person insofar as such person is engaged in the
13 provision of a commercial mobile service under section
14 332(c), except to the extent that the Commission finds
15 that such service as provided by such person in a State
16 is a replacement for a substantial portion of the wireline
17 telephone exchange service within such State.

18 “(mm) ‘Telephone exchange access service’ means the
19 offering of telephone exchange services or facilities for the
20 purpose of the origination or termination of interexchange
21 telecommunications services to or from an exchange area.

22 “(nn) ‘Telecommunications’ means the transmission,
23 between or among points specified by the subscriber, of
24 information of the subscriber’s choosing, without change
25 in the form or content of the information as sent and re-

1 ceived, by means of an electromagnetic transmission me-
2 dium, including all instrumentalities, facilities, apparatus,
3 and services (including the collection, storage, forwarding,
4 switching, and delivery of such information) essential to
5 such transmission.

6 “(oo) ‘Telecommunications service’ means the offer-
7 ing, on a common carrier basis, of telecommunications fa-
8 cilities, or of telecommunications by means of such facili-
9 ties. Such term does not include an information service.”.

10 **SEC. 302. EQUAL ACCESS AND NETWORK FUNCTIONALITY**
11 **AND QUALITY.**

12 (a) AMENDMENT.—Section 201 of the Communica-
13 tions Act of 1934 (47 U.S.C. 201) is amended by adding
14 at the end thereof the following new subsections:

15 “(c) EQUAL ACCESS.—

16 “(1) OPENNESS AND ACCESSIBILITY OBLIGA-
17 TIONS.—

18 “(A) COMMON CARRIER OBLIGATIONS.—

19 The duty of a common carrier under subsection
20 (a) to furnish communications service includes
21 the duty to interconnect with the facilities and
22 equipment of other providers of telecommuni-
23 cations services and information services in ac-
24 cordance with such regulations as the Commis-
25 sion may prescribe as necessary or desirable in

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

3 “(B) ADDITIONAL OBLIGATIONS OF LOCAL
4 EXCHANGE CARRIERS.—The duty under sub-
5 section (a) of a local exchange carrier includes
6 the duty—

7 “(i) to provide, in accordance with the
8 regulations prescribed under paragraph
9 (2), equal access to and interconnection
10 with the facilities of the carrier’s networks
11 to any other carrier or person providing
12 telecommunications services or information
13 services reasonably requesting such equal
14 access and interconnection, so that such
15 networks are fully interoperable with such
16 telecommunications services and informa-
17 tion services; and

18 “(ii) to offer unbundled features,
19 functions, and capabilities whenever tech-
20 nically feasible and economically reason-
21 able, in accordance with requirements pre-
22 scribed by the Commission pursuant to
23 this subsection and other laws.

24 “(2) EQUAL ACCESS AND INTERCONNECTION
25 REGULATIONS.—

1 “(A) REGULATIONS REQUIRED.—Within 1
2 year after the date of enactment of this sub-
3 section, the Commission shall establish regula-
4 tions that require reasonable and nondiscrim-
5 inatory equal access to and interconnection with
6 the facilities of a local exchange carrier’s net-
7 work at any technically feasible and economi-
8 cally reasonable point within the carrier’s net-
9 work on reasonable terms and conditions, to
10 any other carrier or person offering tele-
11 communications services requesting such access.
12 The Commission shall establish such regula-
13 tions after consultation with the Joint Board
14 established pursuant to subparagraph (D).
15 Such regulations shall provide for actual col-
16 location of equipment necessary for interconnec-
17 tion for telecommunications services at the
18 premises of a local exchange carrier, except that
19 the regulations shall provide for virtual colloca-
20 tion where the local exchange carrier dem-
21 onstrates that actual collocation is not practical
22 for technical reasons or because of space limita-
23 tions.

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

1 the Commission shall establish regulations re-
2 quiring just and reasonable compensation to the
3 exchange carrier providing such equal access
4 and interconnection pursuant to subparagraph
5 (A). Such regulations shall include regulations
6 to require the carrier, to the extent it provides
7 a telecommunications service or an information
8 service, to impute such access and interconnec-
9 tion charges to itself as the Commission deter-
10 mines are reasonable and nondiscriminatory.

11 “(C) EXEMPTIONS AND MODIFICATIONS.—
12 Notwithstanding paragraph (1) or subpara-
13 graph (A) of this paragraph, a rural telephone
14 company shall not be required to provide equal
15 access and interconnection to another local ex-
16 change carrier. The Commission shall not apply
17 the requirements of this paragraph or impose
18 requirements pursuant to paragraph (1)(B)(ii)
19 to any rural telephone company, except to the
20 extent that the Commission determines that
21 compliance with such requirements would not
22 be unduly economically burdensome, unfairly
23 competitive, technologically infeasible, or other-
24 wise not in the public interest. The Commission
25 may modify the requirements of this paragraph

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

16 “(D) JOINT BOARD ON EQUAL ACCESS AND
17 INTERCONNECTION STANDARDS.—Within 30
18 days after the date of enactment of this sub-
19 section, the Commission shall convene a Fed-
20 eral-State Joint Board under section 410(c) for
21 the purpose of preparing a recommended deci-
22 sion for the Commission with respect to the
23 equal access and interconnection regulations re-
24 quired by this paragraph.

1 “(E) ENFORCEMENT OF EXISTING REGU-
2 LATIONS.—Nothing in this section shall be con-
3 strued to prohibit the Commission from enforc-
4 ing regulations prescribed prior to the date of
5 enactment of this subsection in fulfilling the re-
6 quirements of this subsection, to the extent that
7 such regulations are consistent with the provi-
8 sions of this subsection.

9 “(F) DEFINITION OF RURAL TELEPHONE
10 COMPANY.—For the purpose of subparagraph
11 (C) of this paragraph, the term ‘rural telephone
12 company’ means a local exchange carrier oper-
13 ating entity to the extent that such entity—

14 “(i) provides common carrier service
15 to any local exchange carrier study area
16 that does not include either—

17 “(I) any incorporated place of
18 10,000 inhabitants or more, or any
19 part thereof, based on the most recent
20 available population statistics of the
21 Bureau of the Census; or

22 “(II) any territory, incorporated
23 or unincorporated, included in an ur-
24 banized area, as defined by the Bu-

1 reau of the Census as of August 10,
2 1993;

3 “(ii) provides telephone exchange serv-
4 ice, including telephone exchange access
5 service, to fewer than 50,000 access lines;
6 or

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

10 “(3) PREEMPTION.—

11 “(A) LIMITATION.—Notwithstanding sec-
12 tion 2(b), no State or local government may,
13 after one year after the date of enactment of
14 this subsection—

15 “(i) effectively prohibit any person or
16 carrier from providing any interstate or
17 intrastate telecommunications service or
18 information service, or impose any restric-
19 tion or condition on entry into the business
20 of providing any such service;

21 “(ii) prohibit any carrier or other per-
22 son providing interstate or intrastate tele-
23 communications services or information
24 services from exercising the access and

1 interconnection rights provided under this
2 subsection; or

3 “(iii) impose any limitation on the ex-
4 ercise of such rights.

5 “(B) PERMITTED TERMS AND CONDI-
6 TIONS.—Subparagraph (A) shall not be con-
7 strued to prohibit a State from imposing a term
8 or condition on providers of telecommunications
9 services or information services if such term or
10 condition does not effectively prohibit any per-
11 son or carrier from providing any interstate or
12 intrastate telecommunications service or infor-
13 mation service and is necessary and appropriate
14 to—

15 “(i) protect public safety and welfare;

16 “(ii) ensure the continued quality of
17 intrastate telecommunications;

18 “(iii) ensure that rates for intrastate
19 telecommunications services are just and
20 reasonable; or

21 “(iv) ensure that the provider’s busi-
22 ness practices are consistent with
23 consumer protection laws and regulations.

24 “(C) NORMAL CONSTRUCTION PERMITS
25 PERMITTED.—Subparagraph (A) shall not be

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

10 “(D) EXCEPTION.—In the case of commer-
11 cial mobile services, the provisions of section
12 332(c)(3) shall apply in lieu of the provisions of
13 this paragraph.

14 “(E) PARITY OF FRANCHISE AND OTHER
15 CHARGES.—Notwithstanding section 2(b), no
16 local government may, after 1 year after the
17 date of enactment of this subsection, impose or
18 collect any franchise, license, permit, or right-
19 of-way fee or any assessment, rental, or any
20 other charge or equivalent thereof as a condi-
21 tion for operating in the locality or for obtain-
22 ing access to, occupying, or crossing public
23 rights-of-way from any provider of tele-
24 communications services that distinguishes be-
25 tween or among providers of telecommuni-

1 cations services, including the local exchange
2 carrier. For purposes of this subsection, a fran-
3 chise, license, permit, or right-of-way fee or an
4 assessment, rental, or any other charge or
5 equivalent thereof does not include any imposi-
6 tion of general applicability which does not dis-
7 tinguish between or among providers of tele-
8 communications services, or any tax.

9 “(4) TARIFFS.—

10 “(A) GENERALLY.—Within 18 months
11 after the date of enactment of this subsection,
12 a local exchange carrier shall prepare and file
13 tariffs in accordance with this Act with respect
14 to the services or elements offered to comply
15 with the equal access and interconnection regu-
16 lations required under this subsection. The
17 costs that a carrier incurs in providing such
18 services or elements shall be borne solely by the
19 users of the features and functions comprising
20 such services or elements or of the feature or
21 function that uses or includes such services or
22 elements. The Commission shall review such
23 tariffs to ensure that—

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

1 “(ii) the terms and conditions con-
2 tained in such tariffs unbundle any sepa-
3 rable services, elements, features, or func-
4 tions in accordance with paragraph
5 (1)(B)(ii) and any regulations thereunder.

6 “(B) SUPPORTING INFORMATION.—A local
7 exchange carrier shall submit supporting infor-
8 mation with its tariffs for equal access and
9 interconnection that is sufficient to enable the
10 Commission and the public to determine the re-
11 lationship between the proposed charges and
12 the costs of providing such services or elements.
13 The submission of such information shall be
14 pursuant to regulations adopted by the Com-
15 mission to ensure that similarly situated car-
16 riers provide such information in a uniform
17 fashion.

18 “(5) PRICING FLEXIBILITY.—

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

23 “(i) whether a telecommunications
24 service or provider of such service has be-
25 come, or is substantially certain to become,

1 subject to competition, either within a geo-
2 graphic area or within a class or category
3 of service;

4 “(ii) whether such competition will ef-
5 fectively prevent rates for such service that
6 are unjust or unreasonable or that are un-
7 justly or unreasonably discriminatory; and

8 “(iii) appropriate flexible pricing pro-
9 cedures that can be used in lieu of the fil-
10 ing of tariff schedules, or in lieu of other
11 pricing procedures established by the Com-
12 mission, and that are consistent with the
13 protection of subscribers and the public in-
14 terest, convenience, and necessity.

15 “(B) DETERMINATIONS.—The Commis-
16 sion, with respect to rates for interstate or for-
17 eign communications, and State commissions,
18 with respect to rates for intrastate communica-
19 tions, shall, upon application—

20 “(i) render determinations in accord-
21 ance with the criteria established under
22 clauses (i) and (ii) of subparagraph (A)
23 concerning the services or providers that
24 are the subject of such application; and

1 “(ii) upon a proper showing, establish
2 appropriate flexible pricing procedures con-
3 sistent with the criteria established under
4 clause (iii) of such subparagraph.

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

8 “(C) EXCEPTION.—In the case of commer-
9 cial mobile services, the provisions of section
10 332(c)(1) shall apply in lieu of the provisions of
11 this paragraph.

12 “(6) JOINT BOARD TO PRESERVE UNIVERSAL
13 SERVICE.—

14 “(A) ESTABLISHMENT; FUNCTIONS.—
15 Within 30 days after the date of enactment of
16 this subsection, the Commission shall convene a
17 Federal-State Joint Board under section 410(c)
18 for the purpose of recommending actions to the
19 Commission and State commissions for the
20 preservation of universal service. As a part of
21 preparing such recommendations, the Joint
22 Board shall survey providers and users of tele-
23 phone exchange service and consult with State
24 commissions in order to determine the pecu-
25 niary difference between the cost of providing

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

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

6 “(i) A plan adopted by the Commis-
7 sion and the States should ensure the con-
8 tinued viability of universal service by
9 maintaining quality services at just and
10 reasonable rates.

11 “(ii) Such plan should define the na-
12 ture and extent of the services encom-
13 passed within carriers’ universal service ob-
14 ligations. Such plan should seek to pro-
15 mote access to advanced telecommuni-
16 cations services and capabilities, including
17 open platform service, for all Americans by
18 including access to advanced telecommuni-
19 cations services and capabilities in the defi-
20 nition of universal service while maintain-
21 ing just and reasonable rates. Such plan
22 should seek to promote reasonably com-
23 parable services for the general public in
24 urban and rural areas.

1 “(iii) Such plan should establish spe-
2 cific and predictable mechanisms to pro-
3 vide adequate and sustainable support for
4 universal service.

5 “(iv) All providers of telecommuni-
6 cations services should make an equitable
7 and nondiscriminatory contribution to
8 preservation of universal service.

9 “(v) Such plan should permit residen-
10 tial subscribers to continue to receive only
11 basic voice-grade local telephone service,
12 for a period of not more than 5 years,
13 equivalent to the service generally available
14 to residential subscribers on the date of en-
15 actment of this subsection, at just, reason-
16 able, and affordable rates. Determinations
17 concerning the affordability of rates for
18 such services shall take into account the
19 rates generally available to residential sub-
20 scribers on such date of enactment and the
21 pricing rules established by the States. If
22 the plan would result in any increases in
23 the rates for such services for residential
24 subscribers that are not attributable to
25 changes in consumer prices generally, such

1 plan should include a requirement that a
2 rate increase shall be permitted in any pro-
3 ceeding commenced after March 16, 1994,
4 only upon a showing that such increase is
5 necessary to prevent competitive disadvan-
6 tages for one or more service providers and
7 is in the public interest. Such plan should
8 provide that any such increase in rates
9 shall be minimized to the greatest extent
10 practical and shall be implemented over a
11 time period of not less than 5 years after
12 the date of enactment of this subsection.

13 “(vi) To the extent that a common
14 carrier establishes advanced telecommuni-
15 cations services, such plan should include
16 provisions to promote public access to ad-
17 vanced telecommunications services, other
18 than a video platform, at a preferential
19 rate that will recover only the added costs
20 of providing such service, for public service
21 institutions, both as producers and users of
22 services, as soon as technically feasible and
23 economically reasonable. Such plan shall
24 provide that such preferential rates should
25 only be made available to such institutions

1 for the purpose of providing noncommer-
2 cial information services or telecommuni-
3 cations services to the general public and
4 not for the internal telecommunications
5 needs or commercial use of such institu-
6 tions.

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

14 “(viii) Such plan should, notwith-
15 standing any other provision of law, re-
16 quire common carriers serving more than
17 1,800,000 access lines in the aggregate na-
18 tionwide, to be subject to alternative or
19 price regulation, and not cost-based rate-
20 of-return regulation, for services that are
21 subject to the jurisdiction of the Commis-
22 sion or the States, as applicable, when
23 such carrier’s network has been made open
24 to competition as a result of its implemen-
25 tation of the equal access, interconnection,

1 and accessibility provisions of this sub-
2 section.

3 “(ix) Such other principles as the
4 Board determines are necessary and appro-
5 priate for the protection of the public in-
6 terest, convenience, and necessity and con-
7 sistent with the purposes of this Act.

8 “(C) DEFINITION OF UNIVERSAL SERVICE;
9 ACCESS TO ADVANCED SERVICES.—In defining
10 the nature and extent of the services encom-
11 passed within carriers’ universal service obliga-
12 tions under subparagraph (B)(ii), the Joint
13 Board shall consider the extent to which—

14 “(i) a telecommunications service has,
15 through the operation of market choices by
16 customers, been subscribed to by a sub-
17 stantial majority of residential customers;

18 “(ii) denial of access to such service to
19 any individual would unfairly deny that in-
20 dividual educational and economic opportu-
21 nities;

22 “(iii) such service has been deployed
23 in the public switched telecommunications
24 network; and

1 “(iv) inclusion of such service within
2 carriers’ universal service obligations is
3 otherwise consistent with the public inter-
4 est, convenience, and necessity.

5 The Joint Board may, from time to time, rec-
6 ommend to the Commission modifications in the
7 definition proposed under subparagraph (B).

8 “(D) REPORT; COMMISSION RESPONSE.—
9 The Joint Board convened pursuant to sub-
10 paragraph (A) shall report its recommendations
11 within 270 days after the date of enactment of
12 this subsection. The Commission shall complete
13 any proceeding to act upon such recommenda-
14 tions within one year after such date of enact-
15 ment. A State may adopt regulations to imple-
16 ment the Joint Board’s recommendations, ex-
17 cept that such regulations shall not, after 18
18 months after such date of enactment, be incon-
19 sistent with regulations prescribed by the Com-
20 mission to implement such recommendations.

21 “(E) DEFINITION OF PUBLIC SERVICE IN-
22 STITUTION.—For the purposes of this para-
23 graph, the term ‘public service institution’
24 means—

1 “(i) an agency or instrumentality of
2 Federal, State, or local government;

3 “(ii) a nonprofit educational institu-
4 tion, health care institution, public library,
5 public museum, or public broadcasting sta-
6 tion or entity;

7 “(iii) a charitable organization that
8 (I) is exempt from Federal income taxes
9 under section 501(c)(3) of the Internal
10 Revenue Code of 1986; (II) provides public
11 services in conjunction with an agency, in-
12 strumentality, institution, or entity de-
13 scribed in clause (i) or (ii); and (III) pro-
14 vides information that is useful to the pub-
15 lic and that is related to the work of such
16 an agency, instrumentality, institution, or
17 entity.

18 “(7) CROSS SUBSIDIES PROHIBITION.—The
19 Commission shall—

20 “(A) prescribe regulations to prohibit a
21 common carrier from engaging in any practice
22 that results in the inclusion in rates for tele-
23 phone exchange service or telephone exchange
24 access service of any operating expenses, costs,
25 depreciation charges, capital investments, or

1 other expenses directly associated with the pro-
2 vision of competing telecommunications serv-
3 ices, information services, or video program-
4 ming services by the common carrier or affili-
5 ate; and

6 “(B) ensure such competing telecommuni-
7 cations services, information services or video
8 programming services bear a reasonable share
9 of the joint and common costs of facilities used
10 to provide telephone exchange service or tele-
11 phone exchange access service and competing
12 telecommunications services, information serv-
13 ices, or video programming services.

14 “(8) RESALE.—The resale or sharing of tele-
15 phone exchange service (or unbundled services, ele-
16 ments, features, or functions of telephone exchange
17 service) in conjunction with the furnishing of a tele-
18 communications service or an information service
19 shall not be prohibited nor subject to unreasonable
20 conditions by the carrier, the Commission, or any
21 State.

22 “(9) TELECOMMUNICATIONS NUMBER PORT-
23 ABILITY.—The Commission shall prescribe regula-
24 tions to ensure that—

1 “(A) telecommunications number port-
2 ability shall be available, upon request, as soon
3 as technically feasible and economically reason-
4 able; and

5 “(B) an impartial entity shall administer
6 telecommunications numbering and make such
7 numbers available on an equitable basis.

8 The Commission shall have exclusive jurisdiction
9 over those portions of the North American Number-
10 ing Plan that pertain to the United States. For the
11 purpose of this paragraph, the term ‘telecommuni-
12 cations number portability’ means the ability of
13 users of telecommunications services to retain exist-
14 ing telecommunications numbers without impairment
15 of quality, reliability, or convenience when switching
16 from one provider of telecommunications services to
17 another.

18 “(10) REVIEW OF STANDARDS AND REQUIRE-
19 MENTS.—At least once every three years, the Com-
20 mission shall—

21 “(A) conduct a proceeding in which inter-
22 ested parties shall have an opportunity to com-
23 ment on whether the standards and require-
24 ments established by or under this subsection
25 have opened the networks of carriers to reason-

1 able and nondiscriminatory access by providers
2 of telecommunications services and information
3 services;

4 “(B) review the definition of, and the ade-
5 quacy of support for, universal service, and
6 evaluate the extent to which universal service
7 has been protected and access to advanced serv-
8 ices has been facilitated pursuant to this sub-
9 section and the plans and regulations there-
10 under; and

11 “(C) submit to the Congress a report con-
12 taining a statement of the Commission’s find-
13 ings pursuant to such proceeding, and including
14 an identification of any defects or delays ob-
15 served in attaining the objectives of this sub-
16 section and a plan for correcting such defects
17 and delays.

18 “(11) STUDY OF RURAL PHONE SERVICE.—
19 Within 1 year after the date of enactment of this
20 subsection, the Commission shall initiate an inquiry
21 to examine the effects of competition in the provision
22 of telephone exchange access service and telephone
23 exchange service on the availability and rates for
24 telephone exchange access service and telephone ex-
25 change service furnished by rural exchange carriers.

1 “(d) NETWORK FUNCTIONALITY AND QUALITY.—

2 “(1) FUNCTIONALITY AND RELIABILITY OBLI-
3 GATIONS.—The duty of a common carrier under
4 subsection (a) to furnish communications service in-
5 cludes the duty to furnish that service in accordance
6 with such regulations of functionality and reliability
7 as the Commission may prescribe as necessary or de-
8 sirable in the public interest pursuant to this sub-
9 section.

10 “(2) COORDINATED PLANNING FOR INTEROPER-
11 ABILITY AND OTHER PURPOSES.—The Commission
12 shall establish—

13 “(A) procedures for the conduct of coordi-
14 nated network planning by common carriers
15 and other providers of telecommunications serv-
16 ices or information services, subject to Commis-
17 sion supervision, for the effective and efficient
18 interconnection and interoperability of public
19 and private networks; and

20 “(B) procedures for Commission oversight
21 of the development by appropriate standards-
22 setting organizations of—

23 “(i) standards for the interconnection
24 and interoperability of such networks;

1 “(ii) standards that promote access to
2 network capabilities and services by indi-
3 viduals with disabilities; and

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

9 “(3) OPEN PLATFORM SERVICE.—

10 “(A) STUDY.—Within 90 days after the
11 date of enactment of this subsection, the Com-
12 mission shall initiate an inquiry to consider the
13 regulations and policies necessary to make open
14 platform service available to subscribers at rea-
15 sonable rates based on the reasonably identifi-
16 able costs of providing such service, utilizing ex-
17 isting facilities or new facilities with improved
18 capability or efficiency. The inquiry required
19 under this paragraph shall be completed within
20 180 days after the date of its initiation.

21 “(B) REGULATIONS.—On the basis of the
22 results of the inquiry required under subpara-
23 graph (A), the Commission shall prescribe and
24 make effective such regulations as are necessary
25 to implement the inquiry’s conclusions. Such

1 regulations may require a local exchange carrier
2 to file, in the appropriate jurisdiction, tariffs
3 for the origination and termination of open
4 platform service as soon as such service is eco-
5 nomically and technically feasible. In establish-
6 ing any such regulations, the Commission shall
7 take into account the proximate and long-term
8 deployment plans of local exchange carriers.

9 “(C) TEMPORARY WAIVER.—The Commis-
10 sion shall also establish a procedure to waive
11 temporarily specific provisions of the regula-
12 tions prescribed under this paragraph if a local
13 exchange carrier demonstrates that compliance
14 with such requirement—

15 “(i) would be economically or tech-
16 nically infeasible, or

17 “(ii) would materially delay the de-
18 ployment of new facilities with improved
19 capabilities or efficiencies that will be used
20 to meet the requirements of open platform
21 services.

22 Such petitions shall be decided by the Commis-
23 sion within 180 days after the date of its sub-
24 mission.

1 “(D) COST ALLOCATION.—Any such regu-
2 lations shall provide for the allocation of all
3 costs of facilities jointly used to provide open
4 platform service and telephone exchange service
5 or telephone exchange access services.

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

10 “(F) COMMISSION INQUIRY.—Within 2
11 years after the date of enactment of this para-
12 graph, the Commission shall conduct an inquiry
13 concerning the deployment of open platform
14 service and other advanced telecommunications
15 network capabilities, including switched,
16 broadband telecommunications facilities. In con-
17 ducting such inquiry, the Commission shall seek
18 to develop information concerning—

19 “(i) the availability of such network
20 capabilities to all Americans;

21 “(ii) the availability of such network
22 capabilities to different regions, States,
23 and classes of subscribers;

1 “(iii) the availability of advanced net-
2 work technology needed to deploy such net-
3 work capabilities; and

4 “(iv) likely deployment schedules for
5 such network capabilities by region, State,
6 and classes of subscribers.

7 The Commission shall submit a report to the
8 Congress on the results of such inquiry within
9 270 days after the commencement of such in-
10 quiry, and annually thereafter for the succeed-
11 ing 5 years.

12 “(4) ACCESSIBILITY REGULATIONS.—

13 “(A) REGULATIONS.—Within 1 year after
14 the date of enactment of this section, the Com-
15 mission shall prescribe such regulations as are
16 necessary to ensure that advances in network
17 services deployed by local exchange carriers
18 shall be accessible and usable by individuals
19 with disabilities, including individuals with
20 functional limitations of hearing, vision, move-
21 ment, manipulation, speech, and interpretation
22 of information, unless the cost of making the
23 services accessible and usable would result in an
24 undue burden or adverse competitive impact.
25 Such regulations shall seek to permit the use of

1 both standard and special equipment, and seek
2 to minimize the need of individuals to acquire
3 additional devices beyond those used by the
4 general public to obtain such access. Through-
5 out the process of developing such regulations,
6 the Commission shall coordinate and consult
7 with representatives of individuals with disabil-
8 ities and interested equipment and service pro-
9 viders to ensure their concerns and interests are
10 given full consideration in such process.

11 “(B) COMPATIBILITY.—Such regulations
12 shall require that whenever an undue burden or
13 adverse competitive impact would result from
14 the requirements in subparagraph (A), the local
15 exchange carrier that deploys the network serv-
16 ice shall ensure that the network service in
17 question is compatible with existing peripheral
18 devices or specialized customer premises equip-
19 ment commonly used by persons with disabil-
20 ities to achieve access, unless doing so would re-
21 sult in an undue burden or adverse competitive
22 impact.

23 “(C) UNDUE BURDEN.—The term ‘undue
24 burden’ means significant difficulty or expense.
25 In determining whether the activity necessary

1 to comply with the requirements of this para-
2 graph would result in an undue burden, the fac-
3 tors to be considered include the following:

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

6 “(ii) The impact on the operation of
7 the facility involved in the deployment of
8 the network service.

9 “(iii) The financial resources of the
10 local exchange carrier.

11 “(iv) The type of operations of the
12 local exchange carrier.

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

18 “(i) Whether such activity would raise
19 the cost of the network service in question
20 beyond the level at which there would be
21 sufficient consumer demand by the general
22 population to make the network service
23 profitable.

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

1 tion, put the local exchange carrier at a
2 competitive disadvantage. This factor may
3 be considered so long as competing net-
4 work service providers are not held to the
5 same obligation with respect to access by
6 persons with disabilities.

7 “(E) REVIEW OF STANDARDS AND RE-
8 QUIREMENTS.—At least once every 3 years, the
9 Commission shall conduct a proceeding in which
10 interested parties shall have an opportunity to
11 comment on whether the regulations established
12 under this paragraph have ensured that ad-
13 vances in network services by providers of tele-
14 communications services and information serv-
15 ices are accessible and usable by individuals
16 with disabilities.

17 “(F) EFFECTIVE DATE.—The regulations
18 required by this paragraph shall become effec-
19 tive 18 months after the date of enactment of
20 this subsection.

21 “(5) QUALITY RULES.—

22 “(A) MEASURES OR BENCHMARKS RE-
23 QUIRED.—The Commission shall designate or
24 otherwise establish network reliability and qual-
25 ity performance measures or benchmarks for

1 common carriers for the purpose of ensuring
2 the continued maintenance and evolution of
3 common carrier facilities and service. Not later
4 than 180 days after the date of enactment of
5 this subsection, the Commission shall initiate a
6 rulemaking proceeding to establish such per-
7 formance measures or benchmarks.

8 “(B) CONTENTS OF REGULATIONS.—Such
9 regulations shall include—

10 “(i) quantitative network reliability
11 and service quality performance measures
12 or benchmarks;

13 “(ii) procedures to monitor and evalu-
14 ate common carrier efforts to increase net-
15 work reliability and service quality; and

16 “(iii) procedures to resolve network
17 reliability and service quality complaints.

18 “(C) COORDINATION AND CONSULTA-
19 TION.—Throughout the process of developing
20 network reliability and service quality perform-
21 ance measures or benchmarks, as required by
22 subparagraphs (A) and (B), the Commission
23 shall coordinate and consult with service and
24 equipment providers and users and State regu-

1 latory bodies to ensure their concerns and inter-
2 ests are given full consideration in such process.

3 “(6) RURAL EXEMPTION.—The Commission
4 may modify, or grant exemptions from, the require-
5 ments of this subsection in the case of a common
6 carrier providing telecommunications services in a
7 rural area.

8 “(e) INFRASTRUCTURE SHARING.—

9 “(1) REGULATIONS REQUIRED.—Within one
10 year after the date of enactment of this subsection,
11 the Commission shall prescribe regulations that re-
12 quire local exchange carriers to make available to
13 qualifying carriers such public switched tele-
14 communications network technology and information
15 and telecommunications facilities and functions as
16 may be requested by such a qualifying carrier for
17 the purpose of enabling that carrier to provide tele-
18 communications services, or to provide access to in-
19 formation services, in the geographic area in which
20 that carrier has requested and obtained designation
21 as the qualifying carrier.

22 “(2) QUALIFYING CARRIERS.—For purposes of
23 paragraph (1), the term ‘qualifying carrier’ means a
24 local exchange carrier that—

1 “(A) lacks economies of scale or scope, as
2 determined in accordance with regulations pre-
3 scribed by the Commission pursuant to this
4 subsection; and

5 “(B) is a common carrier which offers tele-
6 phone exchange service, telephone exchange ac-
7 cess service, and any other service that is within
8 the definition of universal service, to all cus-
9 tomers without preference throughout one or
10 more exchange areas in existence on the date of
11 enactment of this subsection.

12 “(3) TERMS AND CONDITIONS OF REGULA-
13 TIONS.—The regulations prescribed by the Commis-
14 sion pursuant to this subsection—

15 “(A) shall not require any local exchange
16 carrier to take any action that is economically
17 unreasonable or that is contrary to the public
18 interest or to provide telecommunications facili-
19 ties and functions to any qualifying carrier that
20 is not reasonably proximate to such local ex-
21 change carrier;

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

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

3 “(C) shall ensure that a local exchange
4 carrier shall not be treated by the Commission
5 or any State commission as a common carrier
6 for hire, or as offering common carrier services,
7 with respect to any technology, information, fa-
8 cilities, or functions made available to a qualify-
9 ing carrier pursuant to this subsection;

10 “(D) shall ensure that local exchange car-
11 riers make such technology, information, facili-
12 ties, or functions available to qualifying carriers
13 on fair and reasonable terms and conditions
14 that permit such qualifying carriers to fully
15 benefit from the economies of scale and scope
16 of the providing local exchange carrier, as de-
17 termined in accordance with guidelines pre-
18 scribed by the Commission in such regulations;

19 “(E) shall establish conditions that pro-
20 mote cooperation between local exchange car-
21 riers and qualifying carriers; and

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

1 carrier is required to provide services subject to
2 State regulation.

3 “(4) INFORMATION CONCERNING DEPLOYMENT
4 OF NEW SERVICES AND EQUIPMENT.—Any local ex-
5 change carrier that has entered into an agreement
6 with a qualifying carrier under this subsection shall
7 provide to each party to such agreement timely in-
8 formation on the planned deployment of tele-
9 communications services and equipment, including
10 software integral to such telecommunications serv-
11 ices and equipment, including upgrades.”.

12 (b) PREEMPTION OF FRANCHISING AUTHORITY REG-
13 ULATION OF TELECOMMUNICATIONS SERVICES.—

14 (1) TELECOMMUNICATIONS SERVICES.—Section
15 621(b) of the Communications Act of 1934 (47
16 U.S.C. 541(c)) is amended by adding at the end
17 thereof the following new paragraph:

18 “(3)(A) To the extent that a cable operator or affili-
19 ate thereof is engaged in the provision of telecommuni-
20 cations services—

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

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

1 “(B) A franchising authority may not impose any re-
2 quirement that has the purpose or effect of prohibiting,
3 limiting, restricting, or conditioning the provision of a tele-
4 communications service by a cable operator or an affiliate
5 thereof.

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

8 “(i) to discontinue the provision of a tele-
9 communications service, or

10 “(ii) to discontinue the operation of a cable sys-
11 tem, to the extent such cable system is used for the
12 provision of a telecommunications service, by reason
13 of the failure of such cable operator or affiliate
14 thereof to obtain a franchise or franchise renewal
15 under this title with respect to the provision of such
16 telecommunications service.

17 “(D) A franchising authority may not require a cable
18 operator to provide any telecommunications service or fa-
19 cilities as a condition of the initial grant of a franchise
20 or a franchise renewal.”.

21 (2) FRANCHISE FEES.—Section 622(b) of the
22 Communications Act of 1934 (47 U.S.C. 542(b)) is
23 amended by inserting “to provide cable services” im-
24 mediately before the period at the end of the first
25 sentence thereof.

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

5 **SEC. 303. TELECOMMUNICATIONS SERVICES FOR EDU-**
6 **CATIONAL INSTITUTIONS, HEALTH CARE IN-**
7 **STITUTIONS, AND LIBRARIES.**

8 Title II of the Communications Act of 1934 is
9 amended by adding at the end the following new section:
10 **“SEC. 234. TELECOMMUNICATIONS SERVICES FOR EDU-**
11 **CATIONAL INSTITUTIONS, HEALTH CARE IN-**
12 **STITUTIONS, AND LIBRARIES.**

13 “(a) PROMOTION OF DELIVERY OF ADVANCED SERV-
14 ICES.—In fulfillment of its obligation under section 1 to
15 make available to all the people of the United States a
16 rapid, efficient, nationwide, and worldwide communica-
17 tions service, the Commission shall promote the provision
18 of advanced telecommunications services by wire, wireless,
19 cable, and satellite technologies to—

20 “(1) educational institutions;

21 “(2) health care institutions; and

22 “(3) public libraries.

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

1 telecommunications services to educational institutions,
2 health care institutions, and public libraries. The Adminis-
3 tration shall complete the survey and release publicly the
4 results of such survey not later than one year after the
5 date of enactment of this section. The results of such sur-
6 vey shall include—

7 “(1) the number of educational institutions and
8 classrooms, health care institutions, and public li-
9 braries;

10 “(2) the number of educational institutions and
11 classrooms, health care institutions, and public li-
12 braries that have access to advanced telecommuni-
13 cations services; and

14 “(3) the nature of the telecommunications fa-
15 cilities through which such educational institutions,
16 health care institutions, and public libraries obtain
17 access to advanced telecommunications services.

18 The National Telecommunications and Information Ad-
19 ministration shall update annually the survey required by
20 this section. The survey required under this subsection
21 shall be prepared in consultation with the Department of
22 Education, Department of Health and Human Services,
23 and such other Federal, State, and local departments,
24 agencies, and authorities that may maintain or have ac-
25 cess to information concerning the availability of advanced

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

3 “(c) RULEMAKING REQUIRED.—Within one year
4 after the date of enactment of this section, the Commis-
5 sion shall issue a notice of proposed rulemaking for the
6 purpose of adopting regulations that—

7 “(1) enhance, to the extent technically feasible
8 and economically reasonable, the availability of ad-
9 vanced telecommunications services to all edu-
10 cational institutions and classrooms, health care in-
11 stitutions, and public libraries by the year 2000;

12 “(2) ensure that appropriate functional require-
13 ments or performance standards, or both, including
14 interoperability standards, are established for tele-
15 communications systems or facilities that inter-
16 connect educational institutions, health care institu-
17 tions, and public libraries with the public switched
18 telecommunications network;

19 “(3) define the circumstances under which a
20 carrier may be required to interconnect its tele-
21 communications network with educational institu-
22 tions, health care institutions, and public libraries;

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

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

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

7 “(d) FEASIBILITY STUDY.—The Commission shall
8 assess the feasibility of including postsecondary edu-
9 cational institutions in any regulations promulgated under
10 this section.

11 “(e) DEFINITIONS.—For purposes of this section—

12 “(1) the term ‘educational institutions’ means
13 elementary and secondary educational institutions;
14 and

15 “(2) the term ‘health care institutions’ means
16 not-for-profit health care institutions, including hos-
17 pitals and clinics.”.

18 **SEC. 304. DISCRIMINATORY INTERCONNECTION.**

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

22 “(c) EXPEDITED REVIEW OF CERTAIN COM-
23 PLAINTS.—The Commission shall issue a final order with
24 respect to any complaint arising from alleged violations
25 of the regulations and orders prescribed pursuant to sec-

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

3 **SEC. 305. EXPEDITED LICENSING OF NEW TECHNOLOGIES**
4 **AND SERVICES.**

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

8 “(c) LICENSING OF NEW TECHNOLOGIES.—

9 “(1) EXPEDITED RULEMAKING.—Within 24
10 months after making a determination under sub-
11 section (b) that a technology or service related to the
12 furnishing of telecommunications services is in the
13 public interest, the Commission shall, with respect to
14 any such service requiring a license or other author-
15 ization from the Commission, adopt and make effec-
16 tive regulations for—

17 “(A) the provision of such technology or
18 service; and

19 “(B) the filing of applications for the li-
20 censes or authorizations necessary to offer such
21 technology or service to the public, and shall act
22 on any such application within 24 months after
23 it is filed.

24 “(2) REVIEW OF APPLICATIONS.—Any applica-
25 tion filed by a carrier under this subsection for the

1 construction or extension of a line shall also be sub-
2 ject to section 214 and to any necessary approval by
3 the appropriate State commissions.”.

4 **SEC. 306. NEW OR EXTENDED LINES.**

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

8 “(e) Any application filed under this section for au-
9 thority to construct or extend a line shall address the
10 means by which such construction or extension will meet
11 the network access needs of individuals with disabilities.”.

12 **SEC. 307. POLE ATTACHMENTS.**

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

15 (1) in subsection (a)(4), by inserting after “sys-
16 tem” the following: “or a provider of telecommuni-
17 cations service”;

18 (2) in subsection (c)(2)(B), by striking “cable
19 television services” and inserting “the services of-
20 fered via such attachments”;

21 (3) by redesignating subsection (d)(2) as sub-
22 section (d)(4); and

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

1 “(d)(1) For purposes of subsection (b) of this section,
2 the Commission shall, no later than 1 year after the date
3 of enactment of the Antitrust and Communications Re-
4 form Act of 1994, prescribe regulations for ensuring that
5 utilities charge just and reasonable and nondiscriminatory
6 rates for pole attachments provided to all providers of tele-
7 communications services, including such attachments used
8 by cable television systems to provide telecommunications
9 services (as defined in section 3(oo) of this Act). Such reg-
10 ulations shall—

11 “(A) recognize that the entire pole, duct, con-
12 duit, or right-of-way other than the usable space is
13 of equal benefit to all attachments to the pole, duct,
14 conduit, or right-of-way and therefore apportion the
15 cost of the space other than the usable space equally
16 among all such attachments,

17 “(B) recognize that the usable space is of pro-
18 portional benefit to all entities attached to the pole,
19 duct, conduit, or right-of-way and therefore appor-
20 tion the cost of the usable space according to the
21 percentage of usable space required for each entity,
22 and

23 “(C) allow for reasonable terms and conditions
24 relating to health, safety, and the provision of reli-
25 able utility service.

1 “(2) The final regulations prescribed by the Commis-
2 sion pursuant to subparagraphs (A), (B), and (C) of para-
3 graph (1) shall not apply to a pole attachment used by
4 a cable television system solely to provide cable service as
5 defined in section 602(6) of this Act. The rates for pole
6 attachments used for such purposes shall assure a utility
7 the recovery of not less than the additional costs of provid-
8 ing pole attachments, nor more than an amount deter-
9 mined by multiplying the percentage of the total usable
10 space, or the percentage of the total duct, conduit, or
11 right-of-way capacity, which is occupied by the pole at-
12 tachment by the sum of the operating expenses and actual
13 capital costs of the utility attributable to the entire pole,
14 duct, conduit, or right-of-way.

15 “(3) For all providers of telecommunications services
16 except members of the exchange carrier association estab-
17 lished in 47 C.F.R. 69.601 as of December 31, 1993, upon
18 enactment of this paragraph and until the Commission
19 promulgates its final regulations pursuant to subpara-
20 graphs (A), (B), and (C) of paragraph (1), the rate for-
21 mula contained in any joint use pole attachment agree-
22 ment between the electric utility and the largest local ex-
23 change carrier having such a joint use agreement in the
24 utility’s service area, in effect on January 1, 1994, shall
25 also apply to the pole attachments in the utility’s service

1 area, but if no such joint use agreement containing a rate
2 formula exists, then the pole attachment rate shall be the
3 rate applicable under paragraph (2) to cable television sys-
4 tems which solely provide cable service as defined in sec-
5 tion 602(6) of this Act. Disputes concerning the applica-
6 bility of a joint use agreement shall be resolved by the
7 Commission or the States, as appropriate.”.

8 **SEC. 308. CIVIC PARTICIPATION.**

9 (a) POLICIES TO ENHANCE CIVIC DIALOGUE.—The
10 Commission, in consultation with the National Tele-
11 communications and Information Administration, shall
12 study policies that will enhance civic participation through
13 the national information infrastructure. The study shall
14 request and record public comments on Federal policies
15 that would enhance and expand democratic dialogue
16 through national computer and data networks. The study
17 shall examine, but not be limited to, the social benefits
18 of flat rate pricing for access to computer and data net-
19 works, the policies which will determine how access to
20 computer networks will be priced, including the access
21 needs of individuals with disabilities, and the appropriate
22 role of common carriers in the development of national
23 computer and data networks. The Commission shall re-
24 ceive comments in both paper and electronic formats and
25 shall establish an online discussion group accessed

1 through the national information infrastructure to encour-
2 age citizen participation in the study.

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

9 **SEC. 309. COMPETITION BY SMALL BUSINESS AND MINOR-**
10 **ITY-OWNED BUSINESS CONCERNS.**

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

13 **“SEC. 235. POLICY AND RULEMAKING TO PROMOTE DIVER-**
14 **SITY OF OWNERSHIP.**

15 “(a) FINDINGS.—The Congress finds that—

16 “(1) in furtherance of the purposes of this Act
17 to make available to all people of the United States
18 a rapid and efficient communications service, and
19 for the purposes of promoting a diversity of opinion
20 in the broadcasting service, the Commission has es-
21 tablished regulations and policies to promote owner-
22 ship of broadcasting services by members of minority
23 groups;

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

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

6 “(3) while the Commission has adopted regula-
7 tions to promote participation by businesses owned
8 by members of minority groups and women, and
9 small businesses, in auctions for certain spectrum-
10 based services which promote diversity of ownership
11 in those services, no other regulations have been es-
12 tablished to promote such diversity of participation
13 in the provision of common carrier services or in the
14 provision of other telecommunications and informa-
15 tion services;

16 “(4) the goals of competitively priced services,
17 service innovation, employment, and diversity of
18 viewpoint can be advanced by promoting market-
19 place penetration by small business concerns, busi-
20 ness concerns owned by women and members of mi-
21 nority groups, and nonprofit entities; and

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

1 communication services by such concerns and enti-
2 ties.

3 “(b) RULEMAKING REQUIRED.—Within 1 year after
4 the date of enactment of this section, the Commission, in
5 consultation with the National Telecommunications and
6 Information Administration, shall initiate a rulemaking
7 proceeding for the purpose of lowering market entry bar-
8 riers for small business, business concerns owned by
9 women and members of minority groups, and nonprofit
10 entities that are seeking to provide telecommunication
11 services and information services. The proceeding shall
12 seek to provide remedies for, among other things, lack of
13 access to capital and technical and marketing expertise on
14 the part of such concerns and entities. Consistent with the
15 broad policy and finding set forth in subsection (a), the
16 Commission shall adopt such regulations and make such
17 recommendations to Congress as the Commission deems
18 appropriate. Not later than 2 years after the date of enact-
19 ment of this section, the Commission shall complete the
20 proceeding required by this subsection.”.

21 **TITLE IV—COMMUNICATIONS**
22 **COMPETITIVENESS**

23 **SEC. 401. CABLE SERVICE PROVIDED BY TELEPHONE COM-**
24 **PANIES.**

25 (a) GENERAL REQUIREMENT.—

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

4 “(b)(1) Subject to the requirements of part V and
5 the other provisions of this title, any common carrier sub-
6 ject in whole or in part to title II of this Act may, either
7 through its own facilities or through an affiliate owned,
8 operated, or controlled by, or under common control with,
9 the common carrier, provide video programming directly
10 to subscribers in its telephone service area.

11 “(2) Subject to the requirements of part V and the
12 other provisions of this title, any common carrier subject
13 in whole or in part to title II of this Act may provide chan-
14 nels of communications or pole, line, or conduit space, or
15 other rental arrangements, to any entity which is directly
16 or indirectly owned, operated, or controlled by, or under
17 common control with, such common carrier, if such facili-
18 ties or arrangements are to be used for, or in connection
19 with, the provision of video programming directly to sub-
20 scribers in its telephone service area.

21 “(3) Notwithstanding paragraphs (1) and (2), an af-
22 filiate that—

23 “(A) is, consistent with section 656, owned, op-
24 erated, or controlled by, or under common control

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

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

5 “(C) does not utilize the local exchange facili-
6 ties or services of any affiliated common carrier in
7 distributing such programming,

8 shall not be subject to the requirements of part V, but
9 shall be subject to the requirements of this part and parts
10 III and IV.”.

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

14 (A) in paragraph (6)(B), by inserting “or
15 use” after “the selection”;

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

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

21 “(18) the term ‘telephone service area’ when
22 used in connection with a common carrier subject in
23 whole or in part to title II of this Act means the
24 area within which such carrier provides telephone ex-
25 change service as of November 20, 1993, but if any

1 common carrier after such date transfers its ex-
2 change service facilities to another common carrier,
3 the area to which such facilities provide telephone
4 exchange service shall be treated as part of the tele-
5 phone service area of the acquiring common carrier
6 and not of the selling common carrier;”.

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

11 **“PART V—VIDEO PROGRAMMING SERVICES**

12 **PROVIDED BY TELEPHONE COMPANIES**

13 **“SEC. 651. DEFINITIONS.**

14 “For purposes of this part—

15 “(1) the term ‘control’ means—

16 “(A) an ownership interest in which an en-
17 tity has the right to vote more than 50 percent
18 of the outstanding common stock or other own-
19 ership interest; or

20 “(B) if no single entity directly or indi-
21 rectly has the right to vote more than 50 per-
22 cent of the outstanding common stock or other
23 ownership interest, actual working control, in
24 whatever manner exercised, as defined by the
25 Commission by regulation on the basis of rel-

1 evant factors and circumstances, which shall in-
2 clude partnership and direct ownership inter-
3 ests, voting stock interests, the interests of offi-
4 cers and directors, and the aggregation of vot-
5 ing interests; and

6 “(2) the term ‘rural area’ means a geographic
7 area that does not include either—

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

11 “(B) any territory, incorporated or unin-
12 corporated, included in an urbanized area.

13 **“SEC. 652. SEPARATE VIDEO PROGRAMMING AFFILIATE.**

14 “(a) IN GENERAL.—Except as provided in subsection
15 (d) of this section, a common carrier subject to title II
16 of this Act shall not provide video programming directly
17 to subscribers in its telephone service area unless such
18 video programming is provided through a video program-
19 ming affiliate that is separate from such carrier.

20 “(b) BOOKS AND MARKETING.—

21 “(1) IN GENERAL.—A video programming affili-
22 ate of a common carrier shall—

23 “(A) maintain books, records, and ac-
24 counts separate from such carrier which iden-
25 tify all transactions with such carrier;

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

6 “(C) not own real or personal property in
7 common with such carrier.

8 “(2) INBOUND TELEMARKETING AND REFER-
9 RAL.—Notwithstanding paragraph (1)(B), a com-
10 mon carrier may provide telemarketing or referral
11 services in response to the call of a customer or po-
12 tential customer related to the provision of video
13 programming by a video programming affiliate of
14 such carrier. If such services are provided to a video
15 programming affiliate, such services shall be made
16 available to any video programmer or cable operator
17 on request, on nondiscriminatory terms, at just and
18 reasonable prices, and subject to regulations of the
19 Commission to ensure that the carrier’s method of
20 providing telemarketing or referral and its price
21 structure do not competitively disadvantage any
22 video programmer or cable operator, regardless of
23 size, including those which do not use the carrier’s
24 telemarketing services.

1 “(3) JOINT TELEMARKETING.—Notwithstand-
2 ing paragraph (1)(B), a common carrier may peti-
3 tion the Commission for permission to market video
4 programming directly, upon a showing that a cable
5 operator or other entity directly or indirectly pro-
6 vides telecommunications services within the tele-
7 phone service area of the common carrier, and mar-
8 kets such telecommunications services jointly with
9 video programming services. The common carrier
10 shall specify the geographic region covered by the
11 petition. Any such petition shall be granted or de-
12 nied within 180 days after the date of its submis-
13 sion.

14 “(c) BUSINESS TRANSACTIONS WITH CARRIER SUB-
15 JECT TO REGULATION.—Any contract, agreement, ar-
16 rangement, or other manner of conducting business, be-
17 tween a common carrier and its video programming affili-
18 ate, providing for—

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

21 “(2) the furnishing of goods or services between
22 such affiliate and such carrier, or

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

1 shall be pursuant to regulation prescribed by the Commis-
2 sion, shall be on a fully compensatory and auditable basis,
3 shall be without cost to the telephone service ratepayers
4 of the carrier, shall be filed with the Commission, and
5 shall be in compliance with regulations established by the
6 Commission that will enable the Commission to assess the
7 compliance of any transaction.

8 “(d) WAIVER.—

9 “(1) CRITERIA FOR WAIVER.—The Commission
10 may waive any of the requirements of this section
11 for small telephone companies or telephone compa-
12 nies serving rural areas, if the Commission deter-
13 mines, after notice and comment, that—

14 “(A) such waiver will not affect the ability
15 of the Commission to ensure that all video pro-
16 gramming activity is carried out without any
17 support from telephone ratepayers;

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

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

24 “(D) such waiver otherwise is in the public
25 interest.

1 “(2) DEADLINE FOR ACTION.—The Commission
2 shall act to approve or disapprove a waiver applica-
3 tion within 180 days after the date it is filed.

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

9 **“SEC. 653. ESTABLISHMENT OF VIDEO PLATFORM.**

10 “(a) COMMON CARRIER OBLIGATIONS.—

11 “(1) IN GENERAL.—Any common carrier sub-
12 ject to title II of this Act, and that provides video
13 programming directly or indirectly to subscribers in
14 its telephone service area, shall establish a video
15 platform.

16 “(2) IDENTIFICATION OF DEMAND FOR CAR-
17 RIAGE.—Any common carrier subject to the require-
18 ments of paragraph (1) shall, prior to establishing a
19 video platform, submit a notice to the Commission
20 of its intention to establish channel capacity for the
21 provision of video programming to meet the bona
22 fide demand for such capacity. Such notice shall—

23 “(A) be in such form and contain such in-
24 formation as the Commission may require by
25 regulations pursuant to subsection (b);

1 “(B) specify the methods by which any en-
2 tity seeking to use such channel capacity should
3 submit to such carrier a specification of its
4 channel capacity requirements; and

5 “(C) specify the procedures by which such
6 carrier will determine (in accordance with the
7 Commission’s regulations under subsection
8 (b)(1)(B)) whether such request for capacity
9 are bona fide.

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

13 “(3) RESPONSE TO REQUEST FOR CARRIAGE.—
14 After receiving and reviewing the requests for capac-
15 ity submitted pursuant to such notice, such common
16 carrier shall, subject to approval of a certificate
17 under section 214, establish channel capacity that is
18 sufficient to provide carriage for—

19 “(A) all bona fide requests submitted pur-
20 suant to such notice,

21 “(B) any additional channels required pur-
22 suant to section 659, and

23 “(C) any additional channels required by
24 the Commission’s regulations under subsection
25 (b)(1)(C).

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

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

8 “(B) continue to receive and grant, to the
9 extent of available capacity, carriage in re-
10 sponse to bona fide requests for carriage from
11 existing or additional video programming pro-
12 viders;

13 “(C) if at any time the number of channels
14 required for bona fide requests for carriage may
15 reasonably be expected soon to exceed the exist-
16 ing capacity of such video platform, imme-
17 diately notify the Commission of such expecta-
18 tion and of the manner and date by which such
19 carrier will provide sufficient capacity to meet
20 such excess demand; and

21 “(D) construct, subject to approval of a
22 certificate under section 214, such additional
23 capacity as may be necessary to meet such ex-
24 cess demand.

1 “(5) DISPUTE RESOLUTION.—The Commission
2 shall have the authority to resolve disputes under
3 this section and the regulations prescribed there-
4 under. Any such dispute shall be resolved within 180
5 days after notice of such dispute is submitted to the
6 Commission. At that time or subsequently in a sepa-
7 rate damages proceeding, the Commission may
8 award damages sustained in consequence of any vio-
9 lation of this section to any person denied carriage,
10 or require carriage, or both. Any aggrieved party
11 may seek any other remedy available under this Act.

12 “(b) COMMISSION REGULATIONS.—

13 “(1) IN GENERAL.—Within one year after the
14 date of the enactment of this section, the Commis-
15 sion shall prescribe regulations that—

16 “(A) consistent with the requirements of
17 section 659, prohibit a common carrier from
18 discriminating among video programming pro-
19 viders with regard to carriage on its video plat-
20 form, and ensure that the rates, terms, and
21 conditions for such carriage are just, reason-
22 able, and nondiscriminatory;

23 “(B) prescribe definitions and criteria for
24 the purposes of determining whether a request

1 shall be considered a bona fide request for pur-
2 poses of this section;

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

7 “(D) extend to video platforms the Com-
8 mission’s regulations concerning network non-
9 duplication (47 C.F.R. 76.92 et seq.) and syn-
10 dicated exclusivity (47 C.F.R. 76.151 et seq.);

11 “(E) require the video platform to provide
12 service, transmission, interconnection, and
13 interoperability for unaffiliated or independent
14 video programming providers that is equivalent
15 to that provided to the common carrier’s video
16 programming affiliate;

17 “(F)(i) prohibit a common carrier from
18 discriminating among video programming pro-
19 viders with regard to material or information
20 provided by the common carrier to subscribers
21 for the purposes of selecting programming on
22 the video platform, or in the way such material
23 or information is presented to subscribers;

24 “(ii) require a common carrier to ensure
25 that video programming providers or copyright

1 holders (or both) are able suitably and uniquely
2 to identify their programming services to sub-
3 scribers; and

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

8 “(G) prohibit a common carrier from ex-
9 cluding areas from its video platform service
10 area on the basis of the ethnicity, race, or in-
11 come of the residents of that area, and provide
12 for public comments on the adequacy of the
13 proposed service area on the basis of the stand-
14 ards set forth under this subparagraph.

15 “(2) EXTENSION OF REGULATIONS TO OTHER
16 HIGH CAPACITY SYSTEMS.—The Commission shall
17 extend the requirements of the regulations pre-
18 scribed pursuant to this section, in lieu of the re-
19 quirements of section 612, to any cable operator of
20 a cable system that has installed a switched,
21 broadband video programming delivery system, ex-
22 cept that the Commission shall not extend the re-
23 quirements of the regulations prescribed pursuant to
24 subsection (b)(1)(D) or any other requirement that
25 the Commission determines is clearly inappropriate.

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

8 **“SEC. 654. EQUAL ACCESS COMPLIANCE.**

9 “(a) CERTIFICATION REQUIRED.—

10 “(1) IN GENERAL.—A common carrier subject
11 to title II of this Act shall not provide video pro-
12 gramming directly to subscribers in its telephone
13 service area unless such carrier has certified to the
14 Commission that such carrier is in compliance with
15 the requirements of paragraphs (1) and (2) of sec-
16 tion 201(c) of this Act, and regulations prescribed
17 pursuant to such paragraphs.

18 “(2) EXCEPTION.—Notwithstanding paragraph
19 (1), a common carrier subject to title II of this Act
20 may provide video programming directly to subscrib-
21 ers in its telephone service area during any period
22 prior to the date the Commission first prescribes
23 final regulations pursuant to paragraphs (1) and (2)
24 of section 201(c) of this Act if such carrier has cer-
25 tified to the Commission that such carrier is in com-

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

13 “(b) CERTIFICATION AND APPLICATION AP-
14 PROVAL.—A common carrier that submits a certification
15 under paragraph (1) or (2) of subsection (a) shall be eligi-
16 ble to provide video programming to subscribers in accord-
17 ance with the requirements of this part, subject to the ap-
18 proval of any necessary application under section 214 for
19 authority to establish a video platform. An application
20 under section 214 may be filed simultaneously with the
21 filing of such certification or at any time after the date
22 of enactment of this section, and the Commission shall act
23 to approve (with or without modification) or reject such
24 application within 180 days after the date of its submis-
25 sion. If the Commission acts to approve such an applica-

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

3 **“SEC. 655. PROHIBITION OF CROSS-SUBSIDIZATION.**

4 “(a) CROSS SUBSIDIES PROHIBITION.—The Commis-
5 sion shall—

6 “(1) prescribe regulations to prohibit a common
7 carrier from engaging in any practice that results in
8 the inclusion in rates for telephone exchange service
9 or telephone exchange access service of any operat-
10 ing expenses, costs, depreciation charges, capital in-
11 vestments, or other expenses directly associated with
12 the provision of competing video programming serv-
13 ices by the common carrier or affiliate; and

14 “(2) ensure such competing video programming
15 services bear a reasonable share of the joint and
16 common costs of facilities used to provide telephone
17 exchange service or telephone exchange access serv-
18 ice and competing video programming services.

19 “(b) CABLE OPERATOR PROHIBITIONS.—The Com-
20 mission shall prescribe regulations to prohibit a cable op-
21 erator from engaging in any practice that results in im-
22 proper cross-subsidization between its regulated cable op-
23 erations and its provision of telecommunications service,
24 either directly or through an affiliate.

1 **“SEC. 656. PROHIBITION ON BUYOUTS.**

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

8 “(b) EXCEPTIONS.—Notwithstanding subsection (a),
9 a common carrier may—

10 “(1) obtain a controlling interest in, or form a
11 joint venture or other partnership with, a cable sys-
12 tem that serves a rural area;

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

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

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

1 50,000 inhabitants if such system is not affili-
2 ated (as such term is defined in section 602)
3 with any other system whose franchise area is
4 contiguous to the franchise area of the acquired
5 system;

6 “(3) obtain, with the concurrence of the cable
7 operator on the rates, terms, and conditions, the use
8 of that part of the transmission facilities of such a
9 cable system extending from the last multi-user ter-
10 minal to the premises of the end user, if such use
11 is reasonably limited in scope and duration, as deter-
12 mined by the Commission; or

13 “(4) obtain a controlling interest in, or form a
14 joint venture or other partnership with, or provide
15 financing to, a cable system (hereinafter in this
16 paragraph referred to as ‘the subject cable system’),
17 if—

18 “(A) the subject cable system operates in
19 a television market that is not in the top 25
20 markets, and that has more than 1 cable sys-
21 tem operator, and the subject cable system is
22 not the largest cable system in such television
23 market;

24 “(B) the subject cable system and the larg-
25 est cable system in such television market held

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

5 “(C) the subject cable system is not owned
6 by or under common ownership or control of
7 any one of the 50 largest cable system opera-
8 tors as existed on March 1, 1994; and

9 “(D) the largest system in the television
10 market is owned by or under common owner-
11 ship or control of any one of the 10 largest
12 cable system operators as existed on March 1,
13 1994.

14 “(c) WAIVER.—

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

18 “(A) because of the nature of the market
19 served by the cable system concerned—

20 “(i) the incumbent cable operator
21 would be subjected to undue economic dis-
22 tress by the enforcement of such sub-
23 section; or

1 “(ii) the cable system would not be
2 economically viable if such subsection were
3 enforced; and

4 “(B) the local franchising authority ap-
5 proves of such waiver.

6 “(2) DEADLINE FOR ACTION.—The Commission
7 shall act to approve or disapprove a waiver applica-
8 tion within 180 days after the date it is filed.

9 **“SEC. 657. PENALTIES.**

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

14 **“SEC. 658. CONSUMER PROTECTION.**

15 “(a) JOINT BOARD REQUIRED.—Within 30 days
16 after the date of enactment of this part, the Commission
17 shall convene a Federal-State Joint Board under the pro-
18 visions of section 410(c) for the purpose of recommending
19 a decision concerning the practices, classifications, and
20 regulations as may be necessary to ensure proper jurisdic-
21 tional separation and allocation of the costs of establishing
22 and providing a video platform. The Board shall issue its
23 recommendations to the Commission within 270 days after
24 the date of enactment of this part.

1 “(b) COMMISSION REGULATIONS REQUIRED.—The
2 Commission, with respect to interstate switched access
3 service, and the States, with respect to telephone exchange
4 service and intrastate interexchange service, shall establish
5 such regulations as may be necessary to implement section
6 655 within one year after the date of the enactment of
7 this part.

8 “(c) NO EFFECT ON CARRIER REGULATION AU-
9 THORITY.—Nothing in this section shall be construed to
10 limit or supersede the authority of any State or the Com-
11 mission with respect to the allocation of costs associated
12 with intrastate or interstate communication services.

13 **“SEC. 659. APPLICABILITY OF FRANCHISE AND OTHER RE-**
14 **QUIREMENTS.**

15 “(a) IN GENERAL.—Any provision that applies to a
16 cable operator under—

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

19 “(2) sections 611, 612, 614, and 615 of this
20 title, and section 325 of title III, shall apply in ac-
21 cordance with the regulations prescribed under sub-
22 section (b), and

23 “(3) parts III and IV (other than sections 628,
24 631, 632, and 634) of this title shall not apply,

1 to any video programming affiliate established by a com-
2 mon carrier in accordance with the requirements of this
3 part.

4 “(b) IMPLEMENTATION OF REQUIREMENTS.—

5 “(1) REGULATIONS.—The Commission shall
6 prescribe regulations to ensure that a video pro-
7 gramming affiliate of a common carrier shall provide
8 (A) capacity, services, facilities, and equipment for
9 public, educational, and governmental use, (B) ca-
10 pacity for commercial use, (C) carriage of commer-
11 cial and non-commercial broadcast television sta-
12 tions, and (D) an opportunity for commercial broad-
13 cast stations to choose between mandatory carriage
14 and reimbursement for retransmission of the signal
15 of such station. In prescribing such regulations, the
16 Commission shall, to the extent possible, impose ob-
17 ligations that are no greater or lesser than the obli-
18 gations contained in the provisions described in sub-
19 section (a)(2) of this section. Such regulations shall
20 also require that, if a common carrier establishes a
21 video platform but does not provide or ceases to pro-
22 vide video programming through a video program-
23 ming affiliate, such carrier shall comply with the
24 regulations prescribed under this paragraph and

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

3 “(2) FEES.—A video programming affiliate of
4 any common carrier that establishes a video plat-
5 form under this part, and any multichannel video
6 programming distributor offering a competing serv-
7 ice using such video platform (as determined in ac-
8 cordance with regulations of the Commission), shall
9 be subject to the payment of fees imposed by a local
10 franchising authority, in lieu of the fees required
11 under section 622. The rate at which such fees are
12 imposed shall not exceed the rate at which franchise
13 fees are imposed on any cable operator transmitting
14 video programming in the same service area.

15 **“SEC. 660. RURAL AREA EXEMPTION.**

16 “The provisions of sections 652, 653, 654, and 656
17 shall not apply to video programming provided in a rural
18 area by a common carrier that provides telephone ex-
19 change service in the same area.”.

20 **SEC. 402. REVIEW OF BROADCASTERS’ OWNERSHIP RE-**
21 **STRICTIONS.**

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

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

4 **SEC. 403. REVIEW OF STATUTORY OWNERSHIP RESTRIC-**
5 **TION.**

6 Within one year after the date of enactment of this
7 Act, the Commission shall review the ownership restriction
8 in section 613(a)(1) of the Communications Act of 1934
9 (47 U.S.C. 553(a)(1)) and report to Congress whether or
10 not such restriction continues to serve the public interest.

11 **SEC. 404. BROADCASTER SPECTRUM FLEXIBILITY.**

12 (a) REGULATIONS REQUIRED.—If the Commission
13 determines to issue additional licenses for advanced tele-
14 vision services, and initially limits the eligibility for such
15 licenses to persons that, as of the date of such issuance,
16 are licensed to operate a television broadcast station or
17 hold a permit to construct such a station (or both), the
18 Commission shall adopt regulations that allow such licens-
19 ees or permittees to offer such ancillary or supplementary
20 services on designated frequencies as may be consistent
21 with the public interest, convenience, and necessity.

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

1 (1) only permit such licensee or permittee to
2 offer ancillary or supplementary services if the use
3 of a designated frequency for such services is indivis-
4 ible from the use of such designated frequency for
5 the provision of advanced television services;

6 (2) limit the broadcasting of ancillary or supple-
7 mentary services on designated frequencies so as to
8 avoid derogation of any advanced television services,
9 including high definition television broadcasts, that
10 the Commission may require using such frequencies;

11 (3) treat any such ancillary or supplementary
12 services for which the licensee or permittee solicits
13 and receives compensation in return for transmitting
14 commercial advertising as broadcast services for the
15 purposes of the Communications Act of 1934 and
16 the Children's Television Act of 1990 (47 U.S.C.
17 303a), and the Commission's regulations thereunder,
18 including regulations promulgated pursuant to sec-
19 tion 315 of the Communications Act of 1934 (47
20 U.S.C. 315);

21 (4) apply to any other ancillary or supple-
22 mentary service such of the Commission's regula-
23 tions as are applicable to the offering of analogous
24 services by any other person;

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

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

10 (c) RECOVERY OF LICENSE.—

11 (1) CONDITIONS REQUIRED.—If the Commis-
12 sion limits the eligibility for licenses to provide ad-
13 vanced television services in the manner described in
14 subsection (a), the Commission shall, as a condition
15 of such license, require that, upon a determination
16 by the Commission pursuant to the regulations pre-
17 scribed under paragraph (2), either the additional li-
18 cense or the original license held by the licensee be
19 surrendered to the Commission in accordance with
20 such regulations for reallocation or reassignment (or
21 both) pursuant to Commission regulation.

22 (2) REGULATIONS.—The Commission shall pre-
23 scribe regulations establishing criteria for rendering
24 determinations concerning license surrender pursu-

1 ant to license conditions required by paragraph (1).

2 Such regulations shall—

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

8 (B) not require the cessation of the broad-
9 casting if such cessation would render the tele-
10 vision receivers of a substantial portion of the
11 public useless, or otherwise cause undue bur-
12 dens on the owners of such television receivers.

13 (d) FEES REQUIRED.—

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

18 (A) for which the payment of a subscrip-
19 tion fee is required in order to receive such
20 services, or

21 (B) for which the licensee directly or indi-
22 rectly receives compensation from a third party
23 in return for transmitting material furnished by
24 such third party (other than commercial adver-

1 tishments used to support broadcasting for
2 which a subscription fee is not required),
3 the Commission shall establish by regulation a pro-
4 gram to assess and collect an annual fee or royalty
5 payment.

6 (2) CRITERIA FOR REGULATIONS.—The regula-
7 tions required by paragraph (1) shall—

8 (A) be designed (i) to recover for the pub-
9 lic a portion of the value of the public spectrum
10 resource made available for such commercial
11 use, and (ii) to avoid unjust enrichment
12 through the method employed to permit such
13 uses of that resource;

14 (B) recover for the public an amount that
15 is, to maximum extent feasible, equal (over the
16 term of the license) to the amount that would
17 have been recovered had such services been li-
18 censed pursuant to the provisions of section
19 309(j) of the Communications Act of 1934 (47
20 U.S.C. 309(j)) and the Commission's regula-
21 tions thereunder; and

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

25 (3) TREATMENT OF REVENUES.—

1 (A) GENERAL RULE.—Except as provided
2 in subparagraph (B), all proceeds obtained pur-
3 suant to the regulations required by this sub-
4 section shall be deposited in the Treasury in ac-
5 cordance with chapter 33 of title 31, United
6 States Code.

7 (B) RETENTION OF REVENUES.—Notwith-
8 standing subparagraph (A), the salaries and ex-
9 penses account of the Commission shall retain
10 as an offsetting collection such sums as may be
11 necessary from such proceeds for the costs of
12 developing and implementing the program re-
13 quired by this section and regulating and super-
14 vising advanced television services. Such offset-
15 ting collections shall be available for obligation
16 subject to the terms and conditions of the re-
17 ceiving appropriations account, and shall be de-
18 posited in such accounts on a quarterly basis.

19 (4) REPORT.—Within 5 years after the date of
20 the enactment of this section, the Commission shall
21 report to the Congress on the implementation of the
22 program required by this subsection, and shall annu-
23 ally thereafter advise the Congress on the amounts
24 collected pursuant to such program.

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

6 (1) an assessment of the willingness of consum-
7 ers to purchase the television receivers necessary to
8 receive broadcasts of advanced television services;

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

12 (3) the extent to which the Commission has
13 been or will be able to reduce the amount of spec-
14 trum assigned to licensees in order to issue addi-
15 tional licenses for the provision of advanced tele-
16 vision services.

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

18 (1) ADVANCED TELEVISION SERVICES.—The
19 term “advanced television services” means television
20 services provided using digital or other advanced
21 technology to enhance audio quality and video reso-
22 lution, as further defined in the opinion, report, and
23 order of the Commission entitled “Advanced Tele-
24 vision Systems and Their Impact Upon the Existing
25 Television Broadcast Service”, MM Docket 87–268,

1 adopted September 17, 1992, and successor proceed-
2 ings.

3 (2) DESIGNATED FREQUENCIES.—The term
4 “designated frequency” means each of the fre-
5 quencies designated by the Commission for licenses
6 for advanced television services.

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

14 **SEC. 405. INTERACTIVE SERVICES AND CRITICAL INTER-**
15 **FACES.**

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

17 (1) the convergence of communications, com-
18 puting, and video technologies will permit improve-
19 ments in interoperability between and among those
20 technologies;

21 (2) in the public switched telecommunications
22 network, open protocols and technical requirements
23 for connection between the network and the
24 consumer, and the availability of unbundled cus-
25 tomer equipment through retailers and other third

1 party vendors, have served to broaden consumer
2 choice, lower prices, and spur competition and inno-
3 vation in the customer equipment industry;

4 (3) set-top boxes and other interactive commu-
5 nications devices could similarly serve as a critical
6 gateway between American homes and businesses
7 and advanced telecommunications and video pro-
8 gramming networks;

9 (4) American consumers have benefited from
10 the ability to own or rent customer premises equip-
11 ment obtained from retailers and other vendors and
12 the ability to access the network with portable, com-
13 patible equipment;

14 (5) in order to promote diversity, competition,
15 and technological innovation among suppliers of
16 equipment and services, it may be necessary to make
17 certain critical interfaces with such networks open
18 and accessible to a broad range of equipment manu-
19 facturers and information providers;

20 (6) the identification of critical interfaces with
21 such networks and the assessment of their openness
22 must be accomplished with due recognition that open
23 and accessible systems may include standards that
24 involve both nonproprietary and proprietary tech-
25 nologies;

1 (7) such identification and assessment must
2 also be accomplished with due recognition of the
3 need for owners and distributors of video program-
4 ming and information services to ensure system and
5 signal security and to prevent theft of service;

6 (8) whenever possible, standards in dynamic in-
7 dustries such as interactive systems are best set by
8 the marketplace or by private sector standard-set-
9 ting bodies; and

10 (9) the role of the Commission in this regard
11 is—

12 (A) to identify, in consultation with indus-
13 try groups, consumer interests, and independent
14 experts, critical interfaces with such networks
15 (i) to ensure that end users can connect infor-
16 mation devices to such networks, and (ii) to en-
17 sure that information service providers are able
18 to transmit information to end users, and

19 (B) as necessary, to take steps to ensure
20 these networks and services are accessible to a
21 broad range of equipment manufacturers, infor-
22 mation providers, and program suppliers.

23 (b) INQUIRY REQUIRED.—Within 6 months after the
24 date of the enactment of this Act, the Commission shall
25 commence an inquiry—

1 (1) to examine the impact of the convergence of
2 technologies on cable, telephone, satellite, and wire-
3 less and other communications technologies likely to
4 offer interactive communications services;

5 (2) to ascertain the importance of maintaining
6 open and accessible systems in interactive commu-
7 nications services;

8 (3) to examine the costs and benefits of main-
9 taining varying levels of interoperability between and
10 among interactive communications services;

11 (4) to examine the costs and benefits of estab-
12 lishing open interfaces (A) between the network pro-
13 vider and the set-top box or other interactive com-
14 munications devices used in the home or office, and
15 (B) between network providers and information serv-
16 ice providers, and to determine how best to establish
17 such interfaces;

18 (5) to determine methods by which converter
19 boxes or other interactive communications devices
20 may be sold through retailers and other third party
21 vendors and to determine the vendors' responsibil-
22 ities for ensuring that their devices are interoperable
23 with interactive networks;

24 (6) to assess how the security of cable, satellite,
25 and other interactive systems or their services can

1 continue to be ensured with the establishment of an
2 interface between the network and a converter box
3 or other interactive communications device, including
4 those manufactured and distributed at retail by enti-
5 ties independent of network providers and informa-
6 tion service providers, and to determine the respon-
7 sibilities of such independent entities for assuring
8 network security and for conforming to signal inter-
9 ference standards;

10 (7) to ascertain the conditions necessary to en-
11 sure that any critical interface is available to infor-
12 mation and content providers and others who seek to
13 design, build, and distribute interoperable devices for
14 these networks so as to ensure network access and
15 fair competition for independent information provid-
16 ers and consumers;

17 (8) to assess the impact of the deployment of
18 digital technologies on individuals with disabilities,
19 with particular emphasis on any regulatory, policy,
20 or design barriers which would limit functionally
21 equivalent access by such individuals;

22 (9) to assess current regulation of telephone,
23 cable, satellite, and other communications delivery
24 systems to ascertain how best to ensure interoper-
25 ability between those systems;

1 (10) to assess the adequacy of current regula-
2 tion of telephone, cable, satellite, and other commu-
3 nications delivery systems with respect to bundling
4 of equipment and services and to identify any
5 changes in unbundling regulations necessary to as-
6 sure effective competition and encourage techno-
7 logical innovation, consistent with the finding in sub-
8 section (a)(6) and the objectives of paragraph (6) of
9 this subsection, in the market for converter boxes or
10 interactive communications devices and for other
11 customer premises equipment;

12 (11) to solicit comment on any changes in the
13 Commission's regulations that are necessary to en-
14 sure that diversity, competition, and technological
15 innovation are promoted in communications services
16 and equipment; and

17 (12) to prepare recommendations to the Con-
18 gress for any legislative changes required.

19 (c) REPORT TO CONGRESS.—Within 12 months after
20 the date of the enactment of this Act, the Commission
21 shall submit to the Congress a report on the results of
22 the inquiry required by subsection (b). Within 6 months
23 after the date of submission of such report, the Commis-
24 sion shall prescribe such changes in its regulations as the

1 Commission determines are necessary pursuant to sub-
2 section (b)(10).

3 (d) PRESERVATION OF EXISTING AUTHORITY.—
4 Nothing in this section shall be construed as limiting, su-
5 perseding, or otherwise modifying the existing authority
6 and responsibilities of the Commission or National Insti-
7 tute of Standards and Technology.

8 **SEC. 406. VIDEO PROGRAMMING ACCESSIBILITY.**

9 (a) INQUIRY REQUIRED.—Within 180 days after the
10 date of enactment of this section, the Federal Communica-
11 tions Commission shall complete an inquiry to ascertain
12 the level at which video programming is closed captioned.
13 Such inquiry shall examine the extent to which existing
14 or previously published programming is closed captioned,
15 the size of the video programming provider or program-
16 ming owner providing closed captioning, the size of the
17 market served, the relative audience shares achieved, or
18 any other related factors. The Commission shall submit
19 to the Congress a report on the results of such inquiry.

20 (b) CONTENTS OF REGULATIONS.—Within 18
21 months after the date of enactment, the Commission shall
22 prescribe such regulations as are necessary to implement
23 this section. Such regulations shall ensure that—

24 (1) video programming first published or exhib-
25 ited after the effective date of such regulations is

1 fully accessible through the provision of closed cap-
2 tions, except as provided in subsection (d); and

3 (2) video programming providers or owners
4 maximize the accessibility of video programming
5 first published or exhibited prior to the effective date
6 of such regulations through the provision of closed
7 captions, except as provided in subsection (d).

8 (c) CONTENTS OF REGULATIONS.—Such regulations
9 shall include an appropriate schedule of deadlines for the
10 provision of closed captioning of video programming.

11 (d) EXEMPTIONS.—Notwithstanding subsection
12 (b)—

13 (1) the Commission may exempt by regulation
14 programs, classes of programs, or services for which
15 the Commission has determined that the provision of
16 closed captioning would be economically burdensome
17 to the provider or owner of such programming;

18 (2) a provider of video programming or the
19 owner of any program carried by the provider shall
20 not be obligated to supply closed captions if such ac-
21 tion would be inconsistent with contracts in effect on
22 the date of enactment of this Act, except that noth-
23 ing in this section shall be construed to relieve a
24 video programming provider of its obligations to pro-
25 vide services required by Federal law; and

1 (3) a provider of video programming or pro-
2 gram owner may petition the Commission for an ex-
3 emption from the requirements of this section, and
4 the Commission may grant such petition upon a
5 showing that the requirements contained in this sec-
6 tion would result in an undue burden.

7 (e) **UNDUE BURDEN.**—The term ‘undue burden’
8 means significant difficulty or expense. In determining
9 whether the closed captions necessary to comply with the
10 requirements of this paragraph would result in an undue
11 economic burden, the factors to be considered include—

12 (1) the nature and cost of the closed captions
13 for the programming;

14 (2) the impact on the operation of the provider
15 or program owner;

16 (3) the financial resources of the provider or
17 program owner; and

18 (4) the type of operations of the provider or
19 program owner.

20 (f) **ADDITIONAL PROCEEDING ON VIDEO DESCRIP-**
21 **TIONS REQUIRED.**—Within 6 months after the date of en-
22 actment of this Act, the Commission shall commence an
23 inquiry to examine the use of video descriptions on video
24 programming in order to ensure the accessibility of video
25 programming to persons with visual impairments, and re-

1 port to Congress on its findings. The Commission's report
2 shall assess appropriate methods and schedules for phas-
3 ing video descriptions into the marketplace, technical and
4 quality standards for video descriptions, a definition of
5 programming for which video descriptions would apply,
6 and other technical and legal issues that the Commission
7 deems appropriate. Following the completion of such in-
8 quiry, the Commission may adopt regulation it deems nec-
9 essary to promote the accessibility of video programming
10 to persons with visual impairments.

11 (g) MODEL PROGRAM.—The National Telecommuni-
12 cations and Information Administration shall establish
13 and oversee, and (to the extent of available funds) provide
14 financial support for, marketplace tests of video descrip-
15 tions on commercial and noncommercial video program-
16 ming services.

17 (h) VIDEO DESCRIPTION.—For purposes of this sec-
18 tion, “video description” means the insertion of audio nar-
19 rated descriptions of a television program’s key visual ele-
20 ments into natural pauses between the program’s dia-
21 logue.

22 **SEC. 407. PUBLIC ACCESS.**

23 Within one year after the date of enactment of this
24 Act, the Federal Communications Commission shall pre-
25 scribe regulations to reserve appropriate capacity for the

1 public at preferential rates on cable systems and video
2 platforms.

3 **SEC. 408. AUTOMATED SHIP DISTRESS AND SAFETY SYS-**
4 **TEMS.**

5 Notwithstanding any provision of the Communica-
6 tions Act of 1934, a ship documented under the laws of
7 the United States operating in accordance with the Global
8 Maritime Distress and Safety System provisions of the
9 Safety of Life at Sea Convention shall not be required to
10 be equipped with a radio station operated by one or more
11 radio officers or operators.

12 **SEC. 409. EXCLUSIVE FEDERAL JURISDICTION OVER DI-**
13 **RECT BROADCAST SATELLITE SERVICE.**

14 Section 303 of the Communications Act of 1934 (47
15 U.S.C. 303) is amended by adding at the end thereof the
16 following new subsection:

17 “(v) Have exclusive jurisdiction over the regulation
18 of the direct broadcast satellite service.”.

19 **SEC. 410. TECHNICAL AMENDMENTS.**

20 (a) RETRANSMISSION.—Section 325(b)(2)(D) of the
21 Communications Act of 1934 (47 U.S.C. 325(b)(2)(D))
22 is amended to read as follows:

23 “(D) retransmission by a cable operator or
24 other multichannel video programming distributor of
25 the signal of a superstation if (i) the customers

1 served by the cable operator or other multichannel
2 video programming distributor reside outside the
3 originating station's television market, as defined by
4 the Commission for purposes of section
5 614(h)(1)(C); (ii) such signal was obtained from a
6 satellite carrier or terrestrial microwave common
7 carrier; and (iii) and the origination station was a
8 superstation on May 1, 1991.

9 (b) MARKET DETERMINATIONS.—Section
10 614(h)(1)(C)(i) of the Communications Act of 1934 (47
11 U.S.C. 534(h)(1)(C)(i)) is amended by striking out “in the
12 manner provided in section 73.3555(d)(3)(i) of title 47,
13 Code of Federal Regulations, as in effect on May 1,
14 1991,” and inserting “by the Commission by regulation
15 or order using, where available, commercial publications
16 which delineate television markets based on viewing pat-
17 terns,”.

18 **SEC. 411. AVAILABILITY OF SCREENING DEVICES TO PRE-**
19 **CLUDE DISPLAY OF ENCRYPTED PROGRAM-**
20 **MING.**

21 (a) CUSTOMER NOTICE.—Section 624(d)(2)(A) of
22 the Communications Act of 1934 (47 U.S.C.
23 544(d)(2)(A)) is amended by adding at the end the follow-
24 ing new sentence: “Upon beginning service to any new
25 subscriber and not less frequently than once each calendar

1 year for current subscribers, the cable operator shall in-
2 form subscribers of the right to request and obtain such
3 device.”.

4 (b) SIGNAL LEAKAGE.—Section 624(d)(2) of such
5 Act is further amended by adding at the end the following
6 new subparagraph:

7 “(C) The Commission shall prescribe regulations to
8 require, to the extent technically feasible, the transmission
9 of programming described in subparagraph (A) by means
10 of encrypted signals that permit subscribers to effectively
11 and entirely prevent the display of both the audio and
12 video portions of such programming with or without the
13 use of a device described in subparagraph (A).”.

14 **TITLE V—PROCUREMENT PRAC-**
15 **TICES OF TELECOMMUNI-**
16 **CATIONS PROVIDERS.**

17 **SEC. 501. FINDINGS.**

18 The Congress finds the following:

19 (1) It is in the public interest for business en-
20 terprises owned by minorities and women to partici-
21 pate in procurement contracts of all providers of
22 telecommunications services.

23 (2) The opportunity for full participation in our
24 free enterprise system by business enterprises that
25 are owned by minorities and women is essential if

1 this Nation is to attain social and economic equality
2 for those businesses and improve the functioning of
3 the national economy.

4 (3) It is in this Nation's interest to expedi-
5 tiously improve the economically disadvantaged posi-
6 tion of business enterprises that are owned by mi-
7 norities and women.

8 (4) The position of these businesses can be im-
9 proved through the development by the providers of
10 telecommunications services of substantial long-
11 range and annual goals, which are supported by
12 training and technical assistance, for the purchase,
13 to the maximum practicable extent, of technology,
14 equipment, supplies, services, material and construc-
15 tion from minority business enterprises.

16 (5) Procurement policies which include partici-
17 pation of business enterprises that are owned by mi-
18 norities and women also benefit the communication
19 industry and its consumers by encouraging the ex-
20 pansion of the numbers of suppliers for procure-
21 ment, thereby encouraging competition among sup-
22 pliers and promoting economic efficiency in the proc-
23 ess.

24 **SEC. 502. PURPOSE.**

25 The purposes of this title are—

1 (1) to encourage and foster greater economic
2 opportunity for business enterprises that are owned
3 by minorities and women;

4 (2) to promote competition among suppliers to
5 providers of telecommunications services and their
6 affiliates to enhance economic efficiency in the pro-
7 curement of telephone corporation contracts and
8 contracts of their State commission-regulated sub-
9 sidiaries and affiliates;

10 (3) to clarify and expand a program for the
11 procurement by State and federally-regulated tele-
12 phone companies of technology, equipment, supplies,
13 services, materials and construction work from busi-
14 ness enterprises that are owned by minorities and
15 women; and

16 (4) to ensure that a fair proportion of the total
17 purchases, contracts, and subcontracts for supplies,
18 commodities, technology, property, and services of-
19 fered by the providers of telecommunications services
20 and their affiliates are awarded to minority and
21 women business enterprises.

22 **SEC. 503. ANNUAL PLAN SUBMISSION.**

23 (a) ANNUAL PLANS REQUIRED.—

24 (1) IN GENERAL.—The Commission shall re-
25 quire each provider of telecommunications services

1 to submit annually a detailed and verifiable plan for
2 increasing its procurement from business enterprises
3 that are owned by minorities or women in all cat-
4 egories of procurement in which minorities are under
5 represented.

6 (2) CONTENTS OF PLANS.—The annual plans
7 required by paragraph (1) shall include (but not be
8 limited to) short- and long-term progressive goals
9 and timetables, technical assistance, and training
10 and shall, in addition to goals for direct contracting
11 opportunities, include methods for encouraging both
12 prime contractors and grantees to engage business
13 enterprises that are owned by minorities and women
14 in subcontracts in all categories in which minorities
15 are under represented.

16 (3) IMPLEMENTATION REPORT.—Each provider
17 of telecommunications services shall furnish an an-
18 nual report to the Commission regarding the imple-
19 mentation of programs established pursuant to this
20 title in such form as the Commission shall require,
21 and at such time as the Commission shall annually
22 designate.

23 (4) REPORT TO CONGRESS.—The Commission
24 shall provide an annual report to Congress, begin-
25 ning in January 1995, on the progress of activities

1 undertaken by each provider of telecommunications
2 services regarding the implementation of activities
3 pursuant to this title to develop business enterprises
4 that are owned by minorities or women. The report
5 shall evaluate the accomplishments under this title
6 and shall recommend a program for enhancing the
7 policy declared in this title, together with such rec-
8 ommendations for legislation as it deems necessary
9 or desirable to further that policy.

10 (b) REGULATIONS AND CRITERIA FOR DETERMINING
11 ELIGIBILITY OF MINORITY BUSINESS ENTERPRISES FOR
12 PROCUREMENT CONTRACTS.—

13 (1) IN GENERAL.—The Commission shall estab-
14 lish regulations for implementing programs pursuant
15 to this title that will govern providers of tele-
16 communications services and their affiliates.

17 (2) VERIFYING CRITERIA.—The Commission
18 shall develop and publish regulations setting forth
19 criteria for verifying and determining the eligibility
20 of business enterprises that are owned by minorities
21 or women for procurement contracts.

22 (3) OUTREACH.—The Commission's regulations
23 shall require each provider of telecommunications
24 services and its affiliates to develop and to imple-
25 ment an outreach program to inform and recruit

1 business enterprises that are owned by minorities or
2 women to apply for procurement contracts under
3 this title.

4 (4) ENFORCEMENT.—The Commission shall es-
5 tablish and promulgate such regulations necessary to
6 enforce the provisions of this title.

7 (c) WAIVER AUTHORITY.—The requirements of this
8 section may be waived, in whole or in part, by the Commis-
9 sion with respect to a particular contract or subcontract
10 in accordance with guidelines set forth in regulations
11 which the Commission shall prescribe when it determines
12 that the application of such regulations prove to result in
13 undue hardship or unreasonable expense to a provider of
14 telecommunications services.

15 **SEC. 504. SANCTIONS AND REMEDIES.**

16 (a) FALSE REPRESENTATION OF BUSINESSES; SANC-
17 TIONS.—

18 (1) IN GENERAL.—Any person or corporation,
19 through its directors, officers, or agent, which falsely
20 represents the business as a business enterprise that
21 are owned by minorities or women in the procure-
22 ment or attempt to procure contracts from telephone
23 operating companies and their affiliates pursuant to
24 this article, shall be punished by a fine of not more
25 than \$5,000, or by imprisonment for a period not to

1 exceed 5 years of its directors, officers, or agents re-
2 sponsible for the false statements, or by both fine
3 and imprisonment.

4 (2) HOLDING COMPANIES.—Any provider of
5 telecommunications services which falsely represents
6 its annual report to the Commission or its imple-
7 mentation of its programs pursuant to this section
8 shall be subject to a fine of \$100,000 and be subject
9 to a penalty of up to 5 years restriction from partici-
10 pation in lines of business activities provided for in
11 this title.

12 (b) INDEPENDENT CAUSE OF ACTION, REMEDIES,
13 AND ATTORNEY FEES.—

14 (1) DISCRIMINATION PROHIBITED.—No other-
15 wise qualified business enterprise that are owned by
16 minorities or women shall solely, by reason of its ra-
17 cial, ethnic, or gender composition be excluded from
18 the participation in, be denied the benefits of, or be
19 subjected to discrimination in procuring contracts
20 from telephone utilities.

21 (2) CIVIL ACTIONS AUTHORIZED.—Whenever a
22 qualified business enterprise that is owned by mi-
23 norities or women has reasonable cause to believe
24 that a provider of telecommunications services or its
25 affiliate is engaged in a pattern or practice of resist-

1 ance to the full compliance of any provision of this
2 title, the business enterprise may bring a civil action
3 in the appropriate district court of the United States
4 against the provider of telecommunications services
5 or its affiliate requesting such monetary or injunc-
6 tive relief, or both, as deemed necessary to ensure
7 the full benefits of this title.

8 (3) ATTORNEYS' FEES AND COSTS.—In any ac-
9 tion or proceeding to enforce or charge of a violation
10 of a provision of this title, the court, in its discre-
11 tion, may allow the prevailing party reasonable at-
12 torneys' fees and costs.

13 **SEC. 505. DEFINITIONS.**

14 For the purpose of this title, the following definitions
15 apply:

16 (1) The term “business enterprise owned by mi-
17 norities or women” means—

18 (A) a business enterprise that is at least
19 51 percent owned by a person or persons who
20 are minority persons or women; or

21 (B) in the case of any publicly owned busi-
22 ness, at least 51 percent of the stock of which
23 is owned by one or more persons who are mi-
24 nority persons or women, and whose manage-

1 ment and daily business operations are con-
2 trolled by one or more of those persons.

3 (2) The term “minority person” means persons
4 who are Black Americans, Hispanic Americans, Na-
5 tive Americans, Asian Americans, and Pacific Amer-
6 icans.

7 (3) The term “control” means exercising the
8 power to make financial and policy decisions.

9 (4) The term “operate” means the active in-
10 volvement in the day-to-day management of the
11 business and not merely being officers or directors.

12 (5) The term “Commission” means the Federal
13 Communications Commission.

14 (6) The term “telecommunications service” has
15 the meaning provided in section 3(o) of the Com-
16 munications Act of 1934 (as added by this Act).

17 **TITLE VI—FEDERAL COMMU-**
18 **NICATIONS COMMISSION RE-**
19 **SOURCES**

20 **SEC. 601. AUTHORIZATION OF APPROPRIATIONS.**

21 (a) IN GENERAL.—In addition to any other sums au-
22 thorized by law, there are authorized to be appropriated
23 to the Federal Communications Commission such sums as
24 may be necessary to carry out this Act and the amend-
25 ments made by this Act.

1 (b) EFFECT ON FEES.—For purposes of section
2 9(b)(2) of the Communications Act of 1934 (47 U.S.C.
3 159(b)(2)), additional amounts appropriated pursuant to
4 subsection (a) shall be construed to be changes in the
5 amounts appropriated for the performance of activities de-
6 scribed in section 9(a) of such Act.

Passed the House of Representatives June 28, 1994.

Attest: DONNALD K. ANDERSON,
Clerk.

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