

104TH CONGRESS
1ST SESSION

H. R. 1528

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, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

MAY 2, 1995

Mr. HYDE introduced the following bill; which was referred to the Committee on the Judiciary, and in addition to the Committee on Commerce, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

A BILL

To supersede the Modification of Final Judgment entered August 24, 1982, in the antitrust action styled United States v. Western Electric, Civil Action No. 82-0192, United States District Court for the District of Columbia, 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 TITLE.**

4 This Act may be cited as the “Antitrust Consent De-
5 cree Reform Act of 1995”.

1 **SEC. 2. AUTHORIZATION FOR BELL OPERATING COMPANY**
2 **TO ENTER COMPETITIVE LINES OF BUSINESS.**

3 (a) APPLICATION.—

4 (1) IN GENERAL.—After the applicable date
5 specified in paragraph (2), a Bell operating company
6 may apply to the Attorney General for authorization,
7 notwithstanding the Modification of Final Judgment—
8

9 (A) to provide interexchange telecommuni-
10 cations services,

11 (B) to manufacture or provide tele-
12 communications equipment, or manufacture
13 customer premises equipment, or

14 (C) to provide alarm monitoring services.

15 The application shall describe the nature and scope
16 of the activity, and the product market, service mar-
17 ket, and geographic market, for which authorization
18 is sought.

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

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

25 (i) providing interexchange tele-
26 communications services, and

1 (ii) manufacturing or providing tele-
2 communications equipment, or manufac-
3 turing customer premises equipment, and

4 (B) the date that occurs 3 years after the
5 date of the enactment of this Act, with respect
6 to providing alarm monitoring services.

7 (3) PUBLICATION.—Not later than 10 days
8 after receiving an application made under paragraph
9 (1), the Attorney General shall publish the applica-
10 tion in the Federal Register.

11 (4) AVAILABILITY OF INFORMATION.—The At-
12 torney General shall make available to the public all
13 information (excluding trade secrets and privileged
14 or confidential commercial or financial information)
15 submitted by the applicant in connection with the
16 application.

17 (b) DETERMINATION BY THE ATTORNEY GEN-
18 ERAL.—

19 (1) COMMENT PERIOD.—Not later than 45 days
20 after an application is published under subsection
21 (a)(3), interested persons may submit written com-
22 ments to the Attorney General, regarding the appli-
23 cation. Submitted comments shall be available to the
24 public.

1 (2) DETERMINATION.—(A) After the time for
2 comment under paragraph (1) has expired, but not
3 later than 180 days after receiving an application
4 made under subsection (a)(1), the Attorney General
5 shall issue a written determination, with respect to
6 granting the authorization for which the Bell operat-
7 ing company has applied. If the Attorney General
8 fails to issue such determination in the 180-day pe-
9 riod beginning on the date the Attorney General re-
10 ceives such application, the Attorney General shall
11 be deemed to have issued a determination approving
12 such application on the last day of such period.

13 (B) The Attorney General shall approve the
14 granting of the authorization requested in the appli-
15 cation unless the Attorney General finds by clear
16 and convincing evidence that there is a dangerous
17 probability that such company or its affiliates would
18 successfully use market power to achieve monopoly
19 power in the market such company seeks to enter.
20 The Attorney General may approve all or part of the
21 requested authorization.

22 (C) A determination that approves any part of
23 a requested authorization shall describe with par-
24 ticularity the nature and scope of the approved ac-
25 tivity, and list each product market, service market,

1 and geographic market, to which such approval
2 applies.

3 (3) PUBLICATION.—Not later than 10 days
4 after issuing a determination under paragraph (2),
5 the Attorney General shall publish a brief descrip-
6 tion of the determination in the Federal Register.

7 (4) FINALITY.—A determination made under
8 paragraph (2) shall be final unless a petition with
9 respect to such determination is timely filed under
10 subsection (c)(1).

11 (c) JUDICIAL REVIEW.—

12 (1) FILING OF PETITION.—(A) Not later than
13 30 days after a determination by the Attorney Gen-
14 eral is published under subsection (b)(3), the Bell
15 operating company that applied to the Attorney
16 General under subsection (a), or any person who
17 would be injured in its business or property as a re-
18 sult of the determination regarding such company's
19 engaging in the activity described in such company's
20 application, may file a petition for judicial review of
21 the determination in the United States Court of Ap-
22 peals for the District of Columbia Circuit.

23 (B) The United States Court of Appeals for the
24 District of Columbia shall have exclusive jurisdiction

1 to review determinations made under section
2 2(b)(2).

3 (2) CERTIFICATION OF RECORD.—As part of
4 the answer to the petition, the Attorney General
5 shall file in such court a certified copy of the record
6 upon which the determination is based.

7 (3) CONSOLIDATION OF PETITIONS.—The court
8 shall consolidate for judicial review all petitions filed
9 under this subsection with respect to the application.

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. Whether there is clear and convincing
14 evidence supporting the determination, as required
15 by subsection (b)(2)(B), shall be affirmed by the
16 court only if the court finds that the record certified
17 pursuant to paragraph (2) provides substantial evi-
18 dence for that determination.

19 (B) A judgment—

20 (i) affirming any part of the determination
21 that approves granting all or part of the re-
22 quested authorization, or

23 (ii) reversing any part of the determination
24 that denies all or part of the requested author-
25 ization,

1 shall describe with particularity the nature and
2 scope of the activity, and each product market, serv-
3 ice market, and geographic market, to which the af-
4 firmance or reversal applies.

5 **SEC. 3. AUTHORIZATION AS PREREQUISITE.**

6 (a) PREREQUISITE.—Until a Bell operating company
7 is so authorized in accordance with section 2, it shall be
8 unlawful for such company, directly or through an affili-
9 ate, to engage in an activity described in section 2(a)(1).

10 (b) GENERAL EXCEPTIONS.—Except with respect to
11 providing alarm monitoring services, subsection (a) shall
12 not prohibit a Bell operating company from engaging, at
13 any time after the date of the enactment of this Act, in
14 any activity as authorized by an order entered by the
15 United States District Court for the District of Columbia
16 pursuant to section VII or VIII(C) of the Modification of
17 Final Judgment, if—

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

20 (2) a request for such authorization was pend-
21 ing before such court on the date of the enactment
22 of this Act.

23 (c) EXCEPTION FOR CERTAIN ALARM MONITORING
24 SERVICES.—Subsection (a) shall not prohibit a Bell oper-
25 ating company, at any time after the date of the enact-

1 ment of this Act, from providing alarm monitoring services
2 to the same extent that such company was already provid-
3 ing such services before such date.

4 (d) EXCEPTION FOR CERTAIN INTEREXCHANGE
5 TELECOMMUNICATIONS SERVICES.—Subsection (a) shall
6 not prohibit a Bell operating company, at any time after
7 the date of the enactment of this Act, from providing
8 interexchange telecommunications services with respect to
9 telecommunications that originate in any exchange area
10 in which such company is not the dominant provider of
11 wireline telephone exchange service.

12 (e) EXCEPTIONS FOR INCIDENTAL SERVICES.—Sub-
13 section (a) shall not prohibit a Bell operating company,
14 at any time after the date of the enactment of this Act,
15 from providing interexchange telecommunications services
16 for the purpose of—

17 (1)(A) providing audio programming, video pro-
18 gramming, or other programming services to sub-
19 scribers to such services of such company,

20 (B) providing the capability for interaction by
21 such subscribers to select or respond to such audio
22 programming, video programming, or other pro-
23 gramming services, or

24 (C) providing to distributors audio program-
25 ming or video programming that such company

owns, controls, or is licensed by the copyright owner of such programming, or by an assignee of such owner, to distribute,

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

(3) providing commercial mobile services in accordance with existing law,

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

(5) providing signaling information used in connection with the provision of exchange services, or exchange access, to a local exchange carrier, or

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

1 **SEC. 4. REGULATION OF ELECTRONIC PUBLISHING.**

2 (a) IN GENERAL.—

3 (1) PROHIBITION.—A Bell operating company
4 and any affiliate shall not engage in the provision of
5 electronic publishing that is disseminated by means
6 of such Bell operating company's or any of its affili-
7 ates' basic telephone service.

8 (2) PERMITTED ACTIVITIES OF SEPARATED AF-
9 FILIATE.—Subject to subsection (b), nothing in this
10 section shall prohibit a separated affiliate or elec-
11 tronic publishing joint venture from engaging in the
12 provision of electronic publishing or any other lawful
13 service in any area.

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

22 (b) SEPARATED AFFILIATE OR ELECTRONIC PUB-
23 LISHING JOINT VENTURE REQUIREMENTS.—A separated
24 affiliate and electronic publishing joint venture shall
25 each—

1 (1) maintain books, records, and accounts that
2 are separate from those of the Bell operating com-
3 pany and from any affiliate and that record in ac-
4 cordance with generally accepted accounting prin-
5 ciples all transactions, whether direct or indirect,
6 with the Bell operating company,

7 (2) not incur debt in a manner that would per-
8 mit a creditor upon default to have recourse to the
9 assets of the Bell operating company,

10 (3) prepare financial statements that are not
11 consolidated with those of the Bell operating com-
12 pany or an affiliate, provided that consolidated
13 statements may also be prepared,

14 (4) after 1 year from the effective date of this
15 section, not hire—

16 (A) as corporate officers, sales and mar-
17 keting management personnel whose respon-
18 sibilities at the separated affiliate or electronic
19 publishing joint venture will include the geo-
20 graphic area where the Bell operating company
21 provides basic telephone service,

22 (B) network operations personnel whose
23 responsibilities at the separated affiliate or elec-
24 tronic publishing joint venture would require

1 dealing directly with the Bell operating com-
2 pany, or

3 (C) any person who was employed by the
4 Bell operating company during the year preced-
5 ing their date of hire,

6 except that the requirements of this paragraph shall
7 not apply to persons subject to a collective bargain-
8 ing agreement that gives such persons rights to be
9 employed by a separated affiliate or electronic pub-
10 lishing joint venture of the Bell operating company,

11 (5) not provide any wireline telephone exchange
12 service in any telephone exchange area where a Bell
13 operating company with which it is under common
14 ownership or control provides basic telephone ex-
15 change service except on a resale basis,

16 (6) not use the name, trademarks, or service
17 marks of an existing Bell operating company except
18 for names, trademarks, or service marks that are or
19 were used in common with the entity that owns or
20 controls the Bell operating company,

21 (7) have performed annually by March 31 a
22 compliance review—

23 (A) that is conducted by an independent
24 entity that is subject to professional, legal, and
25 ethical obligations for the purpose of determin-

1 ing compliance during the preceding calendar
2 year with any provision of this section that im-
3 poses a requirement on such separated affiliate
4 or electronic publishing joint venture, and

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

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

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

20 (1) not provide a separated affiliate any facili-
21 ties, services, or basic telephone service information
22 unless such Bell operating company makes such fa-
23 cilities, services, or information available to unaffili-
24 ated entities upon request and on the same terms
25 and conditions;

1 (2) carry out transactions with a separated af-
2 filiate in a manner equivalent to the manner that
3 unrelated parties would carry out independent trans-
4 actions and not based upon the affiliation;

5 (3) carry out transactions with a separated af-
6 filiate, which involve the transfer of personnel, as-
7 sets, or anything of value, pursuant to written con-
8 tracts or tariffs made publicly available;

9 (4) carry out transactions with a separated af-
10 filiate in a manner that is auditable in accordance
11 with generally accepted auditing standards;

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

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

18 (7) except for—

19 (A) instances where State regulations per-
20 mit in-arrears payment for tariffed tele-
21 communications services, or

22 (B) the investment by an affiliate of divi-
23 dends or profits derived from a Bell operating
24 company,

1 not provide debt or equity financing directly or indi-
2 rectly to a separated affiliate;

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

5 (9) have performed annually by March 31 a
6 compliance review—

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

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

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

1 (11) if it provides facilities or services for tele-
2 communication, transmission, billing and collection,
3 or physical collocation to any electronic publisher,
4 including a separated affiliate, for use with or in
5 connection with the provision of electronic publishing
6 that is disseminated by means of such Bell operating
7 company's or any of its affiliates' basic telephone
8 service, provide to all other electronic publishers the
9 same type of facilities and services on request, on
10 the same terms and conditions or as required by a
11 State, and unbundled and individually tariffed to the
12 smallest extent that is technically feasible and eco-
13 nomically reasonable to provide;

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

24 (13) if prices for network access and inter-
25 connection for basic telephone service are no longer

1 subject to regulation, provide electronic publishers
2 such services on the same terms and conditions as
3 a separated affiliate receives such services;

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

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

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

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

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

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

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

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

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

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

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

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

1 (d) CUSTOMER PROPRIETARY NETWORK INFORMA-
2 TION.—A Bell operating company or any affiliate shall not
3 provide to any electronic publisher, including a separated
4 affiliate or electronic publishing joint venture, customer
5 proprietary network information for use with or in connec-
6 tion with the provision of electronic publishing that is dis-
7 seminated by means of such Bell operating company's or
8 any of its affiliates' basic telephone service that is not
9 made available by the Bell operating company or affiliate
10 to all electronic publishers on the same terms and condi-
11 tions.

12 (e) COMPLIANCE WITH SAFEGUARDS.—No Bell oper-
13 ating company, affiliate, or separated affiliate shall act in
14 concert with another Bell operating company or any other
15 entity in order to knowingly and willfully violate or evade
16 the requirements of this section.

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

22 (g) JOINT MARKETING.—Except as provided in sub-
23 section (h)—

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

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

8 (h) PERMISSIBLE JOINT ACTIVITIES.—

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

1 (2) TEAMING ARRANGEMENTS.—A Bell operat-
2 ing company may engage in nondiscriminatory
3 teaming or business arrangements to engage in elec-
4 tronic publishing with any separated affiliate or with
5 any other electronic publisher provided that the Bell
6 operating company only provides facilities, services,
7 and basic telephone service information as author-
8 ized by this section and provided that the Bell oper-
9 ating company does not own such teaming or busi-
10 ness arrangement.

11 (3) ELECTRONIC PUBLISHING JOINT VEN-
12 TURES.—A Bell operating company or affiliate may
13 participate on a nonexclusive basis in electronic pub-
14 lishing joint ventures with entities that are not any
15 Bell operating company, affiliate, or separated affili-
16 ate to provide electronic publishing services, provided
17 that the participating Bell operating company or
18 participating affiliate has not more than a 50 per-
19 cent direct or indirect equity interest (or the equiva-
20 lent thereof) or the right to more than 50 percent
21 of the gross revenues under a revenue sharing or
22 royalty agreement in any electronic publishing joint
23 venture. Officers and employees of a Bell operating
24 company or affiliate participating in an electronic
25 publishing joint venture may not have more than 50

1 percent of the voting control over the electronic pub-
2 lishing joint venture. In the case of joint ventures
3 with small, local electronic publishers, the Attorney
4 General may authorize the Bell operating company
5 or affiliate to have a larger equity interest, revenue
6 share, or voting control but not to exceed 80 per-
7 cent. A Bell operating company participating in an
8 electronic publishing joint venture may provide pro-
9 motion, marketing, sales, or advertising personnel
10 and services to such joint venture.

11 (i) TRANSACTIONS RELATED TO THE PROVISION OF
12 ELECTRONIC PUBLISHING BETWEEN A TELEPHONE OP-
13 ERATING COMPANY AND ANY AFFILIATE.—

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

20 (A) recorded in the books and records of
21 each entity,

22 (B) auditable in accordance with generally
23 accepted auditing standards, and

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

1 (2) VALUATION OF TRANSFERS.—Any transfer
2 of assets directly related to the provision of elec-
3 tronic publishing from a Bell operating company to
4 an affiliate shall be valued at the greater of net book
5 cost or fair market value. Any transfer of assets re-
6 lated to the provision of electronic publishing from
7 an affiliate to the Bell operating company shall be
8 valued at the lesser of net book cost or fair market
9 value.

10 (3) PROHIBITION OF EVASIONS.—A Bell operat-
11 ing company shall not provide directly or indirectly
12 to a separated affiliate any facilities, services, or
13 basic telephone service information related to the
14 provision of electronic publishing that are not made
15 available to unaffiliated companies on the same
16 terms and conditions.

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

20 (1) RECORDS OF TRANSACTIONS.—Any facili-
21 ties, services, or basic telephone service information
22 provided or any assets, personnel, or anything of
23 commercial or competitive value transferred, from a
24 Bell operating company to any affiliate as described

1 in subsection (i) and then provided or transferred to
2 a separated affiliate shall be—

3 (A) recorded in the books and records of
4 each entity,

5 (B) auditable in accordance with generally
6 accepted auditing standards, and

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

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

21 (3) PROHIBITION OF EVASIONS.—An affiliate
22 shall not provide directly or indirectly to a separated
23 affiliate any facilities, services, or basic telephone
24 service information related to the provision of elec-
25 tronic publishing that are not made available to un-

1 affiliated companies on the same terms and condi-
2 tions.

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

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

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

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

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

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

22 (B) any hiring of personnel, purchasing, or
23 production,

24 for any entity that engages in electronic publishing.

1 (5) The Bell operating company shall not pro-
2 vide any facilities, services, or basic telephone service
3 information to any entity that engages in electronic
4 publishing, for use with or in connection with the
5 provision of electronic publishing that is dissemi-
6 nated by means of such Bell operating company's or
7 any of its affiliates' basic telephone service, unless
8 equivalent facilities, services, or information are
9 made available on equivalent terms and conditions to
10 all.

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

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

18 (n) PRIVATE RIGHT OF ACTION.—Any person claim-
19 ing that any act or practice of any Bell operating com-
20 pany, affiliate, or separated affiliate constitutes a violation
21 of this section may commence a civil action in an appro-
22 priate district court of the United States for damages, for
23 an order enjoining such act or practice or compelling com-
24 pliance with such requirement, or for both.

1 (o) SUBPOENAS.—In an action commenced under this
2 section, a subpoena requiring the attendance of a witness
3 at a hearing or a trial may be served at any place within
4 the United States.

5 (p) DEFINITIONS.—For purposes of this section:

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

13 (2) The term “affiliate” means any entity that,
14 directly or indirectly, owns or controls, is owned or
15 controlled by, or is under common ownership or con-
16 trol with, a Bell operating company. Such term shall
17 not include a separated affiliate.

18 (3) The term “basic telephone service” means
19 any wireline telephone exchange service, or wireline
20 telephone exchange facility, provided by a Bell oper-
21 ating company in a telephone exchange area, ex-
22 cept—

23 (A) a competitive wireline telephone ex-
24 change service provided in a telephone exchange
25 area where another entity provides a wireline

1 telephone exchange service that was provided on
2 January 1, 1984, and

3 (B) a commercial mobile service provided
4 by an affiliate that is required by the Federal
5 Communications Commission to be a corporate
6 entity separate from the Bell operating com-
7 pany.

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

14 (5) The term “control” means the possession,
15 direct or indirect, of the power to direct or cause the
16 direction of the management and policies of a per-
17 son, whether through the ownership of voting securi-
18 ties, by contract, or otherwise.

19 (6)(A) The term “electronic publishing” means
20 the dissemination, provision, publication, or sale to
21 an unaffiliated entity or person, using a Bell operat-
22 ing company’s basic telephone service, of—

23 (i) news,

24 (ii) entertainment (other than interactive
25 games),

- 1 (iii) business, financial, legal, consumer, or
- 2 credit material,
- 3 (iv) editorials,
- 4 (v) columns,
- 5 (vi) sports reporting,
- 6 (vii) features,
- 7 (viii) advertising,
- 8 (ix) photos or images,
- 9 (x) archival or research material,
- 10 (xi) legal notices or public records,
- 11 (xii) scientific, educational, instructional,
- 12 technical, professional, trade, or other literary
- 13 materials, or
- 14 (xiii) other like or similar information.

15 (B) The term “electronic publishing” shall not
16 include the following network services:

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

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

21 (iii) The transmission of information as
22 part of a gateway to an information service that
23 does not involve the generation or alteration of
24 the content of information, including data
25 transmission, address translation, protocol con-

1 version, billing management, introductory infor-
2 mation content, and navigational systems that
3 enable users to access electronic publishing
4 services, which do not affect the presentation of
5 such electronic publishing services to users.

6 (iv) Voice storage and retrieval services, in-
7 cluding voice messaging and electronic mail
8 services.

9 (v) Data processing services that do not in-
10 volve the generation or alteration of the content
11 of information.

12 (vi) Transaction processing systems that
13 do not involve the generation or alteration of
14 the content of information.

15 (vii) Electronic billing or advertising of a
16 Bell operating company's regulated tele-
17 communications services.

18 (viii) Language translation.

19 (ix) Conversion of data from one format to
20 another.

21 (x) The provision of information necessary
22 for the management, control, or operation of a
23 telephone company telecommunications system.

1 (xi) The provision of directory assistance
2 that provides names, addresses, and telephone
3 numbers and does not include advertising.

4 (xii) Caller identification services.

5 (xiii) Repair and provisioning databases for
6 telephone company operations.

7 (xiv) Credit card and billing validation for
8 telephone company operations.

9 (xv) 911-E and other emergency assist-
10 ance databases.

11 (xvi) Any other network service of a type
12 that is like or similar to these network services
13 and that does not involve the generation or al-
14 teration of the content of information.

15 (xvii) Any upgrades to these network serv-
16 ices that do not involve the generation or alter-
17 ation of the content of information.

18 (C) The term “electronic publishing” also shall
19 not include—

20 (i) full motion video entertainment on de-
21 mand, and

22 (ii) video programming.

23 (7) The term “electronic publishing joint ven-
24 ture” means a joint venture owned by a Bell operat-
25 ing company or affiliate that engages in the provi-

1 sion of electronic publishing which is disseminated
2 by means of such Bell operating company's or any
3 of its affiliates' basic telephone service.

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

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

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

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

1 **SEC. 5. DEFINITIONS.**

2 Except as provided in section 4, for purposes of this
3 Act:

4 (1) **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 50
10 percent.

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

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

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

1 security, or public safety personnel of such
2 threat,
3 but does not include a service that uses a medical
4 monitoring device attached to an individual for the
5 automatic surveillance of an ongoing medical condi-
6 tion.

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

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

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

22 (A) Bell Telephone Company of Nevada,
23 Illinois Bell Telephone Company, Indiana Bell
24 Telephone Company, Incorporated, Michigan
25 Bell Telephone Company, New England Tele-

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

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

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

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

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

4 (8) COMMERCIAL MOBILE SERVICES.—The term
5 “commercial mobile services” has the same meaning
6 as such term has in section 332(d) of the Commu-
7 nications 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-
22 ropolitan 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 same meaning as such term
16 has in section 602(19) of the Communications Act
17 of 1934 (47 U.S.C. 522(19)).

18 **SEC. 6. RELATIONSHIP TO OTHER LAWS.**

19 (a) MODIFICATION OF FINAL JUDGMENT.—This Act
20 shall supersede only the following sections of the Modifica-
21 tion of Final Judgment:

22 (1) Section II(C) of the Modification of Final
23 Judgment, relating to deadline for procedures for
24 equal access compliance.

1 (2) Section II(D) of the Modification of Final
2 Judgment, relating to line of business restrictions.

3 (3) Section VIII(A) of the Modification of Final
4 Judgment, relating to manufacturing restrictions.

5 (4) Section VIII(C) of the Modification of Final
6 Judgment, relating to standard for entry into the
7 interexchange market.

8 (5) Section VIII(D) of the Modification of Final
9 Judgment, relating to prohibition on entry into elec-
10 tronic publishing.

11 (6) Section VIII(H) of the Modification of
12 Final Judgment, relating to debt ratios at the time
13 of transfer.

14 (7) Section VIII(J) of the Modification of Final
15 Judgment, relating to prohibition on implementation
16 of the plan of reorganization before court approval.

17 (b) APPLICATION TO OTHER ACTION.—This Act
18 shall supersede the final judgment entered December 21,
19 1984 and as restated January 11, 1985, in the action
20 styled United States v. GTE Corp., Civil Action No. 83–
21 1298, in the United States District Court for the District
22 of Columbia, and such final judgment shall not be en-
23 forced with respect to conduct occurring after the date of
24 the enactment of this Act.

1 (c) ANTITRUST LAWS.—Nothing in this Act shall be
2 construed to modify, impair, or supersede the applicability
3 of any of the antitrust laws.

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

8 (2) This Act shall supersede State and local law to
9 the extent that such law would impair or prevent the oper-
10 ation or purposes of this Act.

○