

Union Calendar No. 104

104TH CONGRESS
1ST SESSION

H. R. 1528

[Report No. 104-203, Part I]

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.

JULY 24, 1995

Reported from the Committee on the Judiciary with an amendment

Committee on Commerce discharged, committed to the Committee of the Whole House on the State of the Union, and ordered to be printed

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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

JULY 24, 1995

Reported from the Committee on the Judiciary with an amendment
[Strike out all after the enacting clause and insert the part printed in italic]

JULY 24, 1995

Referral to the Committee on Commerce extended for a period ending not later than July 24, 1995

JULY 24, 1995

Committee on Commerce discharged, committed to the Committee of the Whole House on the State of the Union, and ordered to be printed

[For text of introduced bill, see copy of bill as introduced on May 2, 1995]

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”.

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

8 (a) APPLICATION.—

9 (1) IN GENERAL.—After the applicable date
10 specified in paragraph (2), a Bell operating company
11 may apply to the Attorney General for authorization,
12 notwithstanding the Modification of Final Judg-
13 ment—

14 (A) to provide interexchange telecommuni-
15 cations services,

16 (B) to manufacture or provide tele-
17 communications equipment, or manufacture
18 customer premises equipment, or

19 (C) to provide alarm monitoring services.

20 The application shall describe the nature and scope
21 of the activity, and the product market, service mar-

1 ket, and geographic market, for which authorization
2 is sought.

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

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

9 (i) providing interexchange tele-
10 communications services, and

11 (ii) manufacturing or providing tele-
12 communications equipment, or manufac-
13 turing customer premises equipment, and

14 (B) the date that occurs 3 years after the
15 date of the enactment of this Act, with respect
16 to providing alarm monitoring services.

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

21 (4) AVAILABILITY OF INFORMATION.—The At-
22 torney General shall make available to the public all
23 information (excluding trade secrets and privileged
24 or confidential commercial or financial information)

1 submitted by the applicant in connection with the
2 application.

3 (b) DETERMINATION BY THE ATTORNEY GEN-
4 ERAL.—

5 (1) COMMENT PERIOD.—Not later than 45 days
6 after an application is published under subsection
7 (a)(3), interested persons may submit written com-
8 ments to the Attorney General, regarding the appli-
9 cation. Submitted comments shall be available to the
10 public.

11 (2) DETERMINATION.—(A) After the time for
12 comment under paragraph (1) has expired, but not
13 later than 180 days after receiving an application
14 made under subsection (a)(1), the Attorney General
15 shall issue a written determination, with respect to
16 granting the authorization for which the Bell operat-
17 ing company has applied. If the Attorney General
18 fails to issue such determination in the 180-day pe-
19 riod beginning on the date the Attorney General re-
20 ceives such application, the Attorney General shall
21 be deemed to have issued a determination approving
22 such application on the last day of such period.

23 (B) The Attorney General shall approve the
24 granting of the authorization requested in the appli-
25 cation unless the Attorney General finds that there

1 is a dangerous probability that such company or its
2 affiliates would successfully use market power to
3 substantially impede competition in the market such
4 company seeks to enter. The Attorney General may
5 approve all or part of the requested authorization.

6 (C) A determination that approves any part of
7 a requested authorization shall describe with par-
8 ticularity the nature and scope of the approved ac-
9 tivity, and list each product market, service market,
10 and geographic market, to which such approval ap-
11 plies.

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

16 (4) FINALITY.—A determination made under
17 paragraph (2) shall be final unless a petition with
18 respect to such determination is timely filed under
19 subsection (c)(1).

20 (c) JUDICIAL REVIEW.—

21 (1) FILING OF PETITION.—(A) Not later than
22 30 days after a determination by the Attorney Gen-
23 eral is published under subsection (b)(3), the Bell
24 operating company that applied to the Attorney
25 General under subsection (a), or any person who

1 would be injured in its business or property as a re-
2 sult of the determination regarding such company's
3 engaging in the activity described in such company's
4 application, may file a petition for judicial review of
5 the determination in the United States Court of Ap-
6 peals for the District of Columbia Circuit.

7 (B) The United States Court of Appeals for the
8 District of Columbia shall have exclusive jurisdiction
9 to review determinations made under section
10 2(b)(2).

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

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

18 (4) JUDGMENT.—(A) The court shall enter a
19 judgment after reviewing the determination in ac-
20 cordance with section 706 of title 5 of the United
21 States Code. The determination required by sub-
22 section (b)(2)(B) shall be affirmed by the court only
23 if the court finds that the record certified pursuant
24 to paragraph (2) provides substantial evidence for
25 that determination.

1 (B) A judgment—

2 (i) affirming any part of the determination
3 that approves granting all or part of the re-
4 quested authorization, or

5 (ii) reversing any part of the determination
6 that denies all or part of the requested author-
7 ization,

8 shall describe with particularity the nature and
9 scope of the activity, and each product market, serv-
10 ice market, and geographic market, to which the af-
11 firmance or reversal applies.

12 **SEC. 3. AUTHORIZATION AS PREREQUISITE.**

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

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

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

3 (2) a request for such authorization was pend-
4 ing before such court on the date of the enactment
5 of this Act.

6 (c) EXCEPTION FOR CERTAIN ALARM MONITORING
7 SERVICES.—Subsection (a) shall not prohibit a Bell oper-
8 ating company, at any time after the date of the enact-
9 ment of this Act, from providing alarm monitoring services
10 to the same extent that such company was already provid-
11 ing such services before such date.

12 (d) EXCEPTION FOR CERTAIN INTEREXCHANGE
13 TELECOMMUNICATIONS SERVICES.—Subsection (a) shall
14 not prohibit a Bell operating company, at any time after
15 the date of the enactment of this Act, from providing
16 interexchange telecommunications services with respect to
17 telecommunications that originate in any exchange area
18 in which such company is not the dominant provider of
19 wireline telephone exchange service.

20 (e) EXCEPTIONS FOR INCIDENTAL SERVICES.—Sub-
21 section (a) shall not prohibit a Bell operating company,
22 at any time after the date of the enactment of this Act,
23 from providing interexchange telecommunications services
24 for the purpose of—

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

4 (B) providing the capability for interaction by
5 such subscribers to select or respond to such audio
6 programming, video programming, or other pro-
7 gramming services, or

8 (C) providing to distributors audio program-
9 ming or video programming that such company
10 owns, controls, or is licensed by the copyright owner
11 of such programming, or by an assignee of such
12 owner, to distribute,

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

20 (3) providing commercial mobile services in ac-
21 cordance with existing law,

22 (4) providing a service that permits a customer
23 that is located in one exchange area to retrieve
24 stored information from, or file information for stor-

1 age in, information storage facilities of such com-
2 pany that are located in another exchange area,

3 (5) providing signaling information used in con-
4 nection with the provision of exchange services, or
5 exchange access, to a local exchange carrier, or

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

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

12 (a) IN GENERAL.—

13 (1) PROHIBITION.—A Bell operating company
14 and any affiliate shall not engage in the provision of
15 electronic publishing that is disseminated by means
16 of such Bell operating company's or any of its affili-
17 ates' basic telephone service.

18 (2) PERMITTED ACTIVITIES OF SEPARATED AF-
19 FILIATE.—Subject to subsection (b), nothing in this
20 section shall prohibit a separated affiliate or elec-
21 tronic publishing joint venture from engaging in the
22 provision of electronic publishing or any other lawful
23 service in any area.

24 (3) RULE OF CONSTRUCTION.—Nothing in this
25 section shall prohibit a Bell operating company or

1 affiliate from engaging in the provision of any lawful
2 service other than electronic publishing in any area
3 or from engaging in the provision of electronic pub-
4 lishing that is not disseminated by means of such
5 Bell operating company's or any of its affiliates'
6 basic telephone service.

7 (b) SEPARATED AFFILIATE OR ELECTRONIC PUB-
8 LISHING JOINT VENTURE REQUIREMENTS.—A separated
9 affiliate and electronic publishing joint venture shall
10 each—

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

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

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

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

1 (A) as corporate officers, sales and mar-
2 keting management personnel whose respon-
3 sibilities at the separated affiliate or electronic
4 publishing joint venture will include the geo-
5 graphic area where the Bell operating company
6 provides basic telephone service,

7 (B) network operations personnel whose
8 responsibilities at the separated affiliate or elec-
9 tronic publishing joint venture would require
10 dealing directly with the Bell operating com-
11 pany, or

12 (C) any person who was employed by the
13 Bell operating company during the year preced-
14 ing their date of hire,

15 except that the requirements of this paragraph shall
16 not apply to persons subject to a collective bargain-
17 ing agreement that gives such persons rights to be
18 employed by a separated affiliate or electronic pub-
19 lishing joint venture of the Bell operating company,

20 (5) not provide any wireline telephone exchange
21 service in any telephone exchange area where a Bell
22 operating company with which it is under common
23 ownership or control provides basic telephone ex-
24 change service except on a resale basis,

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

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

8 (A) that is conducted by an independent
9 entity that is subject to professional, legal, and
10 ethical obligations for the purpose of determin-
11 ing compliance during the preceding calendar
12 year with any provision of this section that im-
13 poses a requirement on such separated affiliate
14 or electronic publishing joint venture, and

15 (B) the results of which are maintained by
16 the separated affiliate for a period of 5 years
17 subject to review by any lawful authority, and

18 (8) within 90 days of receiving a review de-
19 scribed in paragraph (7), file a report of any excep-
20 tions and corrective action with the Attorney Gen-
21 eral and allow any person to inspect and copy such
22 report subject to reasonable safeguards to protect
23 any proprietary information contained in such report
24 from being used for purposes other than to enforce
25 or pursue remedies under this section.

1 (c) BELL OPERATING COMPANY REQUIREMENTS.—

2 A Bell operating company under common ownership or
3 control with a separated affiliate or electronic publishing
4 joint venture shall—

5 (1) not provide a separated affiliate any facili-
6 ties, services, or basic telephone service information
7 unless such Bell operating company makes such fa-
8 cilities, services, or information available to unaffili-
9 ated entities upon request and on the same terms
10 and conditions,

11 (2) carry out transactions with a separated af-
12 filiate in a manner equivalent to the manner that
13 unrelated parties would carry out independent trans-
14 actions and not based upon the affiliation,

15 (3) carry out transactions with a separated af-
16 filiate, which involve the transfer of personnel, as-
17 sets, or anything of value, pursuant to written con-
18 tracts or tariffs made publicly available,

19 (4) carry out transactions with a separated af-
20 filiate in a manner that is auditable in accordance
21 with generally accepted auditing standards,

22 (5) value any assets that are transferred to a
23 separated affiliate at the greater of net book cost or
24 fair market value,

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

4 (7) except for—

5 (A) instances where State regulations per-
6 mit in-arrears payment for tariffed tele-
7 communications services, or

8 (B) the investment by an affiliate of divi-
9 dends or profits derived from a Bell operating
10 company,

11 not provide debt or equity financing directly or indi-
12 rectly to a separated affiliate,

13 (8) comply fully with all applicable State cost
14 allocation and other accounting rules,

15 (9) have performed annually by March 31 a
16 compliance review—

17 (A) that is conducted by an independent
18 entity that is subject to professional, legal, and
19 ethical obligations for the purpose of determin-
20 ing compliance during the preceding calendar
21 year with any provision of this section that im-
22 poses a requirement on such Bell operating
23 company, and

1 (B) the results of which are maintained by
2 the Bell operating company for a period of 5
3 years subject to review by any lawful authority,
4 (10) within 90 days of receiving a review de-
5 scribed in paragraph (9), file a report of any excep-
6 tions and corrective action with the Attorney Gen-
7 eral and allow any person to inspect and copy such
8 report subject to reasonable safeguards to protect
9 any proprietary information contained in such report
10 from being used for purposes other than to enforce
11 or pursue remedies under this section,

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

1 (12) provide network access and interconnec-
2 tions for basic telephone service to electronic pub-
3 lishers at any technically feasible and economically
4 reasonable point within the Bell operating company's
5 network and at just and reasonable rates that are
6 tariffed (so long as rates for such services are sub-
7 ject to regulation) and that are not higher on a per-
8 unit basis than those charged for such services to
9 any other electronic publisher or any separated affil-
10 iate engaged in electronic publishing,

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

16 (14) if any basic telephone service used by elec-
17 tronic publishers ceases to require a tariff, provide
18 electronic publishers with such service on the same
19 terms and conditions as a separated affiliate receives
20 such service,

21 (15) provide reasonable advance notification at
22 the same time and on the same terms to all affected
23 electronic publishers of information if such informa-
24 tion is within any one or more of the following cat-
25 egories—

1 (A) such information is necessary for the
2 transmission or routing of information by an
3 interconnected electronic publisher,

4 (B) such information is necessary to en-
5 sure the interoperability of an electronic pub-
6 lisher's and the Bell operating company's net-
7 works, or

8 (C) such information concerns changes in
9 basic telephone service network design and
10 technical standards which may affect the provi-
11 sion of electronic publishing,

12 (16) not directly or indirectly provide anything
13 of monetary value to a separated affiliate unless in
14 exchange for consideration at least equal to the
15 greater of its net book cost or fair market value, ex-
16 cept the investment by an affiliate of dividends or
17 profits derived from a Bell operating company,

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

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

1 (19) not own any property in common with a
2 separated affiliate,

3 (20) not perform hiring or training of personnel
4 on behalf of a separated affiliate,

5 (21) not perform the purchasing, installation,
6 or maintenance of equipment on behalf of a sepa-
7 rated affiliate, except for telephone service that it
8 provides under tariff or contract subject to the pro-
9 visions of this section, and

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

12 (d) CUSTOMER PROPRIETARY NETWORK INFORMA-
13 TION.—A Bell operating company or any affiliate shall not
14 provide to any electronic publisher, including a separated
15 affiliate or electronic publishing joint venture, customer
16 proprietary network information for use with or in connec-
17 tion with the provision of electronic publishing that is dis-
18 seminated by means of such Bell operating company's or
19 any of its affiliates' basic telephone service that is not
20 made available by the Bell operating company or affiliate
21 to all electronic publishers on the same terms and condi-
22 tions.

23 (e) COMPLIANCE WITH SAFEGUARDS.—No Bell oper-
24 ating company, affiliate, or separated affiliate shall act in
25 concert with another Bell operating company or any other

1 entity in order to knowingly and willfully violate or evade
2 the requirements of this section.

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

8 (g) JOINT MARKETING.—Except as provided in sub-
9 section (h)—

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

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

17 (h) PERMISSIBLE JOINT ACTIVITIES.—

18 (1) JOINT TELEMARKETING.—A Bell operating
19 company may provide inbound telemarketing or re-
20 ferral services related to the provision of electronic
21 publishing for a separated affiliate, electronic pub-
22 lishing joint venture, affiliate, or unaffiliated elec-
23 tronic publisher, provided that if such services are
24 provided to a separated affiliate, electronic publish-
25 ing joint venture, or affiliate, such services shall be

1 made available to all electronic publishers on re-
2 quest, on nondiscriminatory terms, at compensatory
3 prices, to ensure that the Bell operating company's
4 method of providing telemarketing or referral and its
5 price structure do not competitively disadvantage
6 any electronic publishers regardless of size, including
7 those which do not use the Bell operating company's
8 telemarketing services.

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

19 (3) ELECTRONIC PUBLISHING JOINT VEN-
20 TURES.—A Bell operating company or affiliate may
21 participate on a nonexclusive basis in electronic pub-
22 lishing joint ventures with entities that are not any
23 Bell operating company, affiliate, or separated affili-
24 ate to provide electronic publishing services, provided
25 that the participating Bell operating company or

1 participating affiliate has not more than a 50 per-
2 cent direct or indirect equity interest (or the equiva-
3 lent thereof) or the right to more than 50 percent
4 of the gross revenues under a revenue sharing or
5 royalty agreement in any electronic publishing joint
6 venture. Officers and employees of a Bell operating
7 company or affiliate participating in an electronic
8 publishing joint venture may not have more than 50
9 percent of the voting control over the electronic pub-
10 lishing joint venture. In the case of joint ventures
11 with small, local electronic publishers, the Attorney
12 General may authorize the Bell operating company
13 or affiliate to have a larger equity interest, revenue
14 share, or voting control but not to exceed 80 per-
15 cent. A Bell operating company participating in an
16 electronic publishing joint venture may provide pro-
17 motion, marketing, sales, or advertising personnel
18 and services to such joint venture.

19 (i) TRANSACTIONS RELATED TO THE PROVISION OF
20 ELECTRONIC PUBLISHING BETWEEN A TELEPHONE OP-
21 ERATING COMPANY AND ANY AFFILIATE.—

22 (1) RECORDS OF TRANSACTIONS.—Any provi-
23 sion of facilities, services, or basic telephone service
24 information, or any transfer of assets, personnel, or
25 anything of commercial or competitive value, from a

1 Bell operating company to any affiliate related to
2 the provision of electronic publishing 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 an affiliate shall be valued at the greater of net book
13 cost or fair market value. Any transfer of assets re-
14 lated to the provision of electronic publishing from
15 an affiliate to the Bell operating company shall be
16 valued at the lesser of net book cost or fair market
17 value.

18 (3) PROHIBITION OF EVASIONS.—A Bell operat-
19 ing company shall not provide directly or indirectly
20 to a separated affiliate any facilities, services, or
21 basic telephone service information related to the
22 provision of electronic publishing that are not made
23 available to unaffiliated companies on the same
24 terms and conditions.

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

4 (1) RECORDS OF TRANSACTIONS.—Any facili-
5 ties, services, or basic telephone service information
6 provided or any assets, personnel, or anything of
7 commercial or competitive value transferred, from a
8 Bell operating company to any affiliate as described
9 in subsection (i) and then provided or transferred to
10 a separated affiliate shall be—

11 (A) recorded in the books and records of
12 each entity,

13 (B) auditable in accordance with generally
14 accepted auditing standards, and

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

17 (2) VALUATION OF TRANSFERS.—Any transfer
18 of assets directly related to the provision of elec-
19 tronic publishing from a Bell operating company to
20 any affiliate as described in subsection (i) and then
21 transferred to a separated affiliate shall be valued at
22 the greater of net book cost or fair market value.
23 Any transfer of assets related to the provision of
24 electronic publishing from a separated affiliate to
25 any affiliate and then transferred to the Bell operat-

1 ing company as described in subsection (i) shall be
2 valued at the lesser of net book cost or fair market
3 value.

4 (3) PROHIBITION OF EVASIONS.—An affiliate
5 shall not provide directly or indirectly to a separated
6 affiliate any facilities, services, or basic telephone
7 service information related to the provision of elec-
8 tronic publishing that are not made available to un-
9 affiliated companies on the same terms and condi-
10 tions.

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

13 (1) a Bell operating company shall not have any
14 officers, employees, property, or facilities in common
15 with any entity whose principal business is publish-
16 ing of which a part is electronic publishing,

17 (2) no officer or employee of a Bell operating
18 company shall serve as a director of any entity
19 whose principal business is publishing of which a
20 part is electronic publishing,

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

1 (4) a Bell operating company shall not carry
2 out—

3 (A) any marketing or sales for any entity
4 that engages in electronic publishing, or

5 (B) any hiring of personnel, purchasing, or
6 production,

7 for any entity that engages in electronic publishing,
8 and

9 (5) the Bell operating company shall not pro-
10 vide any facilities, services, or basic telephone service
11 information to any entity that engages in electronic
12 publishing, for use with or in connection with the
13 provision of electronic publishing that is dissemi-
14 nated by means of such Bell operating company's or
15 any of its affiliates' basic telephone service, unless
16 equivalent facilities, services, or information are
17 made available on equivalent terms and conditions to
18 all.

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

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

1 (n) PRIVATE RIGHT OF ACTION.—Any person claim-
2 ing that any act or practice of any Bell operating com-
3 pany, affiliate, or separated affiliate constitutes a violation
4 of this section may commence a civil action in an appro-
5 priate district court of the United States for damages, for
6 an order enjoining such act or practice or compelling com-
7 pliance with such requirement, or for both.

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

12 (p) DEFINITIONS.—For purposes of this section—

13 (1) The term “Bell operating company” means
14 the corporations subject to the Modification of Final
15 Judgment and listed in Appendix A thereof, or any
16 entity owned or controlled by such corporation, or
17 any successor or assign of such corporation, but
18 does not include an electronic publishing joint ven-
19 ture owned by such corporation or entity.

20 (2) The term “affiliate” means any entity that,
21 directly or indirectly, owns or controls, is owned or
22 controlled by, or is under common ownership or con-
23 trol with, a Bell operating company. Such term shall
24 not include a separated affiliate.

1 (3) The term “basic telephone service” means
2 any wireline telephone exchange service, or wireline
3 telephone exchange facility, provided by a Bell oper-
4 ating company in a telephone exchange area, ex-
5 cept—

6 (A) a competitive wireline telephone ex-
7 change service provided in a telephone exchange
8 area where another entity provides a wireline
9 telephone exchange service that was provided on
10 January 1, 1984, and

11 (B) a commercial mobile service provided
12 by an affiliate that is required by the Federal
13 Communications Commission to be a corporate
14 entity separate from the Bell operating com-
15 pany.

16 (4) The term “basic telephone service informa-
17 tion” means network and customer information of a
18 Bell operating company and other information ac-
19 quired by a Bell operating company as a result of
20 its engaging in the provision of basic telephone serv-
21 ice.

22 (5) The term “control” means the possession,
23 direct or indirect, of the power to direct or cause the
24 direction of the management and policies of a per-

1 son, whether through the ownership of voting securi-
2 ties, by contract, or otherwise.

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

7 (i) news,

8 (ii) entertainment (other than interactive
9 games),

10 (iii) business, financial, legal, consumer, or
11 credit material,

12 (iv) editorials,

13 (v) columns,

14 (vi) sports reporting,

15 (vii) features,

16 (viii) advertising,

17 (ix) photos or images,

18 (x) archival or research material,

19 (xi) legal notices or public records,

20 (xii) scientific, educational, instructional,
21 technical, professional, trade, or other literary
22 materials, or

23 (xiii) other like or similar information.

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

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

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

5 (iii) The transmission of information as
6 part of a gateway to an information service that
7 does not involve the generation or alteration of
8 the content of information, including data
9 transmission, address translation, protocol con-
10 version, billing management, introductory infor-
11 mation content, and navigational systems that
12 enable users to access electronic publishing
13 services, which do not affect the presentation of
14 such electronic publishing services to users.

15 (iv) Voice storage and retrieval services, in-
16 cluding voice messaging and electronic mail
17 services.

18 (v) Data processing services that do not in-
19 volve the generation or alteration of the content
20 of information.

21 (vi) Transaction processing systems that
22 do not involve the generation or alteration of
23 the content of information.

1 (vii) Electronic billing or advertising of a
2 Bell operating company's regulated tele-
3 communications services.

4 (viii) Language translation.

5 (ix) Conversion of data from one format to
6 another.

7 (x) The provision of information necessary
8 for the management, control, or operation of a
9 telephone company telecommunications system.

10 (xi) The provision of directory assistance
11 that provides names, addresses, and telephone
12 numbers and does not include advertising.

13 (xii) Caller identification services.

14 (xiii) Repair and provisioning databases for
15 telephone company operations.

16 (xiv) Credit card and billing validation for
17 telephone company operations.

18 (xv) 911-E and other emergency assist-
19 ance databases.

20 (xvi) Any other network service of a type
21 that is like or similar to these network services
22 and that does not involve the generation or al-
23 teration of the content of information.

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

4 (C) The term “electronic publishing” also shall
5 not include—

6 (i) full motion video entertainment on de-
7 mand, and

8 (ii) video programming.

9 (7) The term “electronic publishing joint ven-
10 ture” means a joint venture owned by a Bell operat-
11 ing company or affiliate that engages in the provi-
12 sion of electronic publishing which is disseminated
13 by means of such Bell operating company’s or any
14 of its affiliates’ basic telephone service.

15 (8) The term “entity” means any organization,
16 and includes corporations, partnerships, sole propri-
17 etorships, associations, and joint ventures.

18 (9) The term “inbound telemarketing” means
19 the marketing of property, goods, or services by tele-
20 phone to a customer or potential customer who initi-
21 ated the call.

22 (10) The term “own” with respect to an entity
23 means to have a direct or indirect equity interest (or
24 the equivalent thereof) of more than 10 percent of
25 an entity, or the right to more than 10 percent of

1 the gross revenues of an entity under a revenue
2 sharing or royalty agreement.

3 (11) The term “separated affiliate” means a
4 corporation under common ownership or control with
5 a Bell operating company that does not own or con-
6 trol a Bell operating company and is not owned or
7 controlled by a Bell operating company and that en-
8 gages in the provision of electronic publishing which
9 is disseminated by means of such Bell operating
10 company’s or any of its affiliates’ basic telephone
11 service.

12 **SEC. 5. DEFINITIONS.**

13 Except as provided in section 4, for purposes of this
14 Act:

15 (1) AFFILIATE.—The term “affiliate” means a
16 person that (directly or indirectly) owns or controls,
17 is owned or controlled by, or is under common own-
18 ership or control with, another person. For purposes
19 of this paragraph, to own refers to owning an equity
20 interest (or the equivalent thereof) of more than 50
21 percent.

22 (2) ALARM MONITORING SERVICE.—The term
23 “alarm monitoring service” means a service that
24 uses a device located at a residence, place of busi-
25 ness, or other fixed premises—

1 (A) to receive signals from other devices lo-
2 cated at or about such premises regarding a
3 possible threat at such premises to life, safety,
4 or property, from burglary, fire, vandalism,
5 bodily injury, or other emergency, and

6 (B) to transmit a signal regarding such
7 threat by means of transmission facilities of a
8 Bell operating company or one of its affiliates
9 to a remote monitoring center to alert a person
10 at such center of the need to inform the cus-
11 tomer or another person or police, fire, rescue,
12 security, or public safety personnel of such
13 threat,

14 but does not include a service that uses a medical
15 monitoring device attached to an individual for the
16 automatic surveillance of an ongoing medical condi-
17 tion.

18 (3) ANTITRUST LAWS.—The term “antitrust
19 laws” has the meaning given it in subsection (a) of
20 the first section of the Clayton Act (15 U.S.C.
21 12(a)), except that such term includes the Act of
22 June 19, 1936 (49 Stat. 1526; 15 U.S.C. 13 et
23 seq.), commonly known as the Robinson Patman
24 Act, and section 5 of the Federal Trade Commission

1 Act (15 U.S.C. 45) to the extent that such section
2 5 applies to unfair methods of competition.

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

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

9 (A) Bell Telephone Company of Nevada,
10 Illinois Bell Telephone Company, Indiana Bell
11 Telephone Company, Incorporated, Michigan
12 Bell Telephone Company, New England Tele-
13 phone and Telegraph Company, New Jersey
14 Bell Telephone Company, New York Telephone
15 Company, U S West Communications Com-
16 pany, South Central Bell Telephone Company,
17 Southern Bell Telephone and Telegraph Com-
18 pany, Southwestern Bell Telephone Company,
19 The Bell Telephone Company of Pennsylvania,
20 The Chesapeake and Potomac Telephone Com-
21 pany, The Chesapeake and Potomac Telephone
22 Company of Maryland, The Chesapeake and
23 Potomac Telephone Company of Virginia, The
24 Chesapeake and Potomac Telephone Company
25 of West Virginia, The Diamond State Tele-

1 phone Company, The Ohio Bell Telephone
2 Company, The Pacific Telephone and Telegraph
3 Company, or Wisconsin Telephone Company,

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

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

8 (6) CABLE SYSTEM.—The term “cable system”
9 has the same meaning as such term has in section
10 602(7) of the Communications Act of 1934 (47
11 U.S.C. 522(7)).

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

15 (8) COMMERCIAL MOBILE SERVICES.—The term
16 “commercial mobile services” has the same meaning
17 as such term has in section 332(d) of the Commu-
18 nications Act of 1934 (47 U.S.C. 332(d)).

19 (9) CUSTOMER PREMISES EQUIPMENT.—The
20 term “customer premises equipment” means equip-
21 ment employed on the premises of a person (other
22 than a carrier) to originate, route, or terminate tele-
23 communications, and includes software integral to
24 such equipment.

1 (10) EXCHANGE ACCESS.—The term “exchange
2 access” means exchange services provided for the
3 purpose of originating or terminating interexchange
4 telecommunications.

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

13 (12) EXCHANGE SERVICE.—The term “ex-
14 change service” means a telecommunications service
15 provided within an exchange area.

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

21 (14) INTEREXCHANGE TELECOMMUNI-
22 CATIONS.—The term “interexchange telecommuni-
23 cations” means telecommunications between a point
24 located in an exchange area and a point located out-
25 side such exchange area.

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

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

12 (17) OTHER PROGRAMMING SERVICES.—The
13 term “other programming services” means informa-
14 tion (other than audio programming or video pro-
15 gramming) that the person who offers a video pro-
16 gramming service makes available to all subscribers
17 generally. For purposes of the preceding sentence,
18 the terms “information” and “makes available to all
19 subscribers generally” have the same meaning such
20 terms have under section 602(13) of the Commu-
21 nications Act of 1934 (47 U.S.C. 522(13)).

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

1 (19) STATE.—The term “State” means any of
2 the several States, the District of Columbia, the
3 Commonwealth of Puerto Rico, the Commonwealth
4 of the Northern Mariana Islands, the Federated
5 States of Micronesia, the Republic of the Marshall
6 Islands, Palau, or any territory or possession of the
7 United States.

8 (20) TELECOMMUNICATIONS.—The term “tele-
9 communications” means the transmission of infor-
10 mation between points by electromagnetic means.

11 (21) TELECOMMUNICATIONS EQUIPMENT.—The
12 term “telecommunications equipment” means equip-
13 ment, other than customer premises equipment, used
14 by a carrier to provide a telecommunications service,
15 and includes software integral to such equipment.

16 (22) TELECOMMUNICATIONS SERVICE.—The
17 term “telecommunications service” means the offer-
18 ing for hire of transmission facilities or of tele-
19 communications by means of such facilities.

20 (23) TRANSMISSION FACILITIES.—The term
21 “transmission facilities” means equipment (including
22 wire, cable, microwave, satellite, and fiber-optics)
23 that transmits information by electromagnetic means
24 or that directly supports such transmission, but does
25 not include customer premises equipment.

1 (24) VIDEO PROGRAMMING.—The term “video
2 programming” has the same meaning as such term
3 has in section 602(19) of the Communications Act
4 of 1934 (47 U.S.C. 522(19)).

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

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

9 (1) Section II(C) of the Modification of Final
10 Judgment, relating to deadline for procedures for
11 equal access compliance.

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

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

16 (4) Section VIII(C) of the Modification of Final
17 Judgment, relating to standard for entry into the
18 interexchange market.

19 (5) Section VIII(D) of the Modification of Final
20 Judgment, relating to prohibition on entry into elec-
21 tronic publishing.

22 (6) Section VIII(H) of the Modification of
23 Final Judgment, relating to debt ratios at the time
24 of transfer.

1 (7) Section VIII(J) of the Modification of Final
2 Judgment, relating to prohibition on implementation
3 of the plan of reorganization before court approval.

4 (b) APPLICATION TO OTHER ACTION.—This Act
5 shall supersede the final judgment entered December 21,
6 1984 and as restated January 11, 1985, in the action
7 styled United States v. GTE Corp., Civil Action No. 83–
8 1298, in the United States District Court for the District
9 of Columbia, and such final judgment shall not be en-
10 forced with respect to conduct occurring after the date of
11 the enactment of this Act.

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

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

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

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