

EX PARTE OR LATE FILED



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February 14, 1996

**EX PARTE**

Mr. William F. Caton  
Acting Secretary  
Federal Communications Commission  
2025 M Street, NW, Room 7002-E  
Washington, DC 20554

DOCKETED  
RECEIVED  
FEB 14 1996  
FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF SECRETARY

Re: GEN Docket 90-314, Amendment of the Commission's Rules to Establish  
New Personal Communications Services and Implementation of Section  
309(j) of the Communications Act, Competitive Bidding, PP Docket No.  
93-253

Dear Mr. Caton:

The attached material was distributed to Barbara Esbin on behalf of AirTouch Communications. Please associate this material with the above-referenced proceeding.

Two copies of this notice are being submitted to the Secretary in accordance with Section 1.1206(a)(1) of the Commission's Rules.

Please stamp and return the provided copy to confirm your receipt. Please contact me at 202-293-4960 should you have any questions or require additional information concerning this matter.

Sincerely,

A handwritten signature in black ink, appearing to read "Kathleen Q. Abernathy", written over a white background.

Kathleen Q. Abernathy

Attachment

cc: Barbara Esbin



Kathleen Q. Abernathy  
Vice President  
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**EX PARTE**

Ms. Barbara Esbin  
Federal Communications Commission  
2025 M Street, NW, Room 7002-E  
Washington, DC 20554

Re: GEN Docket 90-314, Amendment of the Commission's Rules to Establish  
New Personal Communications Services and Implementation of Section  
309(j) of the Communications Act, Competitive Bidding, PP Docket No.  
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Dear Barbara:

Attached is information about those sections of the Telecommunications Act of 1996 that are relevant to the LEC-CMRS structural separation question. I have provided both the relevant sections of the Act along with partial legislative histories.

I am also including a copy of an AirTouch Ex Parte presentation submitted earlier this year regarding Pacific Telesis' non-structural safeguard plans.

I apologize for not getting this to you earlier in the week. Please call if you have questions.

Sincerely,

A handwritten signature in black ink, appearing to read "Kathleen", written in a cursive style.

Kathleen Q. Abernathy

Attachments

**LEC-CMRS Structural Separation is Consistent  
With the Telecommunications Act of 1996**

- I. Sections 272(a)(2)(B)(i) and 271(g)(3) do nothing more than "not require" separate subsidiaries for interLATA CMRS; they do not limit the Commission's discretion and ability to conclude that separate subsidiaries for LEC-CMRS are the best means of promoting wireless competition. Further, both Section 271(h) and Section 272(f)(3) contain language requiring the Commission to enact appropriate competitive safeguards in this area.
  
- II. Section 601(d) allows LECs to joint market CMRS and landline services but contains no language against structural separation for LEC-CMRS. In fact, when this section was proposed in the House, its sponsor specifically stated that this section "does not lift the FCC's prohibition against the Bell operating telephone companies providing cellular services" on an integrated basis. Additionally, Section 601(d) is not self executing; the Commission will be required to determine the definition of joint marketing, decide how and when it will occur, and enact safeguards to ensure that Section 601(d) is compatible with other sections, such as Section 702 that concerns the privacy of customer information.
  
- III. Nothing in the Telecommunications Act of 1996 changes the Commission's ability to impose structural separation for LEC-CMRS if the Commission determines that structural separation will best promote the open, competitive markets the Act hopes to encourage. Congress did nothing in the Act to eliminate the cellular structural separation rule, 47 C.F.R. § 22.903, and did nothing in the Act to prevent the Commission from expanding the rule to all LEC-CMRS if such expansion is in the public interest.

Relevant sections, along with partial legislative histories, are attached.

(Mr. BRYANT of Texas asked and was given permission to revise and extend his remarks.)

Mr. BRYANT of Texas. Mr. Chairman, I say to my colleagues, had I been a party to this, I would stand up on the floor, and I would wave my arms and speak loudly as well. The fact of the matter is you voted for the bill that came out of committee, and the gentleman from Virginia [Mr. BLILEY] voted for the bill that came out of committee. I voted against it. But now the two of you come to the floor with a totally different bill. Mr. Chairman, this is not the bill that passed the House by 400 and something to nothing last year. This is a totally different approach. The fact of the matter is it was written in the darkness. The committee did not have any input into this. The Members did not have any input into this. My colleagues wrote it behind closed doors. The Bell companies came and said, "Hey, we decided we don't like what happened in the committee. Rewrite the bill and help us out."

Mr. Chairman, that is what my colleagues have done here. The fact of the matter is this process is an outrage, and Members stand on the floor, and wave their arms and say somebody is trying to deceive the American people, they should have written the bill in public, not behind closed doors. It is an outrage.

I would urge Members, if for no other reason, and I will not yield to the gentleman.

The CHAIRMAN. The time of the gentleman from Texas [Mr. BRYANT] has expired.

Mr. BLILEY. Mr. Chairman, I yield such time as he may consume to the gentleman from North Carolina [Mr. BURR].

(Mr. BURR asked and was given permission to revise and extend his remarks.)

Mr. BURR. Mr. Chairman, I rise in support of the manager's amendment.

During the Commerce Committee's consideration of H.R. 1555, I offered an amendment designed to permit Bell operating telephone companies to resell the cellular services of their cellular affiliates. Currently, Bell operating companies, along with local telephone companies, are prevented from providing or even reselling cellular services with their local services. Larger companies, like GTE—the largest local exchange carrier in the United States—are not restricted from marketing cellular services with their long distance or local services.

Several of my colleagues were concerned that they had not had an ample opportunity to consider the amendment. With the understanding that it could be included in the managers' amendment if these members, upon further study, were not troubled by the substance of the amendment, I withdrew it. Having satisfied the members' concerns with new language, I want to thank the managers of this bill for agreeing to include that language in their amendment.

As with my original amendment, the primary goal of the new language is to provide the Bell operating telephone companies with sufficient relief from existing FCC rules to permit them

to offer one-stop shopping of local exchange services and cellular services. Currently, FCC rules not only prohibit those operating companies from physically providing cellular services—that is, from owning the towers, transmitters, and switches that make up cellular services—but also from marketing cellular services—that is, selling cellular services.

This amendment does not lift the FCC's prohibition against the Bell operating telephone companies providing the cellular services; it merely permits them to jointly market or resell their cellular affiliate's cellular services along with their local exchange services. Under existing FCC policies, cellular providers must permit resale of their cellular services. Thus, virtually everyone but the Bell operating telephone companies can resell the cellular services of their cellular affiliates.

Thus, together with other provisions in the bill, this amendment will help to put the Bell operating telephone companies on par with their competitors by allowing them to resell cellular services—including the provision of interLATA cellular services—in conjunction with local exchange services and other wireless services—that is, PCS services—that they are already permitted to provide.

AT&T has voluntarily entered into a proposed consent decree with the Department of Justice. This would obviate certain potential violations of section 7 of the Clayton Act arising out of its acquisition of McCaw Cellular. To overcome the Department's opposition to the acquisition, AT&T agreed to certain restrictions regarding its provisions and marketing of McCaw's cellular services.

In order to ensure that all carriers offer similar service packages, language has been included in the amendment to supersede language in that pending decree. As a result, AT&T and others will be able to sell cellular services on the same terms as the Bell companies. Specifically, all carriers would be able to sell cellular services, including interLATA cellular services, along with local landline exchange offerings.

However, the Bell operating companies will not be able to offer landline interLATA services in conjunction with such local telephone—even in conjunction with a cellular/cellular interLATA service offering—until they have met the conditions for interLATA relief.

Accordingly, the amendment makes it clear that it does not alter the effect of subsection 242(d) on AT&T or any other company. As a result, AT&T and other competitors subject to that provision will not be able to offer or market landline interLATA services with a local landline exchange offering—even in conjunction with a cellular/cellular interLATA package—until the Bell companies are authorized to do so.

Mr. BLILEY. Mr. Chairman, to close debate, I yield the balance of my time to the gentleman from Texas [Mr. FIELDS], the chairman of the subcommittee.

The CHAIRMAN. The gentleman from Texas [Mr. FIELDS] is recognized for 2 minutes.

(Mr. FIELDS of Texas asked and was given permission to revise and extend his remarks.)

Mr. FIELDS of Texas. Mr. Chairman, let me just say very briefly, and then I am going to yield to the gentleman from Michigan; this is a fair and bal-

anced approach that we are now bringing to this floor for a vote. This is a delicate process, it is a complex process. On a piece of legislation like this we expect a manager's amendment. No one has talked about other things that are in this manager's amendment, local siting, under the right-of-way, the telecommunication development fund sponsored by the gentleman from New York [Mr. TOWNS], a lot of good things in this particular amendment. But I want to identify myself with the remarks made by the gentleman from Michigan. In my career I have never seen a more disingenuous lobbying effort by any segment of an industry.

The long-distance industry, I say shame on them.

Mr. DINGELL. Mr. Chairman, will the gentleman yield?

Mr. FIELDS of Texas. I yield to the gentleman from Michigan.

Mr. DINGELL. Mr. Chairman, I want to reiterate to my colleagues the process under which we are considering this legislation is no different than we have ever done wherever we have had differences between two committees, and the process of working out an amendment between those who supported the bill is an entirely sensible one. Had the gentleman from Texas desired to be a participant in that, he could have, \* \* \* and the result of that is that he did not participate.

Mr. BRYANT of Texas. Mr. Chairman, I ask that the gentleman's words be taken down.

The CHAIRMAN. The gentleman from Michigan will suspend.

Does the gentleman ask unanimous consent to withdraw his reference?

Mr. DINGELL. Mr. Chairman, I ask unanimous consent to withdraw the words referred to.

Mr. BRYANT of Texas. Reserving the right to object, Mr. Chairman, I do not intend to go along with this unanimous-consent request unless there is an apology and an explanation that what he said was inaccurate, totally inaccurate, because I have had absolutely no involvement with the chairman with regard to the development of this amendment whatsoever, and so what he said was inaccurate.

Mr. Chairman, if the gentleman will acknowledge it was inaccurate, at that time I will be happy to go along with his unanimous-consent request.

The CHAIRMAN. Does the gentleman from Texas [Mr. BRYANT] yield under his reservation of objection to the gentleman from Michigan [Mr. DINGELL]?

Mr. BRYANT of Texas. I do, Mr. Chairman.

The CHAIRMAN. The Chair recognizes the gentleman from Michigan [Mr. DINGELL].

Mr. DINGELL. Mr. Chairman, I am not quite sure what the Chair is telling me.

The CHAIRMAN. The gentleman from Texas reserves the right to object, and under his reservation he has said that he would insist on having the gentleman's words taken down.

In new subsections (c) and (d), the conferees have removed language from the House amendment concerning the importation of televisions, and clarified that the requirements of these subsections apply to all televisions above a certain size shipped in interstate commerce (regardless of where they were manufactured) or televisions manufactured in the United States. Such sets are required by these two subsections to include a feature designed to enable viewers to block display of programs carrying a common rating in compliance with rules prescribed by the Commission. Under subsection (c)(4), the Commission is authorized to amend these rules as appropriate to allow set manufacturers to comply with this subsection using alternative technology that meets certain standards of cost, effectiveness and ease of use.

Under subsection (e)(1), the effective date for subsection (b) (regarding the appointment of an advisory committee to recommend a rating system and the rules for transmitting a rating) is no less than one year after the date of enactment. The actual effective date has also been made contingent on a determination by the Commission that distributors of video programming have not, by such date, established a voluntary system for rating video programming and such programming is acceptable to the Commission and have also agreed to include ratings in the transmission of signals to television sets for blocking.

Under subsection (e)(2), the effective date for subsection (c) (regarding the rules for the manufacture of television sets capable of blocking) is no less than two years after the date of enactment. The conferees intend that the actual effective date be specified by the Commission after consultation with the television manufacturing industry.

#### SECTION 562—TECHNOLOGY FUND

##### *Senate bill*

No provision.

##### *House amendment*

Section 304 of the House amendment encourages broadcast, cable, satellite, syndication, and other video programming distributors to establish a technology fund to encourage TV and electronics equipment manufacturers to facilitate the development of blocking technology that would empower parents to block TV programming they deem inappropriate for their children.

##### *Conference agreement*

The conference agreement adopts the House provision with modifications to encourage the availability of blocking technology to low income families.

#### SUBTITLE C—JUDICIAL REVIEW

#### SECTION 561—EXPEDITED REVIEW

##### *Conference agreement*

The conference agreement adds new language to provide for expedited judicial review of the indecency, obscenity and violence

provisions of this title. In any civil action in which a party makes a facial challenge to these provisions, the challenge shall be heard by a three-judge district court convened under 28 U.S.C. § 2284. Any decision of the three-judge district court holding a provision unconstitutional shall be directly appealable to the Supreme Court as a matter of right. However, the direct right of appeal provided in subsection (b) in this limited circumstance does not limit any appeal rights applicable to other circumstances under general statutes.

The conferees emphasize that these provisions are limited in several ways. They apply only in civil actions. If a party makes a facial challenge in a criminal context, that party would not be able to use the procedures provided in this section. These provisions apply only to facial challenges. These provisions do not apply to actions in which the party only challenges the provision as applied to the particular party involved. However, the three-judge district court could hear both a facial challenge and an "as applied" challenge if they were combined in the same action, and facial validity had not yet been determined. Thus, the conferees intend that these provisions should be invoked in only the limited number of cases necessary to determine the facial validity of these provisions. If that facial validity is upheld by the courts, these provisions may not be used in every "as applied" challenge brought thereafter.

#### TITLE VI—EFFECT ON OTHER LAWS

#### SECTION 601—APPLICABILITY OF CONSENT DECREES AND OTHER LAW

##### *Senate bill*

Section 7(a) of the Senate bill provides that except for the supersession of the Modification of Final Judgment, nothing in the Communications Act shall be construed to modify, impair, or supersede the applicability of any antitrust law. Section 7(b) provides that the Communications Act shall supersede the Modification of Final Judgment to the extent that it is inconsistent with the Communications Act. Section 7(c) of the bill transfers jurisdiction of any parts of the Modification of Final Judgment which are not superseded to the Commission. Section 7(d) supersedes the GTE consent decree.

Section 201(c) of the Senate bill provides that except as provided in section 202, nothing in the Communications Act shall be construed to modify, impair, or supersede any State or local tax law.

Section 226 of the Senate bill provides that notwithstanding any other provision of law or any judicial order, no person shall be subject to the provisions of the Modification of Final Judgment solely by reason of having acquired CMS or private mobile service assets or operations previously owned by a BOC or an affiliate of a BOC.

##### *House amendment*

Section 401(a) of the House amendment provides that certain specified sections of the Modification of Final Judgment are superseded. Section 401(b) provides that nothing in the Communications Act or the amendments made by the conference agreement shall be

construed to modify, impair, or supersede any of the antitrust laws. Section 401(c)(1) provides that parts II and III of title II of the Communications Act shall not be construed to modify, impair, or supersede Federal, State, or local law unless expressly so provided in such part. Section 401(c)(2) provides that notwithstanding section 401(c)(1), nothing in the Communications Act or the amendments made by the conference agreement shall be construed to modify, impair, or supersede any State or local tax law except as provided in sections 243(e) and 622 of the Communications Act and section 402 of this Act.

Section 401(d) of the House amendment provides that the GTE consent decree is superseded. Section 401(e) provides that no person shall be considered an affiliate, successor, or an assign of a BOC under section III of the Modification of Final Judgment by reason of having acquired wireless exchange assets or operations previously owned by a BOC or an affiliate of a BOC. Section 401(f) defines the term "antitrust laws" as used in section 401. Section 401(g) provides that for the purposes of this section, the terms "Modification of Final Judgment" and "Bell Operating Company" have the same meanings provided such terms in section 3 of the Communications Act.

#### *Conference agreement*

The conference agreement adopts a new approach to the supersession of the Modification of Final Judgment (now called the AT&T Consent Decree in the conference agreement) and the GTE consent decree, and it adds language superseding the AT&T-McCaw Consent Decree ("McCaw Consent Decree"). The conferees sought to avoid any possibility that the language in the conference agreement might be interpreted as impinging on the judicial power. Congress may not by legislation retroactively overturn a final judgment. *Plaut v. Spendthrift Farm, Inc.*, 115 S.Ct. 1447 (1995). On the other hand, Congress may by legislation modify or eliminate the prospective effect of a continuing injunction. *Robertson v. Seattle Audubon Society*, 503 U.S. 429 (1992); *Plaut*, 115 S.Ct. 1447; *Pennsylvania v. Wheeling & Belmont Bridge Co.*, 59 U.S. 421 (1856).

The conferees believe that the AT&T Consent Decree, the GTE Consent Decree, and the McCaw Consent Decree are continuing injunctions rather than final judgments. The Committee has chosen to use the term "AT&T Consent Decree" rather than "Modification of Final Judgment" to emphasize that point.

To avoid any possible constitutional problem, the conferees adopted the following new approach. Rather than "superseding" all or part of these continuing injunctions, the conference agreement simply provides that all conduct or activities that are currently subject to these consent decrees shall, on and after the date of enactment, become subject to the requirements and obligations of the Communications Act and shall no longer be subject to the restrictions and obligations of the respective consent decrees.

The conferees intend that the court shall retain jurisdiction over the three consent decrees for the limited purpose of dealing with any conduct or activity occurring before the date of enactment. Nothing in the language eliminating the prospective effect of the

three consent decrees should be construed as eliminating the jurisdiction of the Court to deal with preenactment conduct or activities under the consent decrees.

At the time of the divestiture of AT&T under the AT&T Consent Decree, AT&T and the BOCs entered into a number of long-term contracts that dealt with pensions, contingent liabilities, and the like. These contracts are not incorporated by reference in the AT&T Consent Decree, and nothing in the language eliminating the prospective effect of the AT&T Consent Decree should be construed as affecting these contracts.

By eliminating the prospective effect of the GTE Consent Decree, this language removes entirely the GTE Consent Decree's prohibition on GTE's and the GTE Operating Companies' entry into the interexchange market. No provision in the Communications Act should be construed as creating or continuing in any way the GTE Consent Decree's prohibition on GTE or its operating companies' entry into the interexchange market.

Language explicitly overturning the McCaw Consent Decree was not included in either bill. However, the new approach to the AT&T and GTE Consent Decrees, as well as intervening events, justify the overturning of the McCaw Consent Decree in the conference agreement.

The McCaw Consent Decree includes three major elements: (1) equal access and interconnection requirements for AT&T's cellular business, (2) restrictions on AT&T's manufacturing business, and (3) a separate subsidiary requirement for AT&T's cellular business. Both bills contained language that would have overturned the equal access and interconnection requirements for all cellular businesses, and that language is included in the conference agreement. Since the passage of the original bills in both the House and Senate, AT&T has announced that it will spin off its manufacturing business, and so the manufacturing aspects of the decree will soon become moot. Finally, a recent decision of the Sixth Circuit, *Cincinnati Bell Tel. Co., v. FCC*, 69 F.3d 752 (6th Cir. 1995), may lead to the removal of the separate subsidiary requirement for other cellular businesses. Accordingly, there is little reason to keep the McCaw Consent Decree in place.

The McCaw Consent Decree presents a slightly different problem than the other two consent decrees because it has not yet been formally entered by the court. The parties agreed to the McCaw Consent Decree and filed it with the court on July 15, 1994. AT&T entered into a stipulation to abide by the proposed consent decree until the court completed its review under the Tunney Act. That review is still continuing. Nonetheless, the conferees believe that the same basic principles of law set forth above relating to modifying the prospective effect of injunctions apply to the McCaw Consent Decree, which is defined to include the stipulation.

The new approach adopted in the Committee required that several new provisions be added to the conference agreement. Two of these provisions are described below. Two other provisions, relating to equal access and nondiscrimination for interexchange carriers and existing activities under consent decree waivers, are also related to this change and they are described in the appropriate sections of this Joint Statement.

Both the Senate bill and the House amendment specifically provided that a company would not be considered a successor to a BOC or otherwise subject to restrictions imposed on BOCs solely because the company acquired (by spinoff, transfer, or any other manner) wireless exchange assets or operations from a BOC. The language of these provisions provided this protection under the AT&T Consent Decree. Because of the new approach to the AT&T Consent Decree, the language in the bills no longer worked to provide the protection that was intended. For that reason, those specific provisions in both bills are omitted from the conference agreement.

In lieu of those provisions, the conference agreement modifies the definition of BOC so that successors or assigns of the listed BOC's fall within the definition only if they provide wireline telephone exchange service. This change of definition is intended to provide the same protection that the provisions in the two bills provided—that a successor to a BOC's wireless assets shall not be treated as a BOC simply because of the acquisition of those assets.

The conference agreement adopts the House antitrust savings clause with modifications. The antitrust savings clause provides that except as provided in paragraphs two and three, nothing in this Act or the amendments made by the conference agreement shall be construed to modify, impair, or supersede the applicability of any of the antitrust laws. The clause was modified to include the repeal of section 221(a) of the Communications Act (47 U.S.C. § 221(a)). Congress enacted section 221(a) in the days when local telephone service was viewed as a natural monopoly. Its purpose was to allow competing local telephone companies to merge without facing antitrust scrutiny. Thus, the statute provides that when any two telephone companies merge, the Commission should determine whether the merger will be "of advantage to the persons to whom service is to be rendered and in the public interest." If so, the Commission can render the transaction immune from "any Act or Acts of Congress making the proposed transaction unlawful." In a world of regulated monopolies, this idea made sense.

However, section 221(a) could inadvertently undercut several of the provisions of the Telecommunications Act of 1996. The problem arises for at least two reasons. First, the critical term "telephone company" is not defined. In the old world of regulated monopolies, a definition probably was not necessary. However, in the new world of competition, many companies will be able to argue plausibly that they are telephone companies.

Second, section 221(a) allows the Commission to confer immunity from any Act of Congress (including the Telecommunications Act of 1996) after performing a public interest review. Section 221(a) could be used to avoid the cable-telco buyout provisions of the Telecommunications Act of 1996. Any cable company that owned any telephone assets could become a telephone company and be bought out by a BOC by applying for immunity under this section.

In addition, if immunity were conferred under section 221(a), it would allow mergers between telecommunications giants to go forward without any antitrust or securities review. In the old world, the statute was usually used to confer immunity on mergers

between non-competing Bell operating subsidiaries or mergers between Bells and small independents within their territories. Neither of these situations involved competitive considerations.

However, in the future, the conferees anticipate that cable companies will be providing local telephone service and the BOCs will be providing cable service. Mergers between these kinds of companies should not be allowed to go through without a thorough antitrust review under the normal Hart-Scott-Rodino process. The new language contains a conforming change to clarify that these mergers will now be subject to Hart-Scott-Rodino review. By returning review of mergers in a competitive industry to the DOJ, this repeal would be consistent with one of the underlying themes of the bill—to get both agencies back to their proper roles and to end government by consent decree. The Commission should be carrying out the policies of the Communications Act, and the DOJ should be carrying out the policies of the antitrust laws. The repeal would not affect the Commission's ability to conduct any review of a merger for Communications Act purposes, e.g. transfer of licenses. Rather, it would simply end the Commission's ability to confer antitrust immunity.

The conference agreement adopts the House provision stating that the bill does not have any effect on any other Federal, State, or local law unless the bill expressly so provides. This provision prevents affected parties from asserting that the bill impliedly preempts other laws.

The conference agreement adopts the House version of the State tax savings clause with a modification to clarify that fees for open video systems are excluded from the savings clause.

#### SECTION 602—PREEMPTION OF LOCAL TAXATION WITH RESPECT TO DIRECT-TO-HOME SERVICES

##### *Senate bill*

No provision.

##### *House amendment*

Section 402 of the House amendment preempts local taxation on the provision of direct-to-home (DTH) satellite services. This section exempts DTH satellite service providers and their sales and distribution agents and representatives from collecting and remitting local taxes on satellite-delivered programming services. Section 402 does not preempt local taxes on the sale of the equipment needed to receive these services.

##### *Conference agreement*

The conference agreement adopts the House provisions with modifications. This section exempts DTH satellite service providers from collecting and remitting local taxes and fees on DTH satellite services. DTH satellite service is programming delivered via satellite directly to subscribers equipped with satellite receivers at their premises; it does not require the use of public rights-of-way or the physical facilities or services of a community.

The conferees adopt the House language, but narrow the language to ensure that the exemption is only provided for the actual

"(3) The rules prescribed by the Commission under this subsection shall provide for the oversight by the Commission of the adoption of standards by industry for blocking technology. Such rules shall require that all such apparatus be able to receive the rating signals which have been transmitted by way of line 21 of the vertical blanking interval and which conform to the signal and blocking specifications established by industry under the supervision of the Commission.

"(4) As new video technology is developed, the Commission shall take such action as the Commission determines appropriate to ensure that blocking service continues to be available to consumers. If the Commission determines that an alternative blocking technology exists that—

"(A) enables parents to block programming based on identifying programs without ratings,

"(B) is available to consumers at a cost which is comparable to the cost of technology that allows parents to block programming based on common ratings, and

"(C) will allow parents to block a broad range of programs on a multichannel system as effectively and as easily as technology that allows parents to block programming based on common ratings,

the Commission shall amend the rules prescribed pursuant to section 303(x) to require that the apparatus described in such section be equipped with either the blocking technology described in such section or the alternative blocking technology described in this paragraph."

(2) **CONFORMING AMENDMENT.**—Section 330(d), as redesignated by subsection (d)(1)(A), is amended by striking "section 303(s), and section 303(u)" and inserting in lieu thereof "and sections 303(s), 303(u), and 303(x)".

(e) **APPLICABILITY AND EFFECTIVE DATES.**—

(1) **APPLICABILITY OF RATING PROVISION.**—The amendment made by subsection (b) of this section shall take effect 1 year after the date of enactment of this Act, but only if the Commission determines, in consultation with appropriate public interest groups and interested individuals from the private sector, that distributors of video programming have not, by such date—

(A) established voluntary rules for rating video programming that contains sexual, violent, or other indecent material about which parents should be informed before it is displayed to children, and such rules are acceptable to the Commission; and

(B) agreed voluntarily to broadcast signals that contain ratings of such programming.

(2) **EFFECTIVE DATE OF MANUFACTURING PROVISION.**—In prescribing regulations to implement the amendment made by subsection (c), the Federal Communications Commission shall, after consultation with the television manufacturing industry, specify the effective date for the applicability of the requirement to the apparatus covered by such amendment, which date shall not be less than two years after the date of enactment of this Act.

#### **SEC. 562. TECHNOLOGY FUND.**

It is the policy of the United States to encourage broadcast television, cable, satellite, syndication, other video programming distributors, and relevant related industries (in consultation with appropriate public interest groups and interested individuals from the private sector) to—

(1) establish a technology fund to encourage television and electronics equipment manufacturers to facilitate the development of technology which would empower parents to block programming they deem inappropriate for their children and to encourage the availability thereof to low income parents;

(2) report to the viewing public on the status of the development of affordable, easy to use blocking technology; and

(3) establish and promote effective procedures, standards, systems, advisories, or other mechanisms for ensuring that users have easy and complete access to the information necessary to effectively utilize blocking technology and to encourage the availability thereof to low income parents.

### **Subtitle C—Judicial Review**

#### **SEC. 561. EXPEDITED REVIEW.**

(a) **THREE-JUDGE DISTRICT COURT HEARING.**—Notwithstanding any other provision of law, any civil action challenging the constitutionality, on its face, of this title or any amendment made by this title, or any provision thereof, shall be heard by a district court of 3 judges convened pursuant to the provisions of section 2284 of title 28, United States Code.

(b) **APPELLATE REVIEW.**—Notwithstanding any other provision of law, an interlocutory or final judgment, decree, or order of the court of 3 judges in an action under subsection (a) holding this title or an amendment made by this title, or any provision thereof, unconstitutional shall be reviewable as a matter of right by direct appeal to the Supreme Court. Any such appeal shall be filed not more than 20 days after entry of such judgment, decree, or order.

### **TITLE VI—EFFECT ON OTHER LAWS**

#### **SEC. 601. APPLICABILITY OF CONSENT DECREES AND OTHER LAW.**

(a) **APPLICABILITY OF AMENDMENTS TO FUTURE CONDUCT.**—

(1) **AT&T CONSENT DECREE.**—Any conduct or activity that was, before the date of enactment of this Act, subject to any restriction or obligation imposed by the AT&T Consent Decree shall, on and after such date, be subject to the restrictions and obligations imposed by the Communications Act of 1934 as amended by this Act and shall not be subject to the restrictions and the obligations imposed by such Consent Decree.

(2) **GTE CONSENT DECREE.**—Any conduct or activity that was, before the date of enactment of this Act, subject to any restriction or obligation imposed by the GTE Consent Decree shall, on and after such date, be subject to the restrictions and obligations imposed by the Communications Act of 1934 as

amended by this Act and shall not be subject to the restrictions and the obligations imposed by such Consent Decree.

(3) **MCCAW CONSENT DECREE.**—Any conduct or activity that was, before the date of enactment of this Act, subject to any restriction or obligation imposed by the McCaw Consent Decree shall, on and after such date, be subject to the restrictions and obligations imposed by the Communications Act of 1934 as amended by this Act and subsection (d) of this section and shall not be subject to the restrictions and the obligations imposed by such Consent Decree.

(b) **ANTITRUST LAWS.**—

(1) **SAVINGS CLAUSE.**—Except as provided in paragraphs (2) and (3), nothing in this Act or the amendments made by this Act shall be construed to modify, impair, or supersede the applicability of any of the antitrust laws.

(2) **REPEAL.**—Subsection (a) of section 221 (47 U.S.C. 221(a)) is repealed.

(3) **CLAYTON ACT.**—Section 7 of the Clayton Act (15 U.S.C. 18) is amended in the last paragraph by striking “Federal Communications Commission.”

(c) **FEDERAL, STATE, AND LOCAL LAW.**—

(1) **NO IMPLIED EFFECT.**—This Act and the amendments made by this Act shall not be construed to modify, impair, or supersede Federal, State, or local law unless expressly so provided in such Act or amendments.

(2) **STATE TAX SAVINGS PROVISION.**—Notwithstanding paragraph (1), nothing in this Act or the amendments made by this Act shall be construed to modify, impair, or supersede, or authorize the modification, impairment, or supersession of, any State or local law pertaining to taxation, except as provided in sections 622 and 653(c) of the Communications Act of 1934 and section 602 of this Act.

(d) **COMMERCIAL MOBILE SERVICE JOINT MARKETING.**—Notwithstanding section 22.903 of the Commission’s regulations (47 C.F.R. 22.903) or any other Commission regulation, a Bell operating company or any other company may, except as provided in sections 271(e)(1) and 272 of the Communications Act of 1934 as amended by this Act as they relate to wireline service, jointly market and sell commercial mobile services in conjunction with telephone exchange service, exchange access, intraLATA telecommunications service, interLATA telecommunications service, and information services.

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

(1) **AT&T CONSENT DECREE.**—The term “AT&T Consent Decree” means the order entered August 24, 1982, in the antitrust action styled *United States v. Western Electric*, Civil Action No. 82-0192, in the United States District Court for the District of Columbia, and includes any judgment or order with respect to such action entered on or after August 24, 1982.

(2) **GTE CONSENT DECREE.**—The term “GTE Consent Decree” means the order entered December 21, 1984, as restated January 11, 1985, in the action styled *United States v. GTE Corp.*, Civil Action No. 83-1298, in the United States District Court for the District of Columbia, and any judgment or order

with respect to such action entered on or after December 21, 1984.

(3) **MCCAW CONSENT DECREE.**—The term “McCaw Consent Decree” means the proposed consent decree filed on July 15, 1994, in the antitrust action styled *United States v. AT&T Corp. and McCaw Cellular Communications, Inc.*, Civil Action No. 94-01555, in the United States District court for the District of Columbia. Such term includes any stipulation that the parties will abide by the terms of such proposed consent decree until it is entered and any order entering such proposed consent decree.

(4) **ANTITRUST LAWS.**—The term “antitrust laws” has the meaning given it in subsection (a) of the first section of the Clayton Act (15 U.S.C. 12(a)), except that such term includes the Act of June 19, 1936 (49 Stat. 1626; 15 U.S.C. 13 et seq.), commonly known as the Robinson-Patman Act, and section 5 of the Federal Trade Commission Act (15 U.S.C. 45) to the extent that such section 5 applies to unfair methods of competition.

**SEC. 602. PREEMPTION OF LOCAL TAXATION WITH RESPECT TO DIRECT-TO-HOME SERVICES.**

(a) **PREEMPTION.**—A provider of direct-to-home satellite service shall be exempt from the collection or remittance, or both, of any tax or fee imposed by any local taxing jurisdiction on direct-to-home satellite service.

(b) **DEFINITIONS.**—For the purposes of this section—

(1) **DIRECT-TO-HOME SATELLITE SERVICE.**—The term “direct-to-home satellite service” means only programming transmitted or broadcast by satellite directly to the subscribers’ premises without the use of ground receiving or distribution equipment, except at the subscribers’ premises or in the uplink process to the satellite.

(2) **PROVIDER OF DIRECT-TO-HOME SATELLITE SERVICE.**—For purposes of this section, a “provider of direct-to-home satellite service” means a person who transmits, broadcasts, sells, or distributes direct-to-home satellite service.

(3) **LOCAL TAXING JURISDICTION.**—The term “local taxing jurisdiction” means any municipality, city, county, township, parish, transportation district, or assessment jurisdiction, or any other local jurisdiction in the territorial jurisdiction of the United States with the authority to impose a tax or fee, but does not include a State.

(4) **STATE.**—The term “State” means any of the several States, the District of Columbia, or any territory or possession of the United States.

(5) **TAX OR FEE.**—The terms “tax” and “fee” mean any local sales tax, local use tax, local intangible tax, local income tax, business license tax, utility tax, privilege tax, gross receipts tax, excise tax, franchise fees, local telecommunications tax, or any other tax, license, or fee that is imposed for the privilege of doing business, regulating, or raising revenue for a local taxing jurisdiction.

(c) **PRESERVATION OF STATE AUTHORITY.**—This section shall not be construed to prevent taxation of a provider of direct-to-home satellite service by a State or to prevent a local taxing jurisdiction from

*Conference agreement*

Section 151 of the conference agreement establishes a new "Part III" of title II of the Communications Act. Part III contains new sections 271-276 of the Communications Act with respect to special provisions applicable to BOCs.

NEW SECTION 271—BELL OPERATING COMPANY ENTRY INTO  
INTERLATA SERVICES

*Senate bill*

Section 221(a) of the Senate bill adds a new section 255 to the Communications Act. Subsection (a) of new section 255 establishes the general requirements for the three different categories of service: in region interLATA; out of region interLATA; and incidental services.

New section 255(b) establishes specific interLATA interconnection requirements that must be fully implemented in order for the Commission to provide authorization for a BOC to provide in region interLATA services. The Commission is specifically prohibited from limiting or extending the terms of the "competitive checklist" contained in subsection (b)(2). The competitive checklist is not intended to be a limitation on the interconnection requirements contained in section 251, but rather, at a minimum, be provided by a BOC in any interconnection agreement approved under section 251 to which that company is a party (assuming the other party or parties to that agreement have requested the items included in the checklist) before the Commission may authorize the BOC to provide in region interLATA services.

Finally, section 255(b) includes a restriction on the ability of telecommunications carriers that serve greater than five percent of the nation's presubscribed access lines to jointly market local exchange service purchased from a BOC and interLATA service offered by the telecommunications carrier until such time as the BOC is authorized to provide interLATA services in that telephone exchange area or until three years after the date of enactment, whichever is earlier. New subsection 255(c) provides the process for application by a BOC to provide in region interLATA services, as well as the process for approval or rejection of that application by the Commission and for review by the courts. The application by the BOC must state with particularity the nature and scope of the activity and each product market or service market, as well as the geographic market for which in region interLATA authorization is sought. Within 90 days of receiving an application, the Commission must issue a written determination, after notice and opportunity for a hearing on the record, granting or denying the application in whole or in part. The Commission is required to consult with the Attorney General regarding the application during that 90 day period. The Attorney General may analyze a BOC application under any legal standard (including the Clayton Act, Sherman Act, other antitrust laws, section VIII(C) of the MFJ, Robinson-Patman Act or any other standard).

The Commission may only grant an application, or any part of an application, if the Commission finds that the petitioning BOC has fully implemented the competitive checklist in new section

255(b)(2), that the interLATA services will be provided through a separate subsidiary that meets the requirements of new section 252, and that the provision of the requested interLATA services is consistent with the public interest, convenience, and necessity. As noted earlier, the Commission is specifically prohibited from limiting or extending the terms used in the competitive checklist, and the Senate intends that the determination of whether the checklist has been fully implemented should be a straightforward analysis based on ascertainable facts. Likewise, the Senate believes that the Commission should be able to readily determine if the requested services will or will not be provided through a separate subsidiary that meets all of the requirements of section 252. Finally, the Senate notes that the Commission's determination of whether the provision of the requested interLATA services is consistent with the public interest, convenience, and necessity must be based on substantial evidence on the record as a whole.

Subsection (c) also requires a BOC which is authorized to provide interLATA services under this subsection to provide intraLATA toll dialing parity throughout the market in which that company is authorized to provide interLATA service. In the event that the Commission finds that the BOC has not provided the required intraLATA toll dialing parity, or fails to continue to provide that parity (except for inadvertent interruptions that are beyond the control of the BOC), then the Commission shall suspend the authorization to provide interLATA services in that market until that company provides or restores the required intraLATA toll dialing parity. Lastly, subsection (c) provides that a State may not order a BOC to provide intraLATA toll dialing parity before the company is authorized to provide interLATA services in that area or until three years after the date of enactment, whichever is earlier. However, this restriction does not apply to single LATA States or States that have ordered intraLATA toll dialing in that State prior to June 1, 1995.

BOCs (including any subsidiary or affiliate) are permitted under new section 255(d) to provide interLATA telecommunications services immediately upon the date of enactment of the bill if those services originate in any area in which that BOC is not the dominant provider of wireline telephone exchange service or exchange access service.

New subsection 255(e) establishes the rules for the provision by a BOC of in-region InterLATA services that are incidental to the provision of specific services listed in paragraph (1) of subsection (e). This list of specific services is intended to be narrowly construed by the Commission. A BOC must first obtain authorization under new section 255(c) before it may provide any in region InterLATA services not listed in subsection (e)(1). In addition, the BOC may only provide the services specified in subparagraphs (C) and (D) of subsection (e)(1), which in general are information storage and retrieval services, through the use of telecommunications facilities that are leased from an unaffiliated provider of those services until the BOC receives authority to provide InterLATA services under subsection (c). Finally, subsection (e) requires that the provision of incidental services by the BOC shall not adversely affect telephone exchange ratepayers or competition in any tele-

communications market. The Senate intends that the Commission will ensure that these requirements are met.

New section 255(f) provides that a BOC may provide interLATA service in connection with CMS upon the date of enactment.

The terms "interLATA," "audio programming services," "video programming services," and "other programming services" are defined in new section 255(g).

#### *House amendment*

Section 245 provides the method by which a BOC may seek entry to offer interLATA or long distance, service on a State-by-State basis. Section 245(a) provides that a BOC may file a verification of access and interconnection compliance anytime after six months after the date of enactment. The verification must include, under section 245(a)(1), a State certification of "openness" or the so-called "checklist" requirements, and under section 245(a)(2), either of the following pursuant to section 245(a)(2)(A), the presence of a facilities-based competitor; or pursuant to section 245(a)(2)(B), a statement of the terms and conditions the BOC would make available under section 244, if no provider had requested access and interconnection within three (3) months prior to the BOC filing under section 245. For purposes of section 245(a)(2)(B), a BOC shall not be considered to have received a request for access and interconnection if a requesting provider failed to bargain in good faith, as required under section 242(a)(8), or if the provider failed to comply, within a reasonable time period, with the requirements under section 242(a)(1) to implement the schedule contained in its access and interconnection agreement.

Section 245(b) sets out the "checklist" requirements that must be included in the State certification that the BOC files with the Commission as part of its verification. These checklist requirements include the following: (1) interconnection; (2) unbundling of network elements; (3) resale; (4) number portability; (5) dialing parity; (6) access to conduits and rights-of-way; (7) no State or local barriers to entry; (8) network functionality and accessibility; and (9) good faith negotiations by the BOC. Section 245(c)(1) sets out the Commission review process for interLATA authorization on a Statewide, permanent basis. Under section 245(c)(2), the Commission may conduct a *de nova* review only if a State commission lacks, under relevant State law, the jurisdiction or authority to make the required certification, fails to act within ninety (90) days of receiving a BOC request for certification, or has attempted to impose a term or condition that exceeds its authority, as limited in section 243. Under section 245(c)(3), the Commission has ninety (90) days to approve, disapprove, or approve with conditions the BOC request, unless the BOC consents to a longer period of time. Under section 245(c)(4), the Commission must determine that the BOC has complied with each and every one of the requirements. As mandated in section 245(d), the Commission has continuing authority after approving a BOC's application for entry into long distance to review a BOC's compliance with the certification requirements under this section.

Section 245(f) prohibits a BOC from providing interLATA service, unless authorized by the Commission. Section 245(f) grandfather any activity authorized by court order or pending before the court prior to the date of enactment. Section 245(g) creates exceptions for the provision of incidental services.

Section 245(g)(1) permits a BOC to engage in interLATA activities related to the provision of cable services. Section 245(g)(2) permits a BOC to offer interLATA services over cable system facilities located outside the BOC's region. Section 245(g)(3) allows a BOC to offer CMS, as defined in section 332(d)(1) of the Communications Act. Section 245(g)(4) allows a BOC to engage in interLATA services relevant to the provision of information services from a central computer. Section 245(g) (5) and (6) allow a BOC to engage in interLATA services related to signaling information integral to the internal operation of the telephone network.

Notwithstanding the dialing parity requirements of section 242(a)(5), as provided in section 245(i), a BOC is not required to provide dialing parity for intraLATA toll service ("short haul" long distance) before the BOC is authorized to provide long distance service in that State. Section 245(j) prohibits the Commission from exercising the general authority to forbear from regulation granted to the Commission under section 230 until five years after the date of enactment. Section 245(k) sunsets this section once the Commission and State commission, in the relevant local exchange market, determine that the BOC has become subject to full and open competition.

#### *Conference agreement*

The conference agreement adds a new section 271 to the Communications Act relating to BOC entry into the interLATA market. New section 271(b)(1) requires a BOC to obtain Commission authorization prior to offering interLATA services within its region unless those services are previously authorized, as defined in new section 271(f), or "incidental" to the provision of another service, as defined in new section 271(g), in which case, the interLATA service may be offered after the date of enactment. New section 271(b)(2) permits a BOC to offer out-of-region services immediately after the date of enactment.

New section 271(c) sets out the requirements for a BOC's provision of interLATA services originating in an in-region State (as defined in new section 271(i)). In addition to complying with the specific interconnection requirements under new section 271(c)(2), a BOC must satisfy the "in-region" test by virtue of the presence of a facilities-based competitor or competitors under new section 271(c)(1)(A), or by the failure of a facilities-based competitor to request access or interconnection (under new section 251) as required under new section 271(c)(1)(B). This test that the conference agreement adopts comes virtually verbatim from the House amendment.

With respect to the facilities-based competitor requirement, the presence of a competitor offering the following services specifically does *not* suffice to meet the requirement: (1) exchange access; (2) telephone exchange service offered exclusively through the resale of the BOC's telephone exchange service; and (3) cellular service. The competitor must offer telephone exchange service either exclusively

over its own facilities or predominantly over its own facilities in combination with the resale of another carrier's service.

This conference agreement recognizes that it is unlikely that competitors will have a fully redundant network in place when they initially offer local service, because the investment necessary is so significant. Some facilities and capabilities (e.g., central office switching) will likely need to be obtained from the incumbent local exchange carrier as network elements pursuant to new section 251. Nonetheless, the conference agreement includes the "predominantly over their own telephone exchange service facilities" requirement to ensure a competitor offering service exclusively through the resale of the BOC's telephone exchange service does not qualify, and that an unaffiliated competing provider is present in the market.

The House has specifically considered how to describe the facilities-based competitor in new subsection 271(c)(1)(A). While the definition of facilities-based competition has evolved through the legislative process in the House, the Commerce Committee Report (House Report 104-204 Part I) that accompanied H.R. 1555 pointed out that meaningful facilities-based competition is possible, given that cable services are available to more than 95 percent of United States homes. Some of the initial forays of cable companies into the field of local telephony therefore hold the promise of providing the sort of local residential competition that has consistently been contemplated. For example, large, well established companies such as Time Warner and Jones Intercable are actively pursuing plans to offer local telephone service in significant markets. Similarly, Cablevision has recently entered into an interconnection agreement with New York Telephone with the goal of offering telephony on Long Island to its 650,000 cable subscribers.

For purposes of new section 271(c)(1)(A), the BOC must have entered into one or more binding agreements under which it is providing access and interconnection to one or more competitors providing telephone exchange service to residential and business subscribers. The requirement that the BOC "is providing access and interconnection" means that the competitor has implemented the agreement and the competitor is operational. This requirement is important because it will assist the appropriate State commission in providing its consultation and in the explicit factual determination by the Commission under new section 271(d)(2)(B) that the requesting BOC has fully implemented the interconnection agreement elements set out in the "checklist" under new section 271(c)(2).

New section 271(c)(1)(B) also is adopted from the House amendment, and it is intended to ensure that a BOC is not effectively prevented from seeking entry into the interLATA services market simply because no facilities-based competitor that meets the criteria set out in new section 271(c)(1)(A) has sought to enter the market. The conference agreement stipulates that a BOC may seek entry under new section 271(c)(1)(B) at any time following 10 months after the date of enactment, provided no qualifying facilities-based competitor has requested access and interconnection under new section 251 by the date that is 3 months prior to the date that the BOC seeks interLATA authorization. Consequently, it is important that the Commission rules to implement new sec-

tion 251 be promulgated within 6 months after the date of enactment, so that potential competitors will have the benefit of being informed of the Commission rules in requesting access and interconnection before the statutory window in new section 271(c)(1)(B) shuts.

New section 271(c)(2) sets out the specific interconnection requirements that comprise the "checklist" that a BOC must satisfy as part of its entry test.

In new section 271(d), the conference agreement adopts the basic structure of the Senate bill concerning authorization of BOC entry by the Commission, with a modification to permit the BOC to apply on a State-by-State basis.

New section 271(d) sets forth administrative provisions regarding applications for BOC entry under this section. In making an evaluation, the Attorney General may use any appropriate standard, including: (1) the standard included in the House amendment, whether there is a dangerous probability that the BOC or its affiliates would successfully use market power to substantially impede competition in the market such company seeks to enter; (2) the standard contained in section VIII(C) of the AT&T Consent Decree, whether there is no substantial possibility that the BOC or its affiliates could use monopoly power to impede competition in the market such company seeks to enter; or (3) any other standard the Attorney General deems appropriate.

New section 271(e)(1) prohibits joint marketing of local services obtained from the BOC under new section 251(c)(4) and long distance service within a State by telecommunications carriers with more than five percent of the Nation's pre-subscribed access lines for three years after the date of enactment, or until a BOC is authorized to offer interLATA services within that State, whichever is earlier.

New section 271(e)(2) requires any BOC authorized to offer interLATA services to provide intraLATA toll dialing parity coincident with its exercise of that interLATA authority. States may not order a BOC to implement toll dialing parity prior to its entry into interLATA service. Any single-LATA State or any State that has issued an order by December 19, 1995, requiring a BOC to implement intraLATA toll dialing parity is grandfathered under this Act. The prohibition against "non-grandfathered" States expires three years after the date of enactment.

The conference agreement in new section 271(f) adopts the House provision grandfathering activities under existing waivers. Both the House and Senate bill included separate grandfather provisions for manufacturing in the manufacturing section. The conference agreement combines these separate provisions into one provision covering both interLATA services and manufacturing, and that provision is included in the interLATA section. Because of the new approach to the supersession of the AT&T Consent Decree described below, this section was modified to clarify that requests for waivers pending with the court on the date of enactment are no longer included within this section. Instead, only those waiver requests that have been acted on before the date of enactment will be included. All conduct occurring after the date of enactment will no longer be subject to the AT&T Consent Decree and will be sub-

ject to the Communications Act, as amended by the conference agreement.

New section 271(g) sets out the "incidental" interLATA activities that the BOCs are permitted to provide upon the date of enactment.

#### NEW SECTION 272—SEPARATE AFFILIATE; SAFEGUARDS

##### *Senate bill*

Section 102 of the Senate bill amends the Communications Act to add a new section 252 to impose separate subsidiary and other safeguards on certain activities of the BOCs. Section 102 requires that to the extent a BOC engages in certain businesses, it must do so through an entity that is separate from any entities that provide telephone exchange service. Subsection 252(b) spell out the structural and transactional requirements that apply to the separate subsidiary, section 252(c) details the nondiscrimination safeguards, section 252(d) requires a biennial audit of compliance with the separate subsidiary requirements, sections 252(e) imposes restrictions on joint marketing, and subsection 252(f) sets forth additional requirements with respect to the provision of interLATA services.

The activities that must be separated from the entity providing telephone exchange service include telecommunications equipment manufacturing and interLATA telecommunications services, except out-of-region and incidental services (not including information services) and interLATA services that have been authorized by the MFJ court. A BOC also would have to provide alarm monitoring services and certain information services through a separate subsidiary, including cable services and information services which the company was not permitted to offer before July 24, 1991. In a related provision, section 203 of the bill provides that a BOC need not use a separate affiliate to provide video programming services over a common carrier video platform if it complies with certain obligations.

Under section 252(e) of this section the BOC entity that provides telephone exchange service may not jointly market the services required to be provided through a separate subsidiary with telephone exchange service in an area until that company is authorized to provide interLATA service under new section 255. In addition, a separate subsidiary required under this section may not jointly market its services with the telephone exchange service provided by its affiliated BOC entity unless such entity allows other unaffiliated entities that offer the same or similar services to those that are offered by the separate subsidiary to also market its telephone exchange services.

Additional requirements for the provision of interLATA services are included in new section 252(f). These provisions are intended to reduce litigation by establishing in advance the standard to which a BOC entity that provides telephone exchange service or exchange access service must comply in providing interconnection to an unaffiliated entity.

Section 252(g) establishes rules to ensure that the BOCs protect the confidentiality of proprietary information they receive and to prohibit the sharing of such information in aggregate form with

any subsidiary or affiliate unless that information is available to all other persons on the same terms and conditions. In general, a BOC may not share with anyone customer-specific proprietary information without the consent of the person to whom it relates. Exceptions to this general rule permit disclosure in response to a court order or to initiate, render, bill and collect for telecommunications services.

New subsection 252(h) provides that the Commission may grant exceptions to the requirements of section 252 upon a showing that granting of such exception is necessary for the public interest, convenience, and necessity. The Senate intends this exception authority to be used whenever a requirement of this section is not necessary to protect consumers or to prevent anti-competitive behavior. However, the Senate does not intend that the Commission would grant an exception to the basic separate subsidiary requirements of this section for any service prior to authorizing the provision of interLATA service under section 255 by the BOC seeking the exception to a requirement of this section.

Public utility holding companies that engage in the provision of telecommunications services are required to do so through a separate subsidiary under new section 252(i). In addition, a State may require a public utility company that provides telecommunications services to do so through a separate subsidiary. The separate subsidiary for public utility holding companies is required to meet some, but not all, of the structural separation and nondiscriminatory safeguard provisions that are applicable to BOC subsidiaries. Section 252(i) provides that a public utility holding company shall be treated as a BOC for the purpose of those provisions of section 252 that subsection (i) applies to those holding companies.

Subsection (b) of section 102 requires the Commission to promulgate any regulations necessary to implement new section 252 of the Communications Act within nine months of the date of enactment of this bill. The subsection also provides that any separate subsidiary established or designated by a BOC for purposes of complying with new section 252(a) prior to the issuance of the regulations shall be required to comply with the regulations when they are issued.

Section 102(c) provides that the amendment to the Communications Act made by this section takes effect on the date of enactment of this bill.

##### *House amendment*

Section 246(a) creates a separate subsidiary requirement for the BOC provision of interLATA telecommunications or information services. Section 246(b) requires transactions between a BOC and its subsidiary to be on an arm's length basis. Sections 246(c) and (d) mandates fully separate operations and property, including books, records, and accounts between the BOC and its subsidiary. Sections 246(e) and (f) prohibit discrimination and cross-subsidies, respectively. Under section 246(k), this provision sunsets eighteen months after the date of enactment.

*Conference agreement*

The conference agreement adopts the Senate provisions with several modifications. New section 272 of the Communications Act does not contain the provision in the Senate bill requiring that alarm monitoring services, and the interLATA services that are incidental thereto, be provided through the separate affiliate required by this section. The conferees also accepted the provision in the House amendment that requires a separate affiliate for interLATA information services, other than electronic publishing and alarm monitoring, which permit a customer located in one LATA to retrieve stored information from, or file information for storage in, information storage facilities of such company that are located in another LATA.

The conferees deleted the Senate provision providing for Commission exceptions to the requirements of this section. Instead, the conferees adopted a three year "sunset" of the separate affiliate requirement for interLATA services and manufacturing activities. The three year period commences on the date on which the BOC is authorized to offer interLATA services. In addition, the conference agreement provides that the separate affiliate requirement for interLATA information services "sunssets" four years after the date of enactment of the Telecommunications Act of 1996.

In any case, the Commission is given authority to extend the separate affiliate requirement by rule or order.

New section 272(g)(1) permits the separate affiliate required by this section to jointly market any of its services in conjunction with the telephone exchange services and other services of the BOC so long as the BOC permits other entities offering the same or similar services to sell and market the BOC's telephone exchange services.

New section 272(g)(2) permits a BOC, once it has been authorized to provide interLATA service pursuant to new section 271(d), to jointly market its telephone exchange services in conjunction with the interLATA service being offered by the separate affiliate in that State required by this section.

New section 272(g)(3) provides that the joint marketing authorized by new sections 272(g)(1) and (g)(2) does not violate the non-discrimination safeguards in new subsection (e).

**NEW SECTION 273—MANUFACTURING BY BELL OPERATING COMPANIES***Senate bill*

Section 222 of the Senate bill adds a new section 256 to the Communications Act to remove the restrictions on manufacturing imposed by the MFJ on the BOC's under certain conditions, and allows those companies to engage in manufacturing subject to certain safeguards.

New section 256(a) permits a BOC, through a separate subsidiary that meets the requirements of new section 252, to engage in the manufacture and provision of telecommunications equipment and the manufacture of customer premises equipment (CPE) as soon as that company receives authorization to provide in region interLATA services under new section 255(c).

Subsection (b) of new section 256 requires that a BOC engaged in manufacturing may only do so through a separate subsidiary that meets the requirements of new section 252.

New section 256(c) requires that a BOC make available to local exchange carriers telecommunications equipment and any software integral to that equipment that is manufactured by the BOC's affiliate under certain conditions. The manufacturing subsidiary has the obligation to sell telecommunications equipment to an unaffiliated local telephone exchange carrier. This obligation may only be enforced on the manufacturing subsidiary if the local telephone company either does not manufacture equipment (by itself or through an affiliated entity), or it agrees to make available to the BOC any telecommunications equipment (including software integral to such equipment) that the local telephone company manufactures (by itself or through an affiliated entity) without discrimination or self-preference as to price, delivery, terms, or conditions.

In addition, subsection (c) prohibits a BOC from discriminating with respect to bids for services or equipment, establishing standards or certifying equipment, or the sale of telecommunications equipment and software. A BOC and any entity that the company owns or controls also is required to protect any proprietary information submitted to it with contract bids or with respect to establishing standards or certifying equipment, and may not release that information to anyone unless specifically authorized to do so by the owner of the proprietary information.

New section 256(d) permits a BOC or its subsidiaries or affiliates to engage in close collaboration with any manufacturer of customer premises equipment or telecommunications equipment not affiliated with the BOC during the design and development of hardware, software, or combinations thereof related to customer premises equipment or telecommunications equipment.

Subsection (e) requires the Commission to prescribe regulations to require each BOC to file information concerning technical requirements concerning its telephone exchange facilities.

Subsection (f) of new section 256 simply authorizes the Commission to prescribe such additional rules and regulations as the Commission determines necessary to carry out the provisions and purposes of section 256.

Administration and enforcement of new section 256 are provided for in subsection (g) of that section. Paragraph (1) of new subsection 256(g) makes clear that the Commission has the same authority, power, and functions with respect to the BOC as it has with respect to enforcement or administration of title II for any other common carrier subject to the Communications Act. Paragraph (2) allows any injured party by an act or omission of the BOC or its manufacturing subsidiary which violates the requirements of new section 256 to bring a civil action in any U.S. District Court to recover the full amount of any damages and to obtain any appropriate court order to remedy the violation. In the alternative, the party may seek relief from the Commission pursuant to sections 206 through 209 of the Communications Act.

New section 256(h) makes clear that nothing in new section 256 is intended to change the status of Bell Communications Research (Bellcore). Subsection (h) specifically states that nothing in

**“PART III—SPECIAL PROVISIONS CONCERNING  
BELL OPERATING COMPANIES**

**“SEC. 371. BELL OPERATING COMPANY ENTRY INTO INTERLATA SERVICES.**

**“(a) GENERAL LIMITATION.**—Neither a Bell operating company, nor any affiliate of a Bell operating company, may provide interLATA services except as provided in this section.

**“(b) INTERLATA SERVICES TO WHICH THIS SECTION APPLIES.**—

**“(1) IN-REGION SERVICES.**—A Bell operating company, or any affiliate of that Bell operating company, may provide interLATA services originating in any of its in-region States (as defined in subsection (i)) if the Commission approves the application of such company for such State under subsection (d)(3).

**“(2) OUT-OF-REGION SERVICES.**—A Bell operating company, or any affiliate of that Bell operating company, may provide interLATA services originating outside its in-region States after the date of enactment of the Telecommunications Act of 1996, subject to subsection (j).

**“(3) INCIDENTAL INTERLATA SERVICES.**—A Bell operating company, or any affiliate of a Bell operating company, may provide incidental interLATA services (as defined in subsection (g)) originating in any State after the date of enactment of the Telecommunications Act of 1996.

**“(4) TERMINATION.**—Nothing in this section prohibits a Bell operating company or any of its affiliates from providing termination for interLATA services, subject to subsection (j).

**“(c) REQUIREMENTS FOR PROVIDING CERTAIN IN-REGION INTERLATA SERVICES.**—

**“(1) AGREEMENT OR STATEMENT.**—A Bell operating company meets the requirements of this paragraph if it meets the requirements of subparagraph (A) or subparagraph (B) of this paragraph for each State for which the authorization is sought.

**“(A) PRESENCE OF A FACILITIES-BASED COMPETITOR.**—A Bell operating company meets the requirements of this subparagraph if it has entered into one or more binding agreements that have been approved under section 252 specifying the terms and conditions under which the Bell operating company is providing access and interconnection to its network facilities for the network facilities of one or more unaffiliated competing providers of telephone exchange service (as defined in section 3(47)(A), but excluding exchange access) to residential and business subscribers. For the purpose of this subparagraph, such telephone exchange service may be offered by such competing providers either exclusively over their own telephone exchange service facilities or predominantly over their own telephone exchange service facilities in combination with the resale of the telecommunications services of another carrier. For the purpose of this subparagraph, services provided pursuant to subpart K of part 22 of the Commission’s regulations (47 C.F.R. 22.901 et seq.) shall not be considered to be telephone exchange services.

**"(B) FAILURE TO REQUEST ACCESS.**—A Bell operating company meets the requirements of this subparagraph if, after 10 months after the date of enactment of the Telecommunications Act of 1996, no such provider has requested the access and interconnection described in subparagraph (A) before the date which is 3 months before the date the company makes its application under subsection (d)(1), and a statement of the terms and conditions that the company generally offers to provide such access and interconnection has been approved or permitted to take effect by the State commission under section 252(f). For purposes of this subparagraph, a Bell operating company shall be considered not to have received any request for access and interconnection if the State commission of such State certifies that the only provider or providers making such a request have (i) failed to negotiate in good faith as required by section 252, or (ii) violated the terms of an agreement approved under section 252 by the provider's failure to comply, within a reasonable period of time, with the implementation schedule contained in such agreement.

**"(2) SPECIFIC INTERCONNECTION REQUIREMENTS.**—

**"(A) AGREEMENT REQUIRED.**—A Bell operating company meets the requirements of this paragraph if, within the State for which the authorization is sought—

**"(i)(I)** such company is providing access and interconnection pursuant to one or more agreements described in paragraph (1)(A), or

**"(II)** such company is generally offering access and interconnection pursuant to a statement described in paragraph (1)(B), and

**"(ii)** such access and interconnection meets the requirements of subparagraph (B) of this paragraph.

**"(B) COMPETITIVE CHECKLIST.**—Access or interconnection provided or generally offered by a Bell operating company to other telecommunications carriers meets the requirements of this subparagraph if such access and interconnection includes each of the following:

**"(i)** Interconnection in accordance with the requirements of sections 251(c)(2) and 252(d)(1).

**"(ii)** Nondiscriminatory access to network elements in accordance with the requirements of sections 251(c)(3) and 252(d)(1).

**"(iii)** Nondiscriminatory access to the poles, ducts, conduits, and rights-of-way owned or controlled by the Bell operating company at just and reasonable rates in accordance with the requirements of section 224.

**"(iv)** Local loop transmission from the central office to the customer's premises, unbundled from local switching or other services.

**"(v)** Local transport from the trunk side of a wireline local exchange carrier switch unbundled from switching or other services.

**"(vi)** Local switching unbundled from transport, local loop transmission, or other services.

**"(vii) Nondiscriminatory access to—**

**"(I)** 911 and E911 services;

**"(II)** directory assistance services to allow the other carrier's customers to obtain telephone numbers; and

**"(III)** operator call completion services.

**"(viii)** White pages directory listings for customers of the other carrier's telephone exchange service.

**"(ix)** Until the date by which telecommunications numbering administration guidelines, plan, or rules are established, nondiscriminatory access to telephone numbers for assignment to the other carrier's telephone exchange service customers. After that date, compliance with such guidelines, plan, or rules.

**"(x)** Nondiscriminatory access to databases and associated signaling necessary for call routing and completion.

**"(xi)** Until the date by which the Commission issues regulations pursuant to section 251 to require number portability, interim telecommunications number portability through remote call forwarding, direct inward dialing trunks, or other comparable arrangements, with as little impairment of functioning, quality, reliability, and convenience as possible. After that date, full compliance with such regulations.

**"(xii)** Nondiscriminatory access to such services or information as are necessary to allow the requesting carrier to implement local dialing parity in accordance with the requirements of section 251(b)(3).

**"(xiii)** Reciprocal compensation arrangements in accordance with the requirements of section 252(d)(2).

**"(xiv)** Telecommunications services are available for resale in accordance with the requirements of sections 251(c)(4) and 252(d)(3).

**"(d) ADMINISTRATIVE PROVISIONS.**—

**"(1) APPLICATION TO COMMISSION.**—On and after the date of enactment of the Telecommunications Act of 1996, a Bell operating company or its affiliate may apply to the Commission for authorization to provide interLATA services originating in any in-region State. The application shall identify each State for which the authorization is sought.

**"(2) CONSULTATION.**—

**"(A) CONSULTATION WITH THE ATTORNEY GENERAL.**—The Commission shall notify the Attorney General promptly of any application under paragraph (1). Before making any determination under this subsection, the Commission shall consult with the Attorney General, and if the Attorney General submits any comments in writing, such comments shall be included in the record of the Commission's decision. In consulting with and submitting comments to the Commission under this paragraph, the Attorney General shall provide to the Commission an evaluation of the application using any standard the Attorney General considers appropriate. The Commission shall give substantial weight

to the Attorney General's evaluation, but such evaluation shall not have any preclusive effect on any Commission decision under paragraph (3).

**"(B) CONSULTATION WITH STATE COMMISSIONS.**—Before making any determination under this subsection, the Commission shall consult with the State commission of any State that is the subject of the application in order to verify the compliance of the Bell operating company with the requirements of subsection (c).

**"(3) DETERMINATION.**—Not later than 90 days after receiving an application under paragraph (1), the Commission shall issue a written determination approving or denying the authorization requested in the application for each State. The Commission shall not approve the authorization requested in an application submitted under paragraph (1) unless it finds that—

**"(A)** the petitioning Bell operating company has met the requirements of subsection (c)(1) and—

**"(i)** with respect to access and interconnection provided pursuant to subsection (c)(1)(A), has fully implemented the competitive checklist in subsection (c)(2)(B);  
or

**"(ii)** with respect to access and interconnection generally offered pursuant to a statement under subsection (c)(1)(B), such statement offers all of the items included in the competitive checklist in subsection (c)(2)(B);

**"(B)** the requested authorization will be carried out in accordance with the requirements of section 272; and

**"(C)** the requested authorization is consistent with the public interest, convenience, and necessity.

The Commission shall state the basis for its approval or denial of the application.

**"(4) LIMITATION ON COMMISSION.**—The Commission may not, by rule or otherwise, limit or extend the terms used in the competitive checklist set forth in subsection (c)(2)(B).

**"(5) PUBLICATION.**—Not later than 10 days after issuing a determination under paragraph (3), the Commission shall publish in the Federal Register a brief description of the determination.

**"(6) ENFORCEMENT OF CONDITIONS.**—

**"(A) COMMISSION AUTHORITY.**—If at any time after the approval of an application under paragraph (3), the Commission determines that a Bell operating company has ceased to meet any of the conditions required for such approval, the Commission may, after notice and opportunity for a hearing—

**"(i)** issue an order to such company to correct the deficiency;

**"(ii)** impose a penalty on such company pursuant to title V; or

**"(iii)** suspend or revoke such approval.

**"(B) RECEIPT AND REVIEW OF COMPLAINTS.**—The Commission shall establish procedures for the review of complaints concerning failures by Bell operating companies to meet conditions required for approval under paragraph (3).

Unless the parties otherwise agree, the Commission shall act on such complaint within 90 days.

**"(e) LIMITATIONS.**—

**"(1) JOINT MARKETING OF LOCAL AND LONG DISTANCE SERVICES.**—Until a Bell operating company is authorized pursuant to subsection (d) to provide interLATA services in an in-region State, or until 36 months have passed since the date of enactment of the Telecommunications Act of 1996, whichever is earlier, a telecommunications carrier that serves greater than 5 percent of the Nation's presubscribed access lines may not jointly market in such State telephone exchange service obtained from such company pursuant to section 251(c)(4) with interLATA services offered by that telecommunications carrier.

**"(2) INTRALATA TOLL DIALING PARITY.**—

**"(A) PROVISION REQUIRED.**—A Bell operating company granted authority to provide interLATA services under subsection (d) shall provide intraLATA toll dialing parity throughout that State coincident with its exercise of that authority.

**"(B) LIMITATION.**—Except for single-LATA States and States that have issued an order by December 19, 1995, requiring a Bell operating company to implement intraLATA toll dialing parity, a State may not require a Bell operating company to implement intraLATA toll dialing parity in that State before a Bell operating company has been granted authority under this section to provide interLATA services originating in that State or before 3 years after the date of enactment of the Telecommunications Act of 1996, whichever is earlier. Nothing in this subparagraph precludes a State from issuing an order requiring intraLATA toll dialing parity in that State prior to either such date so long as such order does not take effect until after the earlier of either such dates.

**"(f) EXCEPTION FOR PREVIOUSLY AUTHORIZED ACTIVITIES.**—Neither subsection (a) nor section 273 shall prohibit a Bell operating company or affiliate from engaging, at any time after the date of enactment of the Telecommunications Act of 1996, in any activity to the extent authorized by, and subject to the terms and conditions contained in, an order entered by the United States District Court for the District of Columbia pursuant to section VII or VIII(C) of the AT&T Consent Decree if such order was entered on or before such date of enactment, to the extent such order is not reversed or vacated on appeal. Nothing in this subsection shall be construed to limit, or to impose terms or conditions on, an activity in which a Bell operating company is otherwise authorized to engage under any other provision of this section.

**"(g) DEFINITION OF INCIDENTAL INTERLATA SERVICES.**—For purposes of this section, the term 'incidental interLATA services' means the interLATA provision by a Bell operating company or its affiliate—

**"(1)(A)** of audio programming, video programming, or other programming services to subscribers to such services of such company or affiliate;

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

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

"(D) of alarm monitoring services;

"(2) of two-way interactive video services or Internet services over dedicated facilities to or for elementary and secondary schools as defined in section 254(h)(5);

"(3) of commercial mobile services in accordance with section 332(c) of this Act and with the regulations prescribed by the Commission pursuant to paragraph (8) of such section;

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

"(5) of signaling information used in connection with the provision of telephone exchange services or exchange access by a local exchange carrier; or

"(6) of network control signaling information to, and receipt of such signaling information from, common carriers offering interLATA services at any location within the area in which such Bell operating company provides telephone exchange services or exchange access.

"(h) LIMITATIONS.—The provisions of subsection (g) are intended to be narrowly construed. The interLATA services provided under subparagraph (A), (B), or (C) of subsection (g)(1) are limited to those interLATA transmissions incidental to the provision by a Bell operating company or its affiliate of video, audio, and other programming services that the company or its affiliate is engaged in providing to the public. The Commission shall ensure that the provision of services authorized under subsection (g) by a Bell operating company or its affiliate will not adversely affect telephone exchange service ratepayers or competition in any telecommunications market.

"(i) ADDITIONAL DEFINITIONS.—As used in this section—

"(1) IN-REGION STATE.—The term 'in-region State' means a State in which a Bell operating company or any of its affiliates was authorized to provide wireline telephone exchange service pursuant to the reorganization plan approved under the AT&T Consent Decree, as in effect on the day before the date of enactment of the Telecommunications Act of 1996.

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

"(3) VIDEO PROGRAMMING SERVICES; OTHER PROGRAMMING SERVICES.—The terms 'video programming service' and 'other programming services' have the same meanings as such terms have under section 602 of this Act.

"(j) CERTAIN SERVICE APPLICATIONS TREATED AS IN-REGION SERVICE APPLICATIONS.—For purposes of this section, a Bell operat-

ing company application to provide 800 service, private line service, or their equivalents that—

"(1) terminate in an in-region State of that Bell operating company, and

"(2) allow the called party to determine the interLATA carrier, shall be considered an in-region service subject to the requirements of subsection (b)(1).

**"SEC. 273. SEPARATE AFFILIATE; SAFEGUARDS.**

**"(a) SEPARATE AFFILIATE REQUIRED FOR COMPETITIVE ACTIVITIES.—**

"(1) IN GENERAL.—A Bell operating company (including any affiliate) which is a local exchange carrier that is subject to the requirements of section 251(c) may not provide any service described in paragraph (2) unless it provides that service through one or more affiliates that—

"(A) are separate from any operating company entity that is subject to the requirements of section 251(c); and

"(B) meet the requirements of subsection (b).

"(2) SERVICES FOR WHICH A SEPARATE AFFILIATE IS REQUIRED.—The services for which a separate affiliate is required by paragraph (1) are:

"(A) Manufacturing activities (as defined in section 273(h)).

"(B) Origination of interLATA telecommunications services, other than—

"(i) incidental interLATA services described in paragraphs (1), (2), (3), (5), and (6) of section 271(g);

"(ii) out-of-region services described in section 271(b)(2); or

"(iii) previously authorized activities described in section 271(f).

"(C) InterLATA information services, other than electronic publishing (as defined in section 274(h)) and alarm monitoring services (as defined in section 275(e)).

**"(b) STRUCTURAL AND TRANSACTIONAL REQUIREMENTS.—**The separate affiliate required by this section—

"(1) shall operate independently from the Bell operating company;

"(2) shall maintain books, records, and accounts in the manner prescribed by the Commission which shall be separate from the books, records, and accounts maintained by the Bell operating company of which it is an affiliate;

"(3) shall have separate officers, directors, and employees from the Bell operating company of which it is an affiliate;

"(4) may not obtain credit under any arrangement that would permit a creditor, upon default, to have recourse to the assets of the Bell operating company; and

"(5) shall conduct all transactions with the Bell operating company of which it is an affiliate on an arm's length basis with any such transactions reduced to writing and available for public inspection.

**"(c) NONDISCRIMINATION SAFEGUARDS.—**In its dealings with its affiliate described in subsection (a), a Bell operating company—

"(1) may not discriminate between that company or affiliate and any other entity in the provision or procurement of goods, services, facilities, and information, or in the establishment of standards; and

"(2) shall account for all transactions with an affiliate described in subsection (a) in accordance with accounting principles designated or approved by the Commission.

"(d) BIENNIAL AUDIT.—

"(1) GENERAL REQUIREMENT.—A company required to operate a separate affiliate under this section shall obtain and pay for a joint Federal/State audit every 2 years conducted by an independent auditor to determine whether such company has complied with this section and the regulations promulgated under this section, and particularly whether such company has complied with the separate accounting requirements under subsection (b).

"(2) RESULTS SUBMITTED TO COMMISSION; STATE COMMISSIONS.—The auditor described in paragraph (1) shall submit the results of the audit to the Commission and to the State commission of each State in which the company audited provides service, which shall make such results available for public inspection. Any party may submit comments on the final audit report.

"(3) ACCESS TO DOCUMENTS.—For purposes of conducting audits and reviews under this subsection—

"(A) the independent auditor, the Commission, and the State commission shall have access to the financial accounts and records of each company and of its affiliates necessary to verify transactions conducted with that company that are relevant to the specific activities permitted under this section and that are necessary for the regulation of rates;

"(B) the Commission and the State commission shall have access to the working papers and supporting materials of any auditor who performs an audit under this section; and

"(C) the State commission shall implement appropriate procedures to ensure the protection of any proprietary information submitted to it under this section.

"(e) FULFILLMENT OF CERTAIN REQUESTS.—A Bell operating company and an affiliate that is subject to the requirements of section 251(c)—

"(1) shall fulfill any requests from an unaffiliated entity for telephone exchange service and exchange access within a period no longer than the period in which it provides such telephone exchange service and exchange access to itself or to its affiliates;

"(2) shall not provide any facilities, services, or information concerning its provision of exchange access to the affiliate described in subsection (a) unless such facilities, services, or information are made available to other providers of interLATA services in that market on the same terms and conditions;

"(3) shall charge the affiliate described in subsection (a), or impute to itself (if using the access for its provision of its own services), an amount for access to its telephone exchange service

and exchange access that is no less than the amount charged to any unaffiliated interexchange carriers for such service; and

"(4) may provide any interLATA or intraLATA facilities or services to its interLATA affiliate if such services or facilities are made available to all carriers at the same rates and on the same terms and conditions, and so long as the costs are appropriately allocated.

"(f) SUNSET.—

"(1) MANUFACTURING AND LONG DISTANCE.—The provisions of this section (other than subsection (e)) shall cease to apply with respect to the manufacturing activities or the interLATA telecommunications services of a Bell operating company 3 years after the date such Bell operating company or any Bell operating company affiliate is authorized to provide interLATA telecommunications services under section 271(d), unless the Commission extends such 3-year period by rule or order.

"(2) INTERLATA INFORMATION SERVICES.—The provisions of this section (other than subsection (e)) shall cease to apply with respect to the interLATA information services of a Bell operating company 4 years after the date of enactment of the Telecommunications Act of 1996, unless the Commission extends such 4-year period by rule or order.

"(3) PRESERVATION OF EXISTING AUTHORITY.—Nothing in this subsection shall be construed to limit the authority of the Commission under any other section of this Act to prescribe safeguards consistent with the public interest, convenience, and necessity.

"(g) JOINT MARKETING.—

"(1) AFFILIATE SALES OF TELEPHONE EXCHANGE SERVICES.—A Bell operating company affiliate required by this section may not market or sell telephone exchange services provided by the Bell operating company unless that company permits other entities offering the same or similar service to market and sell its telephone exchange services.

"(2) BELL OPERATING COMPANY SALES OF AFFILIATE SERVICES.—A Bell operating company may not market or sell interLATA service provided by an affiliate required by this section within any of its in-region States until such company is authorized to provide interLATA services in such State under section 271(d).

"(3) RULE OF CONSTRUCTION.—The joint marketing and sale of services permitted under this subsection shall not be considered to violate the nondiscrimination provisions of subsection (c).

"(h) TRANSITION.—With respect to any activity in which a Bell operating company is engaged on the date of enactment of the Telecommunications Act of 1996, such company shall have one year from such date of enactment to comply with the requirements of this section.

"SEC. 273. MANUFACTURING BY BELL OPERATING COMPANIES.

"(a) AUTHORIZATION.—A Bell operating company may manufacture and provide telecommunications equipment, and manufacture customer premises equipment, if the Commission authorizes that Bell operating company or any Bell operating company affiliate to

the information service provider includes in response to each call an introductory disclosure message that—

“(A) clearly states that there is a charge for the call;

“(B) clearly states the service’s total cost per minute and any other fees for the service or for any service to which the caller may be transferred;

“(C) explains that the charges must be billed on either a credit, prepaid, debit, charge, or calling card;

“(D) asks the caller for the card number;

“(E) clearly states that charges for the call begin at the end of the introductory message; and

“(F) clearly states that the caller can hang up at or before the end of the introductory message without incurring any charge whatsoever.

“(10) **BYPASS OF INTRODUCTORY DISCLOSURE MESSAGE.**—

The requirements of paragraph (9) shall not apply to calls from repeat callers using a bypass mechanism to avoid listening to the introductory message, provided that information providers shall disable such a bypass mechanism after the institution of any price increase and for a period of time determined to be sufficient by the Federal Trade Commission to give callers adequate and sufficient notice of a price increase.

“(11) **DEFINITION OF CALLING CARD.**—As used in this subsection, the term ‘calling card’ means an identifying number or code unique to the individual, that is issued to the individual by a common carrier and enables the individual to be charged by means of a phone bill for charges incurred independent of where the call originates.”

(2) **REGULATIONS.**—The Federal Communications Commission shall revise its regulations to comply with the amendment made by paragraph (1) not later than 180 days after the date of enactment of this Act.

(3) **EFFECTIVE DATE.**—The amendments made by paragraph (1) shall take effect on the date of enactment of this Act.

(b) **CLARIFICATION OF “PAY-PER-CALL SERVICES”.**—

(1) **TELEPHONE DISCLOSURE AND DISPUTE RESOLUTION ACT.**—Section 204(1) of the Telephone Disclosure and Dispute Resolution Act (15 U.S.C. 5714(1)) is amended to read as follows:

“(1) The term ‘pay-per-call services’ has the meaning provided in section 228(i) of the Communications Act of 1934, except that the Commission by rule may, notwithstanding subparagraphs (B) and (C) of section 228(i)(1) of such Act, extend such definition to other similar services providing audio information or audio entertainment if the Commission determines that such services are susceptible to the unfair and deceptive practices that are prohibited by the rules prescribed pursuant to section 201(a).”

(2) **COMMUNICATIONS ACT.**—Section 228(i)(2) (47 U.S.C. 228(i)(2)) is amended by striking “or any service the charge for which is tariffed.”

**SEC. 702. PRIVACY OF CUSTOMER INFORMATION.**

Title II is amended by inserting after section 221 (47 U.S.C. 221) the following new section:

**"SEC. 222. PRIVACY OF CUSTOMER INFORMATION.**

**"(a) IN GENERAL.**—Every telecommunications carrier has a duty to protect the confidentiality of proprietary information of, and relating to, other telecommunication carriers, equipment manufacturers, and customers, including telecommunication carriers reselling telecommunications services provided by a telecommunications carrier.

**"(b) CONFIDENTIALITY OF CARRIER INFORMATION.**—A telecommunications carrier that receives or obtains proprietary information from another carrier for purposes of providing any telecommunications service shall use such information only for such purpose, and shall not use such information for its own marketing efforts.

**"(c) CONFIDENTIALITY OF CUSTOMER PROPRIETARY NETWORK INFORMATION.**—

**"(1) PRIVACY REQUIREMENTS FOR TELECOMMUNICATIONS CARRIERS.**—Except as required by law or with the approval of the customer, a telecommunications carrier that receives or obtains customer proprietary network information by virtue of its provision of a telecommunications service shall only use, disclose, or permit access to individually identifiable customer proprietary network information in its provision of (A) the telecommunications service from which such information is derived, or (B) services necessary to, or used in, the provision of such telecommunications service, including the publishing of directories.

**"(2) DISCLOSURE ON REQUEST BY CUSTOMERS.**—A telecommunications carrier shall disclose customer proprietary network information, upon affirmative written request by the customer, to any person designated by the customer.

**"(3) AGGREGATE CUSTOMER INFORMATION.**—A telecommunications carrier that receives or obtains customer proprietary network information by virtue of its provision of a telecommunications service may use, disclose, or permit access to aggregate customer information other than for the purposes described in paragraph (1). A local exchange carrier may use, disclose, or permit access to aggregate customer information other than for purposes described in paragraph (1) only if it provides such aggregate information to other carriers or persons on reasonable and nondiscriminatory terms and conditions upon reasonable request therefor.

**"(d) EXCEPTIONS.**—Nothing in this section prohibits a telecommunications carrier from using, disclosing, or permitting access to customer proprietary network information obtained from its customers, either directly or indirectly through its agents—

**"(1)** to initiate, render, bill, and collect for telecommunications services;

**"(2)** to protect the rights or property of the carrier, or to protect users of those services and other carriers from fraudulent, abusive, or unlawful use of, or subscription to, such services; or

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

"(e) **SUBSCRIBER LIST INFORMATION.**—Notwithstanding subsections (b), (c), and (d), a telecommunications carrier that provides telephone exchange service shall provide subscriber list information gathered in its capacity as a provider of such service on a timely and unbundled basis, under nondiscriminatory and reasonable rates, terms, and conditions, to any person upon request for the purpose of publishing directories in any format.

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

"(1) **CUSTOMER PROPRIETARY NETWORK INFORMATION.**—The term 'customer proprietary network information' means—

"(A) information that relates to the quantity, technical configuration, type, destination, and amount of use of a telecommunications service subscribed to by any customer of a telecommunications carrier, and that is made available to the carrier by the customer solely by virtue of the carrier-customer relationship; and

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

except that such term does not include subscriber list information.

"(2) **AGGREGATE INFORMATION.**—The term 'aggregate customer information' means collective data that relates to a group or category of services or customers, from which individual customer identities and characteristics have been removed.

"(3) **SUBSCRIBER LIST INFORMATION.**—The term 'subscriber list information' means any information—

"(A) identifying the listed names of subscribers of a carrier and such subscribers' telephone numbers, addresses, or primary advertising classifications (as such classifications are assigned at the time of the establishment of such service), or any combination of such listed names, numbers, addresses, or classifications; and

"(B) that the carrier or an affiliate has published, caused to be published, or accepted for publication in any directory format."

#### SEC. 703. POLE ATTACHMENTS.

Section 224 (47 U.S.C. 224) is amended—

(1) in subsection (a)(1), by striking the first sentence and inserting the following: "The term 'utility' means any person who is a local exchange carrier or an electric, gas, water, steam, or other public utility, and who owns or controls poles, ducts, conduits, or rights-of-way used, in whole or in part, for any wire communications."

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

(3) by inserting after subsection (a)(4) the following:

"(5) For purposes of this section, the term 'telecommunications carrier' (as defined in section 3 of this Act) does not include any incumbent local exchange carrier as defined in section 251(h).";

(4) by inserting after "conditions" in subsection (c)(1) a comma and the following: "or access to poles, ducts, conduits, and rights-of-way as provided in subsection (f).";

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

(6) by inserting after subsection (d)(2) the following:

"(3) This subsection shall apply to the rate for any pole attachment used by a cable television system solely to provide cable service. Until the effective date of the regulations required under subsection (e), this subsection shall also apply to the rate for any pole attachment used by a cable system or any telecommunications carrier (to the extent such carrier is not a party to a pole attachment agreement) to provide any telecommunications service."; and

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

"(e)(1) The Commission shall, no later than 2 years after the date of enactment of the Telecommunications Act of 1996, prescribe regulations in accordance with this subsection to govern the charges for pole attachments used by telecommunications carriers to provide telecommunications services, when the parties fail to resolve a dispute over such charges. Such regulations shall ensure that a utility charges just, reasonable, and nondiscriminatory rates for pole attachments.

"(2) A utility shall apportion the cost of providing space on a pole, duct, conduit, or right-of-way other than the usable space among entities so that such apportionment equals two-thirds of the costs of providing space other than the usable space that would be allocated to such entity under an equal apportionment of such costs among all attaching entities.

"(3) A utility shall apportion the cost of providing usable space among all entities according to the percentage of usable space required for each entity.

"(4) The regulations required under paragraph (1) shall become effective 5 years after the date of enactment of the Telecommunications Act of 1996. Any increase in the rates for pole attachments that result from the adoption of the regulations required by this subsection shall be phased in equal annual increments over a period of 5 years beginning on the effective date of such regulations.

"(f)(1) A utility shall provide a cable television system or any telecommunications carrier with nondiscriminatory access to any pole, duct, conduit, or right-of-way owned or controlled by it.

"(2) Notwithstanding paragraph (1), a utility providing electric service may deny a cable television system or any telecommunications carrier access to its poles, ducts, conduits, or rights-of-way, on a non-discriminatory basis where there is insufficient capacity and for reasons of safety, reliability and generally applicable engineering purposes.

"(g) A utility that engages in the provision of telecommunications services or cable services shall impute to its costs of providing such services (and charge any affiliate, subsidiary, or associate company engaged in the provision of such services) an equal amount to the pole attachment rate for which such company would be liable under this section.

"(h) Whenever the owner of a pole, duct, conduit, or right-of-way intends to modify or alter such pole, duct, conduit, or right-of-way,

sale of the programming delivered by the direct-to-home satellite service. The conference agreement amends the House provisions to clarify that the exemption applies to taxes "on" direct-to-home satellite service rather than "with respect to the provision of" such service. The conference agreement deletes the language specifying that the sale of equipment was not within the exemption. The conference agreement amends the definition of "direct-to-home satellite service" so that it includes only programming transmitted or broadcast by satellite.

The intent of these amendments is to clarify that the exemption applies only to the programming provided by the direct-to-home satellite service. To give two illustrative examples, the exemption does not apply to the sale of equipment; that language was deleted only because it could have created a negative implication that the exemption was broader than intended. In addition, the exemption does not apply to real estate taxes that are otherwise applicable when the provider owns or leases real estate in a jurisdiction. Also, States are free to tax the sale of the service and they may rebate some or all of those monies to localities if they so desire.

## TITLE VII—MISCELLANEOUS PROVISIONS

### SECTION 701—PREVENTION OF UNFAIR BILLING PRACTICES FOR INFORMATION OR SERVICES PROVIDED OVER TOLL-FREE TELEPHONE CALLS

#### *Senate bill*

Section 406 of the Senate bill amends section 228(c) of the Communications Act to add protection against the use of toll free telephone numbers to connect an individual to a "pay-per-call" service. Published reports have indicated that toll free numbers have been used to defeat the blocking of "pay-per-call" numbers by connecting a caller to a "pay-per-call" service after a toll free connection has been made. Households, businesses and other institutions have been billed for "pay-per-call" charges even though "pay-per-call" blocking techniques were used. This provision is intended to stop that practice.

Section 703 of the Senate bill also amends section 228(c) of the Communications Act to clarify that subscribers who call an 800 number or other toll-free numbers shall not be charged for the calls unless the calling party agrees to be charged under a written subscription agreement or other appropriate means. Section 703(a) enumerates findings made by Congress concerning the prevention of unfair billing practices for information or services provided over toll-free telephone calls.

#### *House amendment*

Section 110 protects unsuspecting callers from being charged for 800 calls that they expect to be toll-free—thereby preserving the toll-free status and integrity of the 800 number exchange and \$8 billion industry—by requiring strict cost disclosure requirements to ensure that consumers clearly know when there is a charge for a call, how much the charge will be, and how they will be billed.

Pursuant to the provisions of this section, information providers must obtain legal, informed consent from a caller through either a written pre-authorized contract between the information providers and the caller, or through the use of an instructive preamble at the start of all non-free 800 calls. Both of these options ensure that consumers know there is a charge for the information service and that they are giving their consent to be charged.

#### *Conference agreement*

The conference agreement adopts the Senate provisions with modifications. The conferees agreed to close a loophole in current law, which permits information providers to evade the restrictions of section 228 by filing tariffs for the provision of information services. Many information providers have taken advantage of this exemption by filing tariffs—especially for 1-500, 1-700 and 10XXX numbers—and charging customers high prices for the services. This exemption has proven to be a problem because consumers have none of the protections that were enacted as part of the Telephone Disclosure and Dispute Resolution Act (P.L. 102-556). Section 701(b) of the conference agreement closes that loophole.

### SECTION 702—PRIVACY OF CUSTOMER INFORMATION

#### *Senate bill*

Section 102 of the Senate bill amends the Communications Act to add a new section 252 to impose separate affiliate and other safeguards on certain activities of the BOCs. Subsection (g) of new section 252 establishes rules to ensure that the BOCs protect the confidentiality of proprietary information they receive and to prohibit the sharing of such information in aggregate form with any subsidiary or affiliate unless that information is available to all other persons on the same terms and conditions. In general, a BOC may not share with anyone customer-specific proprietary information without the consent of the person to whom it relates. Exceptions to this general rule permit disclosure in response to a court order or to initiate, render, bill and collect for telecommunications services. For purposes of this subsection the term "customer proprietary information" does not include subscriber list information.

Subsection 301(c) of the Senate bill defines the term "subscriber list information" and requires local exchange carriers to provide subscriber list information on a timely and unbundled basis and at nondiscriminatory and reasonable rates, terms and conditions to anyone upon request for the purpose of publishing directories in any format.

Subsection 301(d) provides that telecommunications carriers have a duty to protect the confidentiality of proprietary information of other common carriers and customers, including resellers. A telecommunications carrier that receives such from another carrier may not use such information for its own marketing efforts.

#### *House amendment*

Section 105 of the House amendment adds a new section 222 to the Communications Act. Section 222 establishes privacy protections for customer proprietary network information (CPNI). Section

222(a) imposes on carriers a statutory duty to provide subscriber list information on a timely basis, under nondiscriminatory and reasonable rates, terms and conditions, to any publisher of directories upon request.

Section 222(b)(1)(B) prohibits the use of CPNI "in the identifications or solicitation of potential customers for any service other than the service from which such information is derived."

With respect to section 222(b)(2), the House recognizes that carriers are likely to incur some costs in complying with the customer-requested disclosures contemplated by this section. This section does not preclude a carrier from being reimbursed by the customers or third parties for the costs associated with making such disclosures. In addition, the disclosures described in this section include only the information provided to the carrier by the customer. A carrier is not required to disclose any of its work product based on such information.

In section 222(b)(3), the term "aggregate information" should not be construed as a mechanism whereby carriers are forced to disclose sensitive information to their competitors. Indeed, the key component of "aggregate information" is that such information would have to be able to be disclosed only to those persons who have the approval of the customer. Thus, the House intends that the use of "aggregate information" would be rather limited or restricted.

Section 222(c) states that this section shall not prevent the use of CPNI to combat toll fraud or to bill and collect for services requested by the customers.

Section 222(d) allows the Commission to exempt from its requirements of subsection (b) carriers with fewer than 500,000 access lines, if the Commission determines either that such an exemption is in the public interest or that compliance would impose an undue burden.

Section 222(e) defines terms used in this section.

Section 104(b) directs the Commission to review the impact of converging communications technologies on customer privacy. This section requires the Commission to commence a proceeding within one year after the date of enactment to examine the impact of converging technologies and globalization of communications networks has on the privacy rights of consumers and possible remedies to protect them. This section also directs changes in the Commission's regulations to ensure that customer privacy rights are considered in the introduction of new telecommunications service and directs the Commission to correct any defects in its privacy regulations that are identified pursuant to this section. The Commission is also directed to make any recommendations to Congress for any legislative changes required to correct such defects within 18 months after the date of enactment of this Act.

This section defines three fundamental principles to protect all consumers. These principles are: (1) the right of consumers to know the specific information that is being collected about them; (2) the right of consumers to have proper notice that such information is being used for other purposes; and (3) the right of consumers to stop the reuse or sale of that information.

### *Conference agreement*

The conference agreement adopts the Senate provisions with modifications. Section 702 of the conference agreement amends title II of the Communications Act by adding a new section 222.

In general, the new section 222 strives to balance both competitive and consumer privacy interests with respect to CPNI. New subsection 222(a) stipulates that it is the duty of every telecommunications carrier to protect the confidentiality of proprietary information of and relating to other carriers, equipment manufacturers and customers, including carriers reselling telecommunications services provided by a telecommunications carrier.

New subsection 222(b) provides that a telecommunications carrier that receives or obtains proprietary information from another carrier for purposes of providing any telecommunications service shall use such information only for such purpose and shall not use such information for its own marketing efforts.

In new subsection 222(c) use of CPNI by telecommunications carriers is limited, except as provided by law or with the approval of the customer. New subsection (c) specifies that telecommunications carriers shall only use, disclose, or permit access to individually identifiable CPNI in its provision of the telecommunications service for which such information is derived or in its provision of services necessary to or used in the provision of such telecommunications service, including directory services. The conferees also agreed upon a provision that will require disclosure of CPNI by a telecommunications carrier upon affirmative written request by the customer, to any person designated by the customer.

The conference agreement also asserts carriers' rights in new subsection 222(d) to use CPNI to initiate, render, bill, and collect for telecommunications service. New subsection (d) also allows use of CPNI to protect the rights or property of the carrier. The conferees intend new subsection 222(d)(2) to allow carriers to use CPNI in limited fashion for credit evaluation to protect themselves from fraudulent operators who subscribe to telecommunications services, run up large bills, and then change carriers without payment.

New subsection 222(e) stipulates that subscriber list information shall be made available by telecommunications carriers that provide telephone exchange service on a timely and unbundled basis to any person upon request for the purpose of publishing directories in any format. The subscriber list information provision guarantees independent publishers access to subscriber list information at reasonable and nondiscriminatory rates, terms and conditions from any provider of local telephone service.

New subsection 222(f) contains definitions of CPNI, aggregate information and subscriber list information.

### SECTION 703—POLE ATTACHMENTS

#### *Senate bill*

Section 204 of the Senate bill amends section 224 of the Communications Act. Section 204 requires that poles, ducts, conduits and rights-of-way controlled by utilities are made available to cable television systems at the rates, terms and conditions that are just

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**AirTouch Communications, Inc.**

**Ex Parte Presentation**

**General Docket No. 90-314**

Kathleen Abernathy  
and David Gross

August 24, 1995

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