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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

Before the
Federal Communications Commission
Washington, D.C. 20554

In the matter of	)	
	)	
Implementation of Section 273	)	
of the Communications Act of	)	CC Docket No. 96-254
1934, as amended in the	)	
Telecommunications Act of 1996	)	

REPLY OF AD HOC COALITION OF
TELECOMMUNICATIONS MANUFACTURING COMPANIES

The ad hoc manufacturer coalition submits this Reply in order to discuss proposals which TIA makes in its opening comments for interpreting two aspects of Section 273. We discuss each TIA proposal below.[1/]

TIA first asks the FCC to give subsection (b)(1) an interpretation which we believe would be unlawful. That provision provides that the bar against Bell participation in manufacturing in "[s]ubsection (a) shall not prohibit a Bell operating company from engaging in close collaboration with any manufacturer. . . ." TIA asks the Commission to hold that this authority permits a Bell company to collaborate only in a way which does not require the Bell company to engage in "manufacturing" activity as that term is used in subsection (a).[2/] But we think this holding would violate the

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1/ The coalition submitting this Reply consists of seven of the 12 companies which filed opening comments (American Pipe & Plastics; Axes Technologies; H & L Instruments; LC Technologies; Remarque Mfg. Corp.; Sequoia Electronics; and Telect;) and one additional company (Teltrend Inc.).

2/ TIA Comments at 12-14.

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"cardinal rule of statutory construction that significance and effect should, if possible . . . be accorded every part of . . . [a statute], including every section, paragraph, . . . [and] sentence . . . ."[3] Interpreting subsection (b)(1) as authorizing collaboration only if it does not result in Bell involvement in manufacturing within the meaning of subsection (a) would violate this rule by rendering subsection (b)(1) meaningless since nothing in subsection (a) bars a Bell company from collaborating in a way that does not involve the Bell company in manufacturing activity.[4]

Nor does Section 272(b)'s requirement that Bell companies conduct manufacturing only through a special manufacturing affiliate require the FCC to give Section 273(b)(1) this meaningless interpretation as TIA claims.[5] This is because Section 273(b)(1) creates an exception to the requirement in Section 272(b) that a Bell company engage in manufacturing through a special manufacturing affiliate. This exception applies when the Bell company engages in manufacturing activity as a result of collaboration with a manufacturer.

Rather than intending that subsection (b)(1) serve the unnecessary purpose of stating that a Bell company may collaborate

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[3] 73 Am. Jur. 2d, Statutes, §250 (1974). See also Uniform Statute and Rule Act §18(b) (1993).

[4] See also Martin v. Mancari, 417 U.S. 535, 552 (1974), in which the Supreme Court stated that "a specific statute will not be . . . nullified by a general one. . . ." Here, a specific statute authorizing collaboration cannot be nullified by a general statutory prohibition on Bell involvement in manufacturing.

[5] TIA Comments at 13.

with a manufacturer only if the collaboration does not result in manufacturing activity by the Bell company, Congress instead included the provision in order to authorize collaboration in situations where the Bell company is engaged in manufacturing activity as a result of the collaboration. We and other commenters showed in opening comments how the agency may accomplish this Congressional purpose.

TIA asks the FCC to interpret subsection (b)(2) in a way which we also believe would be unlawful. That provision states that the prohibition against Bell involvement in manufacturing in "[s]ubsection (a) shall not prohibit a Bell operating company from . . . entering into royalty agreements . . . ." TIA asks the FCC to interpret subsection (b)(2) as authorizing a Bell company to enter a royalty agreement with a manufacturer only in the narrow situation where the agreement provides that the Bell company will license the manufacturer to use intellectual property obtained through activities other than manufacturing.[6] But interpreting subsection (b)(2) to authorize only this narrow category of royalty agreements would conflict with the plain meaning of the term "royalty agreement" for the reason we explained in our opening comments. We also believe it would violate the rule described above that a statutory provision be interpreted in a way that gives it meaning since subsection (a) does not bar a Bell company from licensing a manufacturer to use property obtained by the Bell company through a means other than manufacturing.

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[6] TIA Comments at 15-16.

Rather than intending subsection (b)(2) to be interpreted in a way that is inconsistent with its plain meaning and would render the provision meaningless, we think Congress instead intended subsection (b)(2) to authorize all royalty agreements and, in doing so, to permit a specific type of royalty agreement which was the subject of a longstanding dispute at the time this provision was enacted. In December 1993, the D.C. Circuit affirmed a district court order holding that a Bell company would be engaged in manufacturing activity if it funds a manufacturer's R&D in return for a royalty whose size is tied to the marketplace success of products developed by the manufacturer with that money. But while affirming the lower court's order, the circuit court also remanded the matter to the district court to consider whether to permit such arrangements notwithstanding the MFJ's bar against Bell involvement in manufacturing.[7] We believe it is clear that Congress intended subsection (b)(2) to authorize this specific type of royalty agreement since at the time Section 273 was enacted (i) the district court was considering the D.C. Circuit's order on remand and (ii) the question of whether to allow this type of agreement

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[7] U.S. v. West. Elec. Co., 12 F.3d 225 (D.C. Cir. 1993).

was the only issue involving royalty agreements under the MFJ's manufacturing proscription which was then pending.

CONCLUSION

The FCC should interpret Sections 273(b)(1) and 273(b)(2) in the manner we proposed in our opening comments.

Respectfully submitted,

AD HOC COALITION OF TELECOMMUNICATIONS MANUFACTURING COMPANIES

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March 26, 1997

CERTIFICATE OF SERVICE

I certify that on this 26th day of March, 1997, I caused a copy of Reply of Ad Hoc Coalition of Telecommunications Manufacturing Companies to be delivered, by First Class Mail, to the following:

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