The Senate met at 12 noon, on the expiration of the recess, and was called to order by the President pro tempore [Mr. THURMOND].

PRAYER

The Chaplain, Dr. Lloyd John Ogilvie, offered the following prayer:

Almighty God, Lord of all life, we praise You for the advancements in computerized communications that we enjoy in our time. Sadly, however, there are those who are littering this information superhighway with obscene, indecent, and destructive pornography. Virtual but virtueless reality is projected in the most twisted, sick, misuse of sexuality. Violent people with sexual pathology are able to stalk and harass the innocent. Cyber solicitation of teenagers reveals the dark side of online victimization.

Lord, we are profoundly concerned about the impact of this on our children. We have learned from careful study how children can become addicted to pornography at an early age. Their understanding and appreciation of Your gift of sexuality can be degraded and eventually debilitated. Pornography disallowed in print and the mail is now readily available to young children who learn how to use the computer.

Oh God, help us care for our children. Give us wisdom to create regulations that will protect the innocent. In times past, You have used the Senate to deal with problems of air and water pollution, and the misuse of our natural resources. Lord, give us courage to balance our reverence for freedom of speech with responsibility for what is said and depicted. Now, guide the Senators as they consider ways of controlling the pollution of computer communications and how to preserve one of our greatest resources: the minds of our children and the future moral strength of our Nation. Amen.

RECOGNITION OF THE ACTING MAJORITY LEADER

The PRESIDENT pro tempore. The acting majority leader is recognized.

SCHEDULE

Mr. INHOFE. Mr. President, for the information of my colleagues, there will be a period for morning business until the hour of 1 p.m. today. Following morning business, the Senate will resume consideration of S. 652, the telecommunications bill. Pending is the Thurmond second-degree amendment to the Dorgan amendment regarding the Department of Justice. Senators should therefore expect roll-call votes. However, there will be none prior to 5 p.m. today.

RESERVATION OF LEADER TIME

The PRESIDING OFFICER (Mr. KYL). Under the previous order, the leadership time is reserved.

MORNING BUSINESS

The PRESIDING OFFICER. Under the previous order, there will now be a period for the transaction of morning business not to extend beyond the hour of 1 p.m., with Senators permitted to speak therein for not to exceed 5 minutes.

Mr. INHOFE. Mr. President, I request 5 minutes in morning business.

THE TELECOMMUNICATIONS BILL

Mr. INHOFE. Mr. President, I would like to use this time to rise in support of the telecommunications bill, the bill we have talked about last week and will continue on this week; hopefully to finish the bill early this week. I know we have talked about it a great deal. Last year there was considerable discussion.

It seems to me it comes along at a time when it is responding to what the American people said in 1994, and that is we ought to move away, have less Government, less regulation, and let the marketplace function. That is what this bill is designed to do. It seeks to remove some artificial governmental regulations, regulations that go beyond simply providing for fair competition. I think we want to move in that direction.

Times have changed a great deal. As some of my experience back with the Rural Electric Association showed, seeking to bring electricity to areas where there was relatively low density and where there were few people living, no one in the competitive business was really interested in serving those areas
that were very low in revenue. Hence, the cooperative effort of the rural electric utilities. I think cooperation is necessary and will be here in the area of universal service. We need to provide with certainty that we will have the communications, and that is part of this bill. At the same time, we need to open it to full access in competition. So many things are happening, so many things are changing, so many things are looking for a signal. We need to examine the opportunity to have all kinds of communications, indeed to conduct the kinds of businesses in Wyoming that you could not conduct without entry to an information network, without the kinds of things that will be provided here.

This bill is designed to remove restrictions on competition. I think that is just as it should be all about. It is designed to create opportunities for investment and growth, not only in the telecommunications system in this country but certainly global communications.

I do not want to take a great deal of time but I do rise in support of that concept. I think this bill does the things it is designed to do. I know there are differences of view. That is as it should be. There are great debates in this place. They are designed to show there is more than one alternative, otherwise there would not be a great debate. I am one who thinks, if we can set forth here the conditions that ought to be met in the case of local telephones before they expand, and long distance into the local, that is the way we ought to do it, and keep the substantive judgments of the Department of Justice at a minimum. The authority lies there, of course, to move in when there are unfair trade practices. That is as it should be.

So the result we look for, of course, is lower prices. We look for expanded options. We look for 1.5 to 3 million high-technology jobs that will be developed, and more exports. So this is a good step.

I look forward to supporting the bill. I look forward to the Senate completing its work this week so we can move on, then, to some of the other features.

Mr. President, I yield the floor.

The PRESIDING OFFICER. The Senator from North Dakota.

Mr. DORGAN. Mr. President, I ask unanimous consent to speak for 10 minutes in morning business.

The PRESIDING OFFICER. Without objection, it is so ordered.

NAFTA

Mr. DORGAN. Mr. President, this morning I was going through some mail in my office and I received a letter from a young woman in Fargo, ND. I shall not use her name because I have not asked her if it is appropriate to use her name. But she is a young woman who described a whole series of troubles. She was left with two children as a single parent, no training, not many skills, and jobless. She described her journey through the social services system to try to find a way to get trained and get a job. The letter is an inspiring letter from someone who is looking for a job today. What she says, to the training programs, thanks to the help that she received from Medicaid and elsewhere. So this is a person for whom a job is a way out, a job is a way to take care of her children. A job is for her, substantial self-worth and respect.

You forget, sometimes, how important jobs are until you read a letter from someone like this who did not have a job and now does, thanks to a lot of help from a lot of people, but especially thanks to her determination.

I mention this letter about jobs because jobs are very important to the American people, and we have 10 million people out there--give or take a few--looking for a job today and cannot find one. We do not have enough jobs. We do not have enough good jobs that pay good wages in our country.

About a year and a half ago we debated in the U.S. Senate what is called NAFTA, which many people will remember, the North American Free Trade Agreement. The contention was, if we would link our economy to Mexico's economy--and Canada's, too, but especially Mexico--somehow we would have tremendous new opportunities in our country, or so we were told by the prophets of the day. We were told that linking the American economy to the Mexican economy would produce a burst of new jobs and new opportunity in our country.

Some of us did not believe that to be the case. Some of us believed that if you linked an economy like ours with an average wage of $17 an hour to an economy like Mexico, which still pays in many areas 50 cents or $1 an hour--in other words, linking our economy to an economy whose wage base is a fraction of ours--we felt it would tip the table so that jobs in this country would move south to Mexico. The jobs would move south because big producers, big corporations want to produce where it is cheap, and sell back into our economy.

I know it may be a sore spot with some to start keeping score on the actual results of NAFTA. But after 1 full year's experience of NAFTA and after part of this year with NAFTA, I felt it was important to come to the floor of the Senate and describe what has happened with the United States-Mexico trade situation.

A new study has just been released by Robert Scott of the Center for International Business Education and Research at the University of Maryland. Robert Scott used to work for the Joint Economic Committee here in Congress, of which I was a member. He did some analysis and some work while on that committee with respect to NAFTA and has now completed an evaluation of NAFTA with respect to the job impact in the United States.

I want to commend to the attention of the Senate this study by Mr. Scott. It is interesting, thoughtful, and I think it is the only study that really looks at this in an appropriate way. Mr. Scott takes out the transshipments between the two countries. In other words, if Mexico receives something that is actually produced in another nation—for example, computers from Asia—and does not use the computers but re-exports them to the United States instead, those computers are not really Mexican exports and so they should not be counted in our measurement. Or, if another nation produces something and ships it to the United States but we do not use and simply transport it to Mexico, then it should not be considered an export from the United States to Mexico. The point is to come to the core of the NAFTA question of whether or not we have a job impact of any significant nature between our two countries.

So, Mr. Scott takes out the transshipments and takes a look at what is produced in the United States versus Mexico and what is consumed in each country. The question is, What has happened as a result of the United States-Mexico trade agreement as a result of NAFTA?

Let me show you two charts. First, the United States-Mexico trade surplus, again taking out transshipments, we had a very significant surplus in Mexico. In 1992, it was $5.7 billion. In 1993, when we had NAFTA passed, it was $1.6 billion. Last year it shrank to $5.5 billion. And, if the first 3 months of this year are any indication—and almost all economists say it is—we will have a $15 billion trade deficit this year with Mexico.

Take a look at that and see which direction trade flows are in the prophecies of those prophets who predicted these wonderful things for America now looking at their chart and saying, "Gee, this is wonderful?" I do not think so. We went...
from a significant trade surplus with Mexico now to a very significant trade deficit.

What does that mean in terms of jobs? Mr. Scott’s study shows what it means in terms of jobs.

What was the “The Promise.” We have all kinds of studies ranging from 220,000 to 2.8 million new jobs if we would just pass NAFTA. That is “The Promise.” The reality is last year we lost 17,000 net jobs in the United States as a result of NAFTA. This year we are going to lose about 220,000 jobs in the United States as a result of NAFTA.

If anyone has other figures and would like to debate those, I would love to do so on the Senate floor. I would be glad to take time to do it. These are the real numbers. Take all of the transshipments out, and take out all of the statistical nonsense and find out what the net effect of jobs is. The net effect of jobs is that in the United States we promised massive new job creation; what we actually have gotten is a massive loss of jobs as a result of the United States-Mexico trade agreement.

Mr. Scott’s study also shows that the jobs that we have lost as a result of the imports coming into this country are good jobs, good that we have gotten is a massive loss of jobs as a result of the United States-Mexico trade agreement.

What are we importing from Mexico? Is it items produced by unskilled workers? No. The top imports are electrical and electronic machinery, equipment and supplies, transportation equipment, automobiles, automobile supplies, and automobile parts. That is what is being shipped into this country from Mexico. Those kinds of products represent good, high-skill jobs. Those are the jobs this country is seeing displaced.

We note that in Mexico there is an area along the border called maquiladora plants. The maquiladora plants are the creation of big companies, many of the United States companies, building manufacturing and processing plants just across the border to produce in Mexico and ship to the United States.

What have we seen along the border since NAFTA?

There were about 2,000 maquiladora plants in 1994, and recent news reports tell us that the Mexican authorities are approving applications for two to three new plants, new manufacturing plants, every single day. At this rate of approval, the number of factories in the maquiladora zone in Mexico will increase by 50 percent in 1995. These plants are not being built to produce for Mexico. These plants are being built to dramatically increase exports from Mexico to the United States and dramatically displace jobs in the United States.

Mr. President, I do not know how those who were paid for those elaborate NAFTA studies that predict massive numbers of new jobs for American workers walk around holding their head up these days when they see what has happened with Mexico. Yes. Some of it is because Mexico devalued the peso. I understand that. But we should never have a trade agreement with anybody under any condition that does not have an adjustment for currency fluctuations.

But the point is, this country got with NAFTA what it got with the Canadian trade agreement, which is what it got with GATT—we lost in the trade negotiations; we lost in a way that hurts American workers and costs our country dearly. I urgently needed good-paying jobs for the American people.

I hope that in the coming weeks, as a result of Mr. Scott’s study, we can have a real debate again now about NAFTA and maybe renegotiate NAFTA. Maybe this trade agreement was not such a good idea. If “The Promise” was nirvana, massive numbers of new jobs and a bright promise for America, but the reality is massive loss of jobs, big corporations taking advantage of the American people under NAFTA. Either they have not fulfilled the promise or been forced across the border to produce in Mexico and to ship back into this country, maybe, understanding all of that, it is time for our country to decide these trade agreements do not make such sense after all.

Maybe our trade agreements ought to be trade agreements that represent the interests of our country, not just the interests of multinational companies who want to produce, yes, in Mexico, but also in Mexico, Colombia, and Malaysia, and all around the world where they can get people to work for 12 cents an hour, 12-year-olds working 12 hours a day, to produce a product they can ship to Pittsburgh, Denver, or Detroit. That is not fair trade. That is not trade that helps our country. That is not trade that produces a vibrant, strong American economy.

Every time we have these debates, those who support these trade agreements, and I mean those who support our trade policy, I think we have irreparably injured our economy and have put Americans into a circumstance where they are looking for good jobs and cannot find them. They say, “Well, the issue is we have to compete.” If American workers and American business cannot compete, then we are doomed in the international economy.”

My response is: Compete with what? Do you really want the American people to have to compete with people working for 25 cents an hour or working in factories that are unsafe, working in factories that dump chemicals into the streets and pollution into the air? Is that what we should compete against, as far as I am concerned, count me out. That is not fair competition. It is not what we fought 50 years for in this country on the issue of decent living wages, good environmental standards, good work, and safety laws. That is not what we fought 50 years to have happen on this country, to give all of that up, because the largest enterprises in the world want to construct an economic circumstance where they can produce where it is cheap and sell into established marketplaces. Such a scheme consigns this country, in my judgment, to a future with fewer jobs, especially fewer good jobs and fewer good paying jobs.

Mr. Scott’s work, which I think is Mr. President, I yield the floor.

The PRESIDING OFFICER. The Senator suggest the absence of a quorum?

Mr. DORGAN. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

Mr. EXON. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

PAYMENT OF BENEFITS TO ILLEGAL ALIENS

Mr. EXON. Mr. President, I rise today to address the issue of payment of benefits to illegal aliens and how it relates to the welfare reform bill that
the Senate will be considering very shortly. As other Senators may know—and I hope that they all know—I have long had an interest in curtailing Fed-
eral benefits to illegal aliens as a matter of both sound immigration policy and sound fiscal policy. I have introduced legislation to amend the immigration laws so that aliens would not be able to receive Federal benefits without deportation. The States have decried the inability of the Federal Government to police its borders. But when Congress considers the immigration bill, the States will be able to do the job in a way that is constitutionally valid. Neither the Federal
Government nor the States should be able to pay for those benefits to those here illegally.
Illegal alien means just that, illegal. That is why I believe the State agencies must help us identify illegal aliens so that they may be deported before they have the benefit of those benefits.

It is time for a whole new way of thinking about this subject. We must initiate a new Federal-Sate re-

serving agreement, if you will, to put an end to these abuses.

Call it a fully funded mandate, and a cost saver as well. I think it is only reasonable to require States to be responsible for the status of applicants provided we help them give the resources that they need to do the job. It is my opinion that this change in the compact bet-

The Senate appears ready to give
the Federal Government a new tool to stop the flow of illegal aliens. We also now have large border States filing lawsuits against the Federal Government as a result of failures in our Federal immigration policy, with other States threatening to follow suit.

It should be noted that the long-

awaited report from the U.S. Commis-
sion on Immigration Reform, headed by respected former Representative Barbara Jordan, has generally rec-
ommended that illegal aliens not—receive publicly funded services or assistance. I agree wholeheartedly with that recommendation.

I am hopeful that we will soon make significant progress in immigration re-

form and welfare reform. I am con-

cerned, however, that meaningful measures to restrict Federal welfare benefits to only citizens and legal aliens will be lost in the shuffle.

I submit, that when we turn to wel-

fare reform, we have a golden oppor-
tunity to create a new and more coer-

gent policy and stop, once and for all, paying benefits to illegal aliens.

The Senate appears ready to give States more funding flexibility and re-

sponsibility to oversee our welfare pro-
grams. I think it is only fair that, when we pass this welfare reform bill, the States will receive benefits and discuss those savings. It is a simple fact that a de-

ported alien will not continue to col-

lect welfare benefits for months and even

years.

To this point, the Federal Government and the States have essentially been working at cross-purposes in en-
forcing the immigration law. The

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forcing the immigration law. The
a look at that presentation and bring themselves up to date on what is going on on this very important matter, and have an independent judgment made by every U.S. Senator as to what is right and what is wrong in this area.

I want to say to you, Mr. President, by the prayer of the Chaplain of the U.S. Senate that was offered this morning as we began our deliberations. The Chaplain prayed for guidance and prayed for action on this matter that he and others see as a very, very, serious threat, especially to our youngsters.

Therefore, I say, Mr. President, I hope that there will be some study given to this. I hope that my colleagues and their staffs will listen to this Senator and others, who try and make our case for doing something constructive about this menace that is engulfing the Internet; statements to the contrary by those who do not agree.

I simply say, Mr. President, that this is something that needs our definite attention. It is something that needs some study. I would hope that my colleagues and their staffs would do some study and make certain individual judgments on this. And I am sure that whether they agree completely with this Senator or not, they cannot help but be concerned about this very real threat that is out there today that I happen to feel is the greatest polluter of the minds of our children and grandchildren, that we must have some rules and regulations.

In short, Mr. President, what this Senator from Nebraska is attempting to do is to merely copy the legislation that we have had on the books for a long, long time with regard to the spread of pornography and obscenity, especially addressing the many court decisions that have said that the community standard rules, and basically rules and regulations we have been recognizing for a long time, that we have the right, and I think the responsibility, to make sure that our children do not have instant access to material on the Internet. That we prohibit them by law or constitutionally to see or read or access to material on the Internet. That we prohibit them by law and that our children do not have instant access to material on the Internet. That we prohibit them by law and that our children do not have instant access to material on the Internet.

The law that we have in place now is to matter, to be productive, to make the world a better place. The purpose of life is to matter, to be productive, to make the world a better place. The purpose of life is not to be happy. The purpose of life is not to be happy. The purpose of life is to matter, to be productive, to make the world a better place. The purpose of life is not to be happy.

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During the recent Memorial Day holiday an aging soldier interviewed about his war service responded that it changed his whole life. Thereafter, he said, he worked hard to always show that he was worthy to have been one of the survivors.

Who knows if that same sort of experience colored Gen. Friend’s life?

To say he was a worthy one for Birmingham is an understatement.

WAS CONGRESS IRRESPONSIBLE? THE VOTERS HAVE SAID YES

Mr. HELMS. Mr. President, more than 3 years ago I began these daily reports to the Senate to make a matter of record the exact Federal debt as of close of business the previous day. On Mondays, of course, my reports are always as of the previous Friday.

As of the close of business Friday, June 9, the Federal debt stood at exactly $4,899,367,488,389.95. On a per capita basis, every man, woman, and child in America owes $12,598.08 as his or her share of this tremendous national debt.

It is important to recall, Mr. President, that the Senate this year missed an opportunity to implement a balanced budget amendment to the U.S. Constitution. Regrettably, the Senate failed by one vote in that first attempt to bring the Federal debt under control.

There will be another opportunity in the months ahead to approve such a constitutional amendment.

UNION COLLEGE COMMENCEMENT

Mr. MOYNIHAN. Mr. President, yesterday at Union College in Schenectady, N.Y., I was privileged to deliver the commencement address on the occasion of the bicentennial anniversary of that institution’s charter. The elements, however, did not cooperate. As the thunder began to rumble, I cut my address short. But as this morning’s Albany Times Union noted, my parting promise to the gathered was: “I’ll put the rest in the CONGRESSIONAL RECORD.”

Mr. President, I ask unanimous consent that the full text of my address be printed in the RECORD.

There being no objection, the address was ordered to be printed in the RECORD, as follows:

UNION COLLEGE COMMENCEMENT ADDRESS

(By Senator Daniel Patrick Moynihan)

In a world made up of so many nations, of which a scant 51 existed a half century ago, and of these only eight having existed for a whole century without having their form of government changed by violence, it is a rare experience to graduate from a college founded a full two centuries ago in a new and novel nation with tiny resources and doubtful prospects which not only endures to this day, but stands now pre-eminent among the nations of the world.

It is a matter worth reflection. And a setting designed for just that, by an architect trained at the court of Louis XVI. Union College was, of course, the first educational institution of its type in this country. It promptly broke with the past creating, as Madison termed “a new science of politics” based upon principles—uniformities—in human behavior which made possible the introduction of republics nearly two millennia after Caesar had ended the experiment. Given what Madison termed “the fugitive and turbulent existence of ancient republics,” who could dare to suggest that a modern republic could fare better? Well, Madison could. And why? Because careful study had produced new knowledge. To cite Martin Diamond:

“This great new claim rested upon a new and aggressively more ‘realistic’ idea of human nature. Ancient and medieval social and political practice had failed dismally to curb the appetites of the ruling and the ruled, by clinging to illusions regarding how men ought to be. Instead, the new science would take as man actually is, however one might define him. The self-interestedness and passion displayed by all men everywhere and, precisely on that basis, would work out decent political solutions.”

Until that time, with but a few exceptions, the whole of political thought turned on ways to inculcate virtue in a small class that governed. But, wrote Madison, “if men were angels, no government would be necessary.”

We would have to work with the material at hand. Not pretty, but something far more important: predictable. Thus, men could be relied upon to be selfish; nay, rapacious. Very well. “Ambition must be made to counteract ambition.” Whereupon we derive the central principle of the Constitution, the various devices which in Madison’s formulation, offset “by opposite and rival interests, the defect of better motives.” (See Daniel Patrick Moynihan, “Came The Revolution”, Harcourt Brace Jovanovich, New York, 1983, Pgs. 302-303.)

The American revolution and the new nations emerged from a defence of personal liberty in the old European order. The Founders genius was to adapt to that order rather than seek to abolish all traces of it. As, for example, the French revolutionaries did when they changed the names of the days of the week and declared 1792 to be l’année Une. Year One.

There is a striking parallel between these political revolutions of the late 18th century and the economic revolutions of our time. In the course of the past half-century the United States has managed to transform an agricultural economy into an industrial economy. This learning followed a crisis of legitimacy in the old economic order which unlike the Soviet Union, for example, we did not abolish but did, in fact, transform.

1945 was, of course, the 150th anniversary of the founding of Union College. It was also the year that World War II came to an end.

V-1 Day was September 2; Union celebrated its Sesquicentennial two weeks later. I was in the Navy then, (as was Joseph Hinchey) and remember those days. The great question here at home was whether the end of the war would mean the resumption of the Great Depression of the 1930s, and generally speaking, we were told that the war had brought on the war, or was widely held to have done.
J une 12, 1995

CONGRESSIONAL RECORD – SENATE

S 8133

Mr. MACK. Mr. President, I applaud last week’s capture of Gilberto Rodriguez Orejuela, a member of the Cali cartel responsible for smuggling an enormous volume of cocaine into the United States and the subject of criminal indictments in Florida and Louisiana. The arrest is a significant step in Colombia’s antidrug forces, but the real test of Colombia’s commitment to the struggle against narcotics traffickers lies ahead. Colombia’s record regarding prosecution, conviction, and sentencing of narcotics traffickers is marred by corruption. Orejuela’s arrest must be followed by a thorough judicial process that strictly adheres to the rule of law.

CAPTURE OF GILBERTO RODRIGUEZ OREJUELA

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TRIBUTE TO ARMAND COCCO

Mr. BIDEN. Mr. President, with the death of Armand F. Cocco, Sr., and I might add Senator Roth, have lost a good friend, and my State of Delaware has lost one of its most conscientious citizens. With his wife and constant companion, the late Senator Cocco, Sr., and Anna Zebley Cocco, he devoted his lifetime to energetic service to others.

Mr. Cocco, a member of the Delaware Industrial Accident Board, was a 45-year member of the Plumbers & Pipe Fitters Union Local 74, acting as their political liaison for the union and testifying in court for workers who had been diagnosed with asbestosis. He had no formal education beyond high school, but he was a student of human nature and a skillful advocate who gained impressive achievements for his community without ever claiming any character other than that of an ordinary citizen. He was my friend for more than 25 years, but he could still surprise me with interests and talents of which I had been unaware. He never stopped.

I first met Armand Cocco when I was a young man, a member of the New Castle County Council and a candidate for U.S. Senate. It was then that he and his wife asked whether I would meet with them, and they came charging full-blown into my office with their usual brisk enthusiasm about a plan that was going to widen a four-lane highway into one of our oldest suburban communities. As they saw it, they were going to convert this modestly busy local road into an expressway that would divide and overshadow their community, literally divide their community right down the middle. And as Anna said, it would amount to a “Chinese wall” in this older, stable community. They were determined to stop it, with the determination they shared, confidently and persistently, with Delaware public officials of both major parties.

I know it will surprise no one in this body that energized citizens often change the outcome of a predetermined decision. A quarter of a century later, that expressway still stops literally at the threshold of the community they were so resolute in defending.

If Armand and Anna Cocco were a political force to be reckoned with—and they certainly were—they were also friends, the sort surrounded on by public officials in both parties, as our Democratic Governor Tom Carper could tell you and my Republican colleague, Senator Roth, as well as my Republican colleague, Congressman Castle, and his wife, Anna.

Armand Cocco was an adroit and accomplished political activist but no party could claim his exclusive allegiance. No party could claim a narrow partisan interest on his part, but he could claim a constant interest. He was a very demanding citizen, but he never asked more than he was willing to give. And shoulder, along with his remarkable
the private sector deployment of advanced telecommunications and information technologies and services to all Americans by opening all telecommunications markets to competition, and for other purposes.

The Senate resumed consideration of the bill.

Pending:
Dorgan modified amendment No. 1264, to require Department of Justice approval for regional Bell operating company entry into long distance services, based on the Vichy (c) standard.

Thurmond modified amendment No. 1265 (to amendment No. 1264), to provide for the entry of the Attorney General of the United States of the entry of the Bell operating companies into interexchange telecommunications and manufacturing markets.

Mr. PRESSEY. Mr. President, we are returning to the telecommunications bill. I urge all Senators to come to the floor with their statements and amendments.

We have made good progress on the bill. We have many challenges ahead to meet.

As I have said frequently, this bill will allow all parts of the telecommunications industry to get into each other's business and allow new small businesses to get into the telecommunications market. It will let our local telephone markets for the first time to competition. It will allow our long distance companies to get into local and vice versa.

It will move toward the deregulation of cable companies by allowing competition from DBS, direct broadcast satellite television, and by giving the regional Bells video dial opportunity. There will be three or four competitors in each market, which should and will make cable prices much lower. It will mean lower cost telephone services, lower telephone rates and lower long distance rates for the average American.

Many years ago, when I was in the House, we had some great debates over the deregulation of natural gas, and people said if we deregulate natural gas, prices will skyrocket. They did not. They have come down and there is competition and natural gas prices are lower than they have ever been.

We can do our senior citizens and others a favor by getting lower prices through competition. That is what this bill will do.

This bill will also lift some regulation in the broadcast area. It will allow some of our utilities to do things they wouldn't have been able to do before. It covers a broad spectrum of American life.

It is a very important bill. It is a bill we need to pass. The bill we have before us is not perfect in anyone's eyes. It is a good bill, and each Senator would write it slightly differently. Indeed, every Senator has had the opportunity to participate in the writing of this bill. It has been a long process that we held before the markup in the Commerce, Science, and Transportation Committee.

We held meeting after meeting for many years ago, when I was in the House, we had some great debates over the deregulation of natural gas, and people said if we deregulate natural gas, prices will skyrocket. They did not. They have come down and there is competition and natural gas prices are lower than they have ever been.

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agreements on some of these amendments so we can move forward.

I have asked Senator DOLE and Senator DASCHLE for their cooperation in finishing this bill, and I think it is very, very important. As has been pointed out, this bill will affect every household in America. If we fail to act this year, it will fail over to 1997 because next year, being a Presidential year, such a controversial bill probably will not be able to pass.

The most controversial and complicated bills to come to the Senate floor. I think we are on the way to passing it. But we will need the cooperation of all Senators. I have frequently said this is not the sort of bill that any one Senator can take credit for, or the lead. It takes every Senator. We all have to be involved. Because in the telecommunications field, any one group can checkmate, almost, the progress of a bill. We hope that does not happen.

It is very important. It will affect a third of our economy. It will create jobs. As we read in the newspapers about some of our mature, aging industries, as they lay people off, we need to have new, creative areas to create jobs. We have seen that in the computer industry. We have done it in some of our other growth industries. This will make us competitive internationally also. It will affect our exports and our balance of payments.

This bill also includes reciprocity for investors from abroad so we treat them as they treat us. The public interest review by the FCC is preserved.

So, I urge Senators, come to the floor and offer amendments. I ask respectfully that we be able to get some time agreements on some of these controversial amendments that will be coming. It is not our intention to shut anybody off. We want people to have their vote. But we must proceed.

Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER (Mr. FRIST). The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. DORGAN. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

AMENDMENT NO. 1265, AS MODIFIED

Mr. PRESIDENT, the matter pending before the Senate is now a second-degree amendment by Senator STROM THURMOND to a first-degree amendment that I offered last week dealing with the issue of the role of the Justice Department in the telecommunications legislation.

I would like to describe where we are and how we reached this point, and why I think this set of amendments is an important discussion for the Senate.

First out of the largest bill that South Dakota Senator PRESSLER, described a few moments ago the importance of this bill for virtually every American. There is no doubt about that. The issue of communications and telecommunications is one that will affect every single American. You cannot escape the impact of this legislation. We have seen an explosion of technology, an explosion in communications in this country in computers, telephones, cable, and in the various television networks. And we are seeing the capabilities in this country today for every American, no matter where they live, that were only dreamed of several years ago.

The question before the Senate is what kind of rules shall exist for the competition between various types of communication in our country? The last set of rules was a set of rules in 1934 established to try to govern the circumstances_Considerable...
acquisitions the Department of Transportation would provide its approval and the Justice Department would be consulted.

Well, what has happened since the deregulation of the airline industry is pretty much what I have been saying over the weekend with the White House for a meeting. But we have worked over the weekend, and I think it is important to have a role in those circumstances with a consultative state, and frankly I do not want the Department of Justice to act as a brake, but as a full participant and a full partner in the public interest by establishing more competition for the work force or college will be able to move forward.

I think it is one of the most important amendments we will be voting on dealing with this legislation. Frankly, there are not many people who even understand it very much. I understand that this is not a very sexy issue; it does not generate a lot of public interest. It is not something that is easily understood. It is not something, the impact of which will be readily known even as we vote on this legislation, but I am convinced that as we tackle the changing of the rules for an industry that is one of the largest industries in this country and as we talk about where we move in the future with that industry, if we do not provide for the public interest by establishing more than a consultative role for the Department of Justice to assure that the forces of competition exist, then I think we will not have done a service with this legislation.

I know this will likely be a close vote, but I do hope that those who study this issue and who really want to deregulate but to retain as we deregulate the safeguards of making certain that competition exists in real form and that the American people have the benefits and bear the fruit of that competition, I think they will want to vote with Senator Thurmond, myself, Senator Kerrey, and many others who feel very strongly about the role of the Department of Justice in providing us those guarantees.

Mr. President, with that I yield the floor.

Mr. KERREY addressed the Chair. The PRESIDING OFFICER. The Senator from Nebraska.

Mr. KERREY. Mr. President. I rise again to discuss this bill and to discuss the amendment offered by the Senator from North Dakota, as well as the amendment offered by the senior Senator from South Carolina, to give the Department of Justice a role in what is essentially an amendment of the 1934 Communications Act which will again move us in the direction, further in the direction of competition, further in the direction of deregulation than the modified consent decree which was filed in August 1982 has done over the past 13 years.

The central question I think for colleagues as they consider this amendment ought to be whether or not the Department of Justice can perform a role in promoting competition. Indeed, I believe that the Department of Justice is the only agency in Washington, DC, with any experience or any demonstrable success at moving us from a monopoly situation, in this case in the communications industry, to a competitive arena.

Let me point out, I appreciate very much what the chairman and the ranking member have done thus far. I believe there had been a number of significant victories that have occurred thus far in the debate important to identify because we have taken a bit more time than was originally anticipated, but I think it has been time well spent.

First, we were successful in defeating an effort to strike the language that the chairman and the ranking member made certain was in the bill that gives preferential rates to education, libraries, and to health care facilities. It is very important, particularly in the area of K-12 education, that we provide those preferential rates.

I know some will argue it runs at odds with what we are trying to do. Indeed, I must confess, it essentially does run in many ways, at odds. The problem, is, our schools, particularly in the K-12 environment, are not market operations, they are government operations. If we do not carve out and provide a special opportunity for them to get access, it is highly unlikely they will be able to take advantage of the communications revolution that I think this legislation is apt to set off, at least accelerate. And if they do not take advantage of it, our test scores are not going to be affected by technology. The capability that these students do well and prepare themselves either for the work force or college will be significantly diminished. That was a big victory in beating back an effort to strike that language, essentially what would amount to the new section 264 under the 1934 Communications Act.
Mr. President, this is a very difficult piece of legislation, because what we are trying to do is to make something that has been going to be terribly important to maintain a competitive environment. Personally, I believe strongly, at least in the short term, unless households have two lines coming in—a telephone line and a cable line—it is not likely that you are going to get that kind of competitive situation. This in-area acquisition amendment was an extremely important amendment to get attached.

There was a joint marketing provision for small companies that was added virtually, very much at the last minute. I believe that promotes competition and allows the smaller entities—I say again for emphasis, that is likely to be where the jobs are going to be created subsequent to this legislation. The other companies in joint marketing, it is a very important procompetitive change that was made in the bill.

The legislation has very strong language making sure the system is interconnected, and it does not establish, as I think it should establish, the Government's role in setting de jure— that is, legal standards. The market should be in a de facto way establishing those standards. Nonetheless, the legislation directs the FCC to put interoperability very high on the agenda and has a mechanism for making sure we have interoperability in the system. It is a very important procompetitive step and a very significant victory, certainly.

The bill already had very good rural provisions in there. The managers' amendment, as well as Senator Dole's and Senator Daschle's amendment, strengthened the protection for rural communities, and we have thus far been successful at preserving the universal service fund.

The distinguished Senator from Alaska—I believe it was the first amendment placed on the bill—made certain that in the budgeting process that we would provide the money that CBO says we are going to need to pay for this universal service fund. Even though the bill results in a $3 billion reduction in the cost of the universal fund, CBO, in their own budget, says that does not establish, with the $7 billion mark, and the Senator from Alaska changed the bill to provide the money to get that done.

Mr. President, this is a very difficult piece of legislation, because it is so difficult to try to assess what the impact is going to be, what will it do for the households, the voters, the consumers in your district and your State. It is undoubtedly a question that more and more Members, I hope, are beginning to ask and attempt to answer. It is not an easy question to answer.

The chairman and the ranking member of the committee have attempted to do what I think would move us very carefully from a monopoly situation to a competitive situation. The question, though, is, Will competition produce something that makes my consumers happier? Will my taxpaying citizens come out better than they are now? Yes, I think, I believe, what I would say, as I believe they do in a number of other areas, including the watershed divestiture that occurred starting in 1982. This has been good for me. I have gotten a reduction in price, I have gotten an increase in quality coming as a consequence, Senator Kerrey, of a piece of legislation you voted for way back there in 1995.

The bill is divided up into three sections. It attempts to describe in general terms what it is that we are trying to do. I think I would think, for all of us to try to examine each one of these little words inside of 146 pages, now a bit longer as a consequence of amendments that have been attached, because each one of them could potentially have its own effects on the situation that we find in title II. I have gotten a reduction in price, I have gotten an increase in quality coming as a consequence, Senator Kerrey, of a piece of legislation you voted for way back there in 1995.

The first section is one that will have an impact immediately. What will happen is you will see companies—I would guess mostly long distance companies, although it could be any number of other companies—coming into the local area asking permission to interconnect, asking permission from the local telephone company to interconnect and begin to provide local telephone service.

The company basically controls that. There is a checklist in there, but the company basically controls the flow of that decision. There is no Department of Justice role there. The FCC is involved in that decision. There are enforcement mechanisms in there. That is where the universal service description is maintained. There are separate subsidiary requirements to protect this company's interest in that, which might make it difficult for competition to occur. There is language in there—I do not know how you describe it—that allows foreign companies to come in and buy American telecommunications companies, but only if their nations reciprocate by changing their laws. It has a snap-back provision. If their countries do not change their laws, they would not be allowed to come in and make investments in local or any other telecommunications carriers.

There is language in there—very important language in there—for infrastructure sharing. But in that first section perhaps most important is a checklist that says here are the sorts of things that have to occur in order to provide that interconnection, in order to give that interconnection opportunity, for, as I said, it is either going to be a long distance company consumers are likely to see or it could be some company you never have seen before that tries to come in and provides local competition.

These requirements, in what would become section 251, are different than what is in the current legislation that you find in title II. Title I is called transition and competition. Title II is the removal of the barriers to competition. There are two subtitles there. The biggest one is a lengthy description of how we are going to try to remove the barriers to entry. There are lots of important detail in that particular section.

The new section 256 is the one that we are addressing with the Department of Justice role. That is where you have something as you can see. If your company wants to get into long distance, they then go to the Federal Communications Commission and present evidence that they are allowing local competition.

It is significantly different than the language in 251. I for one have not been able to determine whether 256 preempts 251, whether the checklist in 251 is preempted in short by the language of 255. I suspect it is an important language making sure the company is going to try to get into interLATA or basically get into long distance services.

Mr. President, the Department of Justice has a longstanding role in our lives making sure, with its Antitrust Division, that we have competitive marketplaces, not just in telecommunications but in every other area of economic life. The larger a business gets and the more of the market a business controls, the more likely it is, the more chances and opportunities there are for that business to say, as I believe they do in a number of other areas, including the watershed divestiture that occurred starting in 1982. This has been good for me. I have gotten a reduction in price, I have gotten an increase in quality coming as a consequence, Senator Kerrey, of a piece of legislation you voted for way back there in 1995.
there is not much competitive choice. That is why we are suggesting with this language—whether it is the Thurmond language or the Dorgan language—a stronger role for the Department of Justice in making certain that we do not have anti-competitive environments. Before that permission is granted to get into long-distance service.

That is the carrot that is being offered. We say to the local company you can either negotiate to provide interconnection, or you can provide the interconnection requirements that are in 251. Or if you want to present that you have done all of that, we have a separate section that says you come and present that to the FCC, but the Department of Justice is engaged in a consultative way. We are saying with this amendment—and again whether it is the VIII(c) test of Senator Dorgan or the Clayton test of Senator Thurmond, it is very important to describe the roles of both of these regulatory agencies as having a certain role in providing approval so you do not get into the problem of unnecessary delay and duplication of bureaucratic oversight.

Mr. President, the Department of Justice was instrumental in shattering the Bell system's monopoly on local telephone service. In 1982, the Department filed its historic suit in long-distance and equipment manufacturing markets in bringing competition to those markets. Colleagues, again, are wondering why the Department of Justice should be given a role. The reason is that there are the ones with the most experience, the ones that have the capacity to make this thing happen. Competition has resulted as a consequence of the MFJ that was filed in August 1982, and that competition has made possible the communications revolution that is changing the lives of all Americans.

The telecommunications legislation should take advantage of the Department of Justice’s profound expertise in telecommunications to ensure that deregulation leads to real competition, not unfettered monopoly. Again, the potential for monopoly is already there. Since we are beginning with a monopoly situation, the potential for a monopoly situation adverse to the consumer would produce a very unhappy consumer, taxpayer, and citizen out there. And we are, with our amendment, suggesting that the best way to ensure that does not happen to the Department of Justice with what fairly, I think, is described as a limited role in assisting the Federal Communications Commission in making a decision about whether or not to allow a local company to get into long-distance, and whether or not the company has demonstrated that they provided a competitive opportunity at the local level—because that is the question.

The question is whether or not to grant long-distance competitive opportunity, and that question is answered by determining whether or not there is competition at the local level. The bill, as I said, has two sets of tests, one in section 251, that could occur almost immediately, and 255, which is the question at hand, when a company is trying to prove that they have local competition by providing the 14-point checklist, as required by this legislation.

The Department of Justice has effectively enforced the antitrust laws in the telecommunications industry on a completely bipartisan and nonpartisan basis throughout this century. It sued the Bell system in 1940. Both times the Department of Justice succeeded in obtaining consent decrees and sought to protect competition. But that allowed AT&T to continue participating in local, long-distance, and equipment manufacturing markets.

In the mid-1980s, Mr. President, it filed comments with the FCC arguing that the Bell system should not be allowed to use its local telephone monopoly to force consumers to buy their telephone sets from it. Although the Solicitor General, Mr. Alman, had the right to choose among competitors, the Bell system succeeded in using its local monopoly bottleneck to impose some burdensome conditions on the interconnection of competitors’ equipment to the Bell system. Evidence of those conditions was an important part of the monopolization case that the Justice Department then presented in 1981.

Open competition in so-called customer premises equipment did not become a reality until after the breakup of the Bell system in 1984.

The Department of Justice, Mr. President, initiated its third major investigation of the Bell system in 1969 during the Nixon administration. In 1974, during the Ford administration, the Department filed its historic suit against AT&T charging that the vertically integrated Bell system illegally used its monopoly control over local telephone service to thwart competition in long-distance and equipment manufacturing. Over the course of the next 7 years, through the end of the Ford administration and into the Carter administration, the Department litigated the case vigorously, filing and organizing the complex evidence that showed how the Bell system used the local monopoly to hurt competition in other markets. In January 1981, at the beginning of the Reagan administration, trial of the case began.

The Department of Justice was instrumental in breaking up the Bell system. AT&T, retained local monopolies over local telephone service in vast geographic expanses, subject to the requirement that AT&T, along with competitors, honor equal nondiscriminatory access to customers through the local networks. The key point of the MFJ was that it removed the Bell companies’ incentive to use the local monopoly to harm competition in long-distance and equipment manufacturing by prohibiting them from entering those markets. By the same token, AT&T no longer had the ability to hurt its competitors in those markets because it no longer controlled the local monopoly.

The restrictions on the Bell company grew directly out of the findings of Judge Greene that “the key to the Bell system’s power to impede competition has been its control of local telephone markets.”

Section VIII(c) of the MFJ—modified final judgment—was the language that is in the Dorgan amendment provides that the line of business restrictions can be waived if a regional Bell operating company shows that there is no substantial possibility that it could use its monopoly power to impede competition in the market it seeks to enter.

Removing the restrictions under any other circumstances would give the local telephone company the incentive and ability to recreate the vertical monopoly that the Department of Justice and many others worked so long and hard to dismantle.

Since the entry of the MFJ in 1982, the Department has assisted Judge Greene in administering its terms—in Republican and Democratic administrations alike. It has been dedicated to ensuring that the line of business restrictions hinder the RBOC’s only to the extent necessary for protecting competition in other markets.

The Department has supported waiver of the restrictions when it has concluded that Bell companies’ entry into the markets presented no substantial possibility of impeding competition in those markets. The Department now has over 50 professionals—lawyers, economists, and paralegals—who are
Again, there are two places in this legislation that I call to my colleagues’ attention who are trying to figure out what to do with this legislation, whether to support this amendment. There are two sections in this legislation that talk about interconnection. The first is the section beginning at 255 of the 1934 Communications Act, and the second, the one we are talking about now, the interconnection requirements prior to getting into long-distance that are described in the new section 255. The fundamental all should be to allow the Bell companies into any market they choose to enter as soon as such entry does not threaten to impede competition in the other markets.

That is the success that we have had to date. Mr. President. By ensuring that there is competition, the consumer has benefited, and it has been the Justice Department that has managed that effort.

The simple fact, however, is that telecommunication networks are so complex that the RBOCs’ ability to frustrate viable competition exceeds the ability of legislators and regulators to specify the steps necessary for opening local markets.

As was the integrated Bell system before the MFJ, the Bell companies today are in a position to ensure that every step forward is accomplished by a step backward, preserving their local monopoly as they race into long-distance with the advantage of the monopoly still intact.

The way to overcome this ability of the RBOCs to thwart the open local markets is to give them a positive incentive to cooperate in the development of competition. The RBOCs will have such incentives when the specified steps for opening the local markets are supplemented by a process that ensures analysis of actual marketplace facts before the RBOCs are allowed to enter long-distance. That is how the Dorgan amendment and the Thurmond amendment attempt to do.

As I said, Mr. President, we have been through this bill a number of times, and there are places in this bill where I believe the Bell companies make a good case. We may have regulatory requirements that are unnecessary that may, in fact, impede the development of competition.

I am prepared to entertain discussion of regulatory requirements that are still required in this bill that may, in fact, impede competition, that may provide an unnecessary burden for the regional Bell operating companies unnecessarily, at least that they cannot be defended in what they provide for the American consumers.

Both the chairman and the ranking member of the committee, as they have said on many occasions on this floor, are attempting to create a structure to compete. All begin the process of competition, initiate competition at the local level, then move to end many of the barriers that currently exist to entry into these markets and finally, in section 3, come to an era of substantial deregulation where price will be determined by competition, not by regulatory fiat.

The Department of Justice role in promoting competition has been historically not only bipartisan but also across party lines. As was the antitrust investigation against the Bell system was initiated in the Nixon administration.

The antitrust case against the Bell system was filed in 1974 in the Ford administration. Litigation continued under the Reagan administration into the Reagan administration. The case was settled by requiring divestiture during the Reagan administration. The Department of Justice assisted Judge Greene administering the consent decree throughout the Bush and the Clinton administrations.

The decisionmaking process of the Department of Justice has not been a partisan issue. It was approved last year by the House, with over 420 votes. It was approved last year by the Senate Commerce Committee by a vote of 2 to 0 and supported by President Reagan’s Assistant Attorney General for antitrust, Prof. William Bater, Judge Robert Bork, a letter from a bipartisan group, and a former member of the House of Representatives, Vin Weber, in a piece he wrote in the Washington Times.

The role for the Department of Justice is not being suggested as a consequence of concern for one sector of the economy or the other. It is the suggestion—recommended change in this law—based both upon what politicians themselves have concluded in the past was necessary, as well, mostly based upon evidence at hand of the Justice Department’s capacity to manage that was an unprecedented transition from a regulated monopoly situation to a competitive environment.

It seems to me, Mr. President, quite appropriate to be calling upon the Justice Department to once again do more than be a consultant in this matter, much more than just in the 90-day period during which the FCC will make its determination.

It is better to have a parallel process going on with the Justice Department, where they will be making determinations as to whether or not competition exists; again, whether it is the VIII(c) test of no substantial standard possible, or the Clayton test, which I will get to later.

The Justice Department is the agency that understands the markets, that knows whether or not there is competition, and it is the agency that I believe we need to turn to if we are concerned about what kind of response it is going to be from our consumers, our taxpayers, and voters.
Mr. President, I will get into that later, but one of the things, if Senators are concerned about what this will do after a person votes "aye," what final passage will do, what changing the law will do, one question to answer is, is this process going to take a long time? Is it fast? Can the merging companies in here sort of drag this thing out for a long period of time?

One of the reasons we need a Department of Justice role is to reduce the possibility of litigation, to reduce the opportunity to drag this thing out in the courts, and to increase the date when real competition will begin to produce benefits for the consumer.

Mr. President, the VIII(c) test is pretty well established. I want to talk now about what the language of the Thurmond amendment does. I believe that it is likely to be that test which we will be deliberating, that Members will have to decide whether or not they approve or want the Clayton standard. First of all, the Clayton Act was passed in 1914 and it was passed to prevent mergers that may substantially lessen competition or create a monopoly. That standard has been applied to every industry, not just to telecommunications. It is applied to mergers with critical national importance such as defense industry mergers like Martin Marietta and Lockheed, applied to mergers in other high-technology industries, software industries, the recent Microsoft and Intuit, applied to mergers in the telecommunications industry like AT&T-McCaw and British Telecom-MCI mergers.

The standard is a known quantity. It is a known quantity and it has been developed through 80 years of litigation under that standard.

If the Bell operating companies want to enter into long distance by buying a long distance company, this is the standard that would be applied and it is logical to apply the same standard if they want to enter long distance in other ways under the unique circumstances of this bill superseding an antitrust consent decree with the intention of creating competition. The Thurmond amendment, the Clayton language, makes entry dependent on passing the Clayton Act test. This test is normally applied to mergers, even in the Microsoft amendment, if they propose to acquire a long distance company. The Clayton Act test would apply to RBOC entry unless the effect of such entry may be substantially to lessen competition or to tend to create a monopoly. That standard has been applied to mergers in other industries, software industries, the defense industry, defense mergers like Martin Marietta and Lockheed, applied to mergers with critical national importance such as defense industry mergers like Martin Marietta and Lockheed, applied to mergers in other high-technology industries, software industries, the recent Microsoft and Intuit, applied to mergers in the telecommunications industry like AT&T-McCaw and British Telecom-MCI mergers.

The standard for the Justice Department role is to reduce the competitive risk of allowing firms that dominate a market to enter into a closely related market through mergers and joint ventures. Based on the facts of those particular cases, the Department of Justice concluded that under certain market conditions it is not necessary to prohibit entry by a number of local exchange companies into long distance services. But the Department of Justice has required structural separation and other safeguards in the anticompetitive areas to protect the public interest in competition, for example, the GTE's 1983 acquisition of Sprint; again the AT&T-McCaw merger and the British Telecom-MCI joint venture.

Mr. President, I would like to now try to give Members—I see the distinguished Senator from Vermont is here.

Mr. President, I would like to speak on the amendment, but I do not want to interrupt the distinguished Senator from Nebraska. I enjoyed listening to him, but if he did want to take a break, I would be happy to express some views on this.

Mr. President, I would like to now try to give Members—I see the distinguished Senator from Vermont is here.

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Mr. President, I would like to now try to give Members—I see the distinguished Senator from Vermont is here.
happened since that time during the years that these suits would be litigated. The American economy would suffer from the effects of lessened competition and higher prices. Before the MFJ broke up the Bell system, there were no suits with antitrust suits against the system ongoing in courts across the country at any given time. AT&T’s 1977 annual report said that some 40 such private suits were then pending against it. Asking for more of those suits would be a giant step backward.

Mr. President, I say with respect that without either the Thurmond or Dorgan language here, that is precisely what we are doing. We are inviting suits in the absence of the Department of Justice moving at the same pace, the same 90-day period. It is not an additional 90 days, not an additional 180 days. During the same 90-day period during which the FCC is examining the merits of the application, determining whether or not the antitrust requirements of section 25(a) have been satisfied, during that same 90-day period the Department of Justice would be doing an analysis of whether or not competition exists at the local level or whether negative impacts of monopoly were not likely to risk higher prices for the consumer at the local level.

At the end of the 90-day period, just as would occur at the Federal Communications Commission, the Department of Justice would have to make its ruling. You have a simultaneous process. I say to my colleagues, if you are trying to reduce bureaucracy, if you are trying to reduce the potential for lawsuit, then either the Dorgan or the Thurmond amendment is something you must be for.

The opponents of the Thurmond and Dorgan amendments argue that all we need to do is allow the Department of Justice to make sure that antitrust suits against the Bell companies from AT&T. That took 10 years to litigate and conclude. The decree, the modified final judgment, took all these years of antitrust litigation, required a restructuring of the market, and led to significant consumers.

Rather than relegate the Justice Department to a consulting role, if we design a proper role for that expert agency up front, we can avoid this kind of costly and time-consuming litigation from happening again. Let us handle it right from the start and not come in after the fact when the cure can sometimes create a new set of problems.

What this bill does, unless amended, is say, “We hope the checklist of anti-competition requirements works to unlock the local loan to competition.” We all hope that. But what if it does not work? What if the checklist is not long enough to ensure that the local monopoly power of the Bell company is broken and competition can develop?

If the checklist does not work, under the bill the Justice Department has to clean up the mess. They have to clean it up after the fact, instead of having the Department of Justice being responsible for the Bells, the Bell company has already gotten into long distance and used its monopoly power to stifle potential competitors who need the Bell companies’ pipeline to our homes and businesses.

The cleanup after the fact could take years of litigation, just as the prior case that ended with the MFJ took years. The cleanup may require a restructuring of companies, just as the prior case prior to the decree, which is after the Bell company has already gotten into long distance and used its monopoly power to stifle potential competitors who need the Bell companies’ pipeline to our homes and businesses.

We are sometimes accused of passing another test, and I think Judge Bork is right on this. We should minimize this litigation quandary by having the Justice Department with its expertise, look at the competitive impact of Bell company entry into the long-distance and manufacturing markets.

The MFJ left the Bell companies with local exchange monopolies, which would be in place today. To consumers, those Bell company monopolies are regulated. Line-of-business restrictions were imposed on the Bell companies. This was to make sure they did not use their controlling monopoly over the local phone service and the pipeline to the home to harm consumers or to gain unfair advantage over the competitors in the long-distance, manufacturing, and information services markets. Any of those regulations could be removed upon a showing by the Bell company that there is no substantial possibility that it could use its monopoly power to impede competition in the particular market it is seeking to enter. This is the so-called VIII(c) test.

The test has been tried, and it actually works. The Bell companies, of course, have their own reasons to believe VIII(c) is overregulatory. But they have been able to satisfy the test in the past and get into information and other services, and do so without harm to consumers.

The MFJ’s VIII(c) test is not even as strong as another test to which one Bell company agreed in March of this year. Ameritech reached a landmark agreement with the Justice Department, and they agreed to an actual competition test. We ought to look at that. Ameritech thought this was an appropriate test for a temporary trial waiver of the long-distance restriction. We are not talking about anything temporary here in this bill, but legislation with a far greater degree of permanence.

In discussions in which I have been involved, our colleagues are working out the differences so the Thurmond-Dorgan amendment can protect competition. I think that is important because the amendment provides a certainty that the Bell companies claim they want.

Having the Justice Department apply the standards under the Sherman Act that is going to be outlined in the amendment, I believe, would complement the competitive checklist in the bill. The Justice Department would make sure that, in addition to the checklist being met and the Bell companies having taken the basic steps necessary to permit local competition to develop, in fact, those steps are working.

The bottom line is that with the existing monopoly hold that the Bells have over long distance, the Department of Justice should review the competitive impact of Bell company entry into long distance. Otherwise, the choices that consumers have in

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Justice, our most expert competition
I am glad I have had a chance to work with them. I think we are going to have a decent solution and a good compromise in the amendment.

With that, Mr. President, I do not know who else may be seeking the floor, so I am going to yield the floor in just a moment.

I see the Senator from Nebraska on his feet. I will yield the floor.

Mr. KERREY. Mr. President, again, the question for colleagues is whether or not the Department of Justice can perform a role that would be useful, that would enable us, 50 years from now, to say we have, as again the chairman and ranking member have attempted to do in this legislation, created a structure under which we will go from a monopoly situation at the local level to a competitive environment for all telecommunications services.

One of the statements that is very often made is that, well, there have been lengthy delays and people say there are a lot of delays over at the Department of Justice. A triennial review that was required has not been done, or, well, the SEC can do it just as well; they will just hire some more people over here in this area and they should be able to do it very well.

Mr. President, what I would like to do is cite a couple of instances to give you an example, and they illustrate the kinds of things that are going to occur, the kinds of questions that are going to occur, and also to do things that the current law prevents them from doing. Basically, that is what we are talking about here. Telecommunications corporations that are prevented from doing something will be allowed to do it with this legislation.

It is not just the common carriers, by the way. We are allowing cable companies to price differently. We are deregulating them substantially. We are changing the FCC, the exchange monopoly. There are lots of changes in this bill besides just having to do with common carriers, but it is the common carriers we are dealing with in this particular amendment.

The case of GTE is very instructive, Mr. President. In this case, what you had was a company, GTE, with a local exchange monopoly in markets that were scattered around the country, and Sprint, a long distance company, represented by Delinger. The Department of Justice did was to write up and get both parties to agree to a consent decree that was filed in court that prevents further litigation requiring separations, separate subsidiaries and equal access for other long distance companies to make sure that GTE customers would have the benefits of long distance competition.

The Department of Justice ensured that there was competition. They promoted and allowed the businesses to mingle, in this case GTE and Sprint.

One of the things does it is sets aside that consent decree. I believe it was in one of the Senator DOLE’s amendments earlier. So now this original consent decree that was filed on behalf of a merger and on behalf of consumers to make sure that you still have competition at the local and at the long distance level.

An even more difficult one was the merger of AT&T and McCaw that my colleagues might recall happened. I guess, about a year ago now in 1994, AT&T, obviously, by far the largest of the long distance carriers, was attempting to acquire initially, I think, perhaps 20 percent even finally 10 percent of the larger cellular provider, providing not just long distance but local telephone service as well. There was vertical integration involving two companies with substantial market power. AT&T was dominant in both long distance and manufacturing of cellular equipment used by McCaw’s competitors. The question was whether or not by acquiring McCaw, AT&T was going to restrict competition from competitors who were buying equipment that wasn’t AT&T, and, you know, on the other hand, has only one competitor in each of the markets it has been given by the Federal Communications Commission.

So what happened? The Department of Justice intervenes. They work with both companies. They negotiate between both parties. They declare what it is they are going to be filing, and they file a consent decree which required separation and nondiscriminatory treatment. So far as regards to do things that the current law prevents them from doing. Basically, that is what we are talking about here. Telecommunications corporations that are prevented from doing something will be allowed to do it with this legislation.

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going to do. We are going to put a consent decree together establishing separation together with nondiscrimination safeguards so that public disclosure of rates, public disclosure of terms and conditions under which MCI and the joint venture can access to BT’s network is required.

Second, British Telecom is barred from providing the joint venture with proprietary information about their American competitor.

Again, Mr. President, I do not expect my colleagues, I do expect myself, to understand exactly what all this means but what it establishes is that the Department of Justice has experience in making certain there is a competitive environment so that neither the providers nor the consumers who are out there trying either to sell or to buy are affected in an adverse way as a consequence of mergers, as a consequence of new lines of business that the Department of Justice has developed as we lower the barriers to entry, as we decrease the regulatory burden and increase the extent to which competition is going to be used to determine our prices and quality of our goods.

Now, as to the question of whether or not the Department of Justice has failed to fulfill its obligation to review the need for continuing the MFJ’s line of business restriction—that is a statement that is made relatively frequently—I think this criticism is not terribly valid. There was a triennial review that was done in 1987; 3 years after the breakup of the Bell system, but the suggestion that because there has been only one triennial review, there has not been a constant review, I think that suggestion does not stand up in the face of the evidence of what Judge Greene has been instructing the Department of Justice to do, it does not stand up in the face of the enormous number of waiver applications that has been coming up and what has been effectively a de facto situation of constant reviewing of the line of business restrictions, and it does not stand up in the face of the current review and the recommendations on line of business restrictions.

Experience demonstrated that triennial reviews by the Department of Justice were not necessary to achieve the intended goal of ensuring review of the matter. The MFJ’s line of business restrictions. Judge Greene himself explained why DOJ should have complete discretion as to whether or when to file additional triennial reviews. In his language:

The Court and the Department envisioned a comprehensive review every 3 years interspersed with occasional waiver requests. What has occurred, however, is the process of almost continuous review generated by an incessant stream of regional company motions and requests dealing with all aspects of the line of business restrictions.

Let me repeat again for emphasis, Mr. President, because those who very often criticize the Department of Justice for not doing a sufficient amount of review are the very companies that have created a constant review as a result of their application for waiver and the motions that they are filing in Judge Greene’s court.

The original intent was for triennial review, Mr. President, because the Department of Justice had envisioned a comprehensive review every 3 years, kind of quiet period of time, interspersed with occasional waiver requests.

So when the consent decree was filed originally breaking up AT&T, the idea was, “Well, we will get a few waiver requests here and an occasional motion, but it will not be very often. Because there are not very many waivers or motions, we will do a triennial review.”

The situation was just the opposite: Constant motions, constant waiver applications and, thus, no need for a triennial review and, thus, it does not stand up to criticize the Department of Justice and say, “See, don’t give them a role in the matter because they didn’t do what they were originally supposed to do.”

They did not do what they were originally supposed to do because circumstances developed precisely the opposite of what the Department of Justice and the Department expected to have happen in 1981 and 1982 when this decree was being negotiated between AT&T and the U.S. people through the U.S. Department of Justice.

Judge Greene further explained why he did not require further triennial reviews. He said, with the stream of waiver requests, he “repeatedly considered broad issues regarding information services, manufacturing and even long distance.”

Mr. President, basically he is saying that though this thing did not develop as was expected—long periods of quiet—interrupted by triennial reviews—the waivers and the motions have enabled us to constantly review the line of business restrictions and determine whether modifications need to be made.

The judge also explained that “as soon as there is a change, real or imagined in the industry or other markets, motions are filed and all aspects of the issue are reviewed in dozens of briefs.”

These observations are still valid. In the life of the MFJ, Bell companies have filed an average of one waiver every 2 1/2 years, and every 2 1/2 years a triennial review is underway right now as the Justice Department investigates a motion to vacate the entire decree pursued by three Bell operating companies. This investigation will culminate with a report to Judge Greene in the next few months, and that report will be a comprehensive review of the need for continuing the line of business restrictions. It is likely the recommendations that are going to be made will support most, if not all, of the changes that are being recommended in this legislation.

Let me talk about this purported delay. You hear, “Well, the Department of Justice takes a long time; this waiver process takes a long time.” Typically what is done is a statistical analysis is used of the average age of pending MFJ waivers; that is to say, the request for waiver of the consent decree. There was a consent decree filed in the consent decree. The Department is administering that consent decree on behalf of American consumers who benefited enormously as a result of that Department of Justice action and what Judge Greene has done otherwise. The statistical analysis, in my judgment, is a red herring. This argument that is used against DOJ decisionmaking is that you will see an unnecessary delay as a consequence of this statistical analysis, to back up the assertion this analysis purports to show that a Department of Justice role will cause a long period of time for decisions to be made.

Again, two things argue against that. One is that I get a decision in a minute. The other is in the language of the amendment, either as modified by the Senator from South Carolina or as originally contained in Senator Dorgan’s amendment. It is a review process that takes place simultaneously in the Department of Justice and in the Federal Communications Commission. Both have a date certain of 90 days. Only with the Department of Justice role, in my judgment, are you going to limit it to 90 days. Without that Department of Justice role, I stand here and predict you are going to have substantial litigation and the very delay we all seek to avoid.

Congress can and should require the Department of Justice to make this determination by a date certain. It is as simple as that. That is what the amendment does. That is what either one of these amendments, in fact, would accomplish.

The amendments guarantee the Bell companies will get an answer on long distance entry by a date certain. The legislation will replace the waiver procedure with specific deadlines. You eliminate the waiver procedures included in the 214 waiver procedures that are in current law under the 1934 Communications Act. The Department of Justice review cannot possibly slow Bell company entry into long distance unless such entry would be harmful to competition and, thus, undesirable for American consumers and customers.

Under that situation, you want the Department of Justice to slow it down, in their reasoned judgment, based upon the experience that they have had, it is going to restrict competition. They are the ones with the experience. You do not want this process to end if the Department of Justice, before granting permission, interprets the proposal to mean less choice, less competition, because in a monopoly situation, when the choice is between two companies, the one that is going with this legislation, you are unquestionably going to get increased prices and marginal, if any, improvement in quality.
Entry will be permitted to occur as quickly as possible, consistent with the appropriate entry tests that have been established by Congress in this legislation.

But there is a follow-on question, which is does the MFJ waiver process show that the Department of Justice has been a barrier to greater competition by unnecessarily delaying waiver requests that are eventually approved? No, the users of that argument imply the Department of Justice review of waiver request has been worthless because the Department of Justice has supported and the district court has approved some 95 percent of those requests.

Mr. President, that examination, that figure of 95 percent does not tell all the story. A typical pattern is for one or more of the Bell companies to file an overbroad waiver request seeking relief that could not possibly be consistent with section 802(c) of the MFJ. The unreasonable requests evoke extensive public concern and comment. The Department of Justice then has two choices: Recommend denial when the request is made, which would be relatively quick, or work with the Bell companies to eliminate the basis for the request so that it satisfies the requirements for approval.

Fixing the request is harder and takes much longer than just saying no. But the Department of Justice has committed itself to this harder course because it believes that the cause of competition is better served by taking the time to negotiate a reasonable request than by merely opposing an unreasonable request itself.

Of the waivers approved by the courts in 1993-1994 that were not mere copies of other waivers, fully 60 percent were the product of negotiations between the Department of Justice and the Bell companies that resulted in a modification of the original waiver request. Thus, the approval rate to which opponents refer is, in large part, a testament to DOJ success in preserving competition while working to minimize the burden of MFJ’s line of business restrictions.

Another argument that is very often thrown up in this debate is that you are seeing an increase in the age of pending waiver applications. The timetables for waivers under the present court-administered consent decree is irrelevant. The Thurmond and Dorgan amendments require that the Department of Justice render its determination no later than 90 days after receiving an application for long distance service.

Mr. President, there is, by the way, some reasons why these waiver requests are pending with the Department of Justice and why they have increased since the early years of the MFJ. I would like to go through one or two of them. But, again, I am actually offering some examples of why the Department of Justice is more competent than they might appear, if this is your only method of evaluation.

I am not offering these to try to persuade any colleagues that this is why you should trust that the process is not going to take very long. The amendment itself says 90 days. There is a date certain in the amendment. Do not worry about this dragging on forever, the law does not allow that.

Well, again, opponents have compared and taken to resolve waiver requests in the early years of the modified final judgment and the time taken more recently and asserted from the Department of Justice fails to deal with the issue. But this comparison is simplistic and ignores fundamental changes in the character of waiver requests. It is worth noting that when you compare the age of waivers in 1984 to the age of waivers in 1994, it does not suggest that the average age of waivers in 1984 would be low, since they could not even be requested before that year. Why would they not be low then? A filed waiver application in 1984 is a year old. It is understandable and logical and indeed would be surprising if the opposite was the case if these waivers would not age longer the consent decree is in place.

More recent waiver requests require more time, as well, to evaluate for several additional reasons. I think it needs to be understood. They are not illegitimate reasons. If they are not legitimate fines, that is fine. But do not come and say merely that we have one single statistic that shows in 1984 here is the age of the waiver application, and in 1994, here is the age of the waiver application and say, see, that justifies the conclusion that the Department of Justice should not be given a role.

Again, there are two reasons why that argument does not stand up. One is a fact I will isolate it in a minute. The other is that both the Thurmond and Dorgan amendment say a 90-day time, certain. The recent waiver requests, however, deal almost entirely with lifting the MFJ’s core business restrictions—that is, inter-exchange, information services—while early request waivers were primarily with respect to non-exchange and non-information services. It is a tough deal when you are looking for how well they are doing, urge my colleagues to look at the progress they have made from 1993 to 1994. Look at the complexity of the cases, and look beyond merely an examination that says from 1984 to 1994 the cases the age of the waiver applications has increased. For all kinds of reasons, it is understandable, and it does not indicate that the Department of Justice is incompetent or unqualified. If that does not persuade you, look at the language of the Thurmond amendment and the Thurmond amendment, because they remove all possibility of this thing being delayed for a long period of time by putting a 90-day time certain, a date certain in the law.

Mr. President, the Department of Justice is the agency with the expertise, the precedent, and the Thurmond and Dorgan amendment, because they remove all possibility of this thing being delayed for a long period of time by putting a 90-day time certain, a date certain in the law.
mony into a competitive environment. They have promoted competition in telecommunications on a non-partisan and bipartisan basis throughout this entire century. The Department of Justice has deepened its role in telecommunications competition over the past quarter century by investigating the Bell system’s monopoly, suing to break up the monopoly, and allowing competition in long-distance and equipment markets to flourish, and in assisting the Federal Circuit court in administering the modification of final judgment, the consent decree that dismantled AT&T. The benefits to the Nation from the Department’s role in promoting competition have been more jobs, more exports, greater innovation, and more products available to businesses and consumers at lower prices than at any time in our history.

I see that the Senator from South Carolina is herein.

I yield the floor.

The PRESIDING OFFICER. The Senator from South Carolina is recognized.

Mr. THURMOND. Mr. President, I have a modification at the desk.

The PRESIDING OFFICER. The Senator has the right to modify his amendment.

The amendment is so modified.

The amendment (No. 1265), as further modified, is in order.

Strike all after the first word of the pending amendment and insert the following:

(2) Section 255(d) (47 U.S.C. 255(d)) is amended by inserting “(for subsection (k) in the case of renewal of any broadcast station license)” after “with subsection (a)” each place it appears.

SUBTITLE B—TERMINATION OF MODIFICATION OF FINAL JUDGMENT

SEC. 221. REMOVAL OF LONG DISTANCE RESTRICTIONS.

(a) IN GENERAL.—Part II of title II (47 U.S.C. 251 et seq.) as added by this Act, in amended by inserting after section 254 the following new section:

SEC. 255. INTEREXCHANGE TELECOMMUNICATIONS SERVICES.

(a) IN GENERAL.—Notwithstanding any restriction or obligation imposed before the date of enactment of the Telecommunications Act of 1996 under section II(D) of the Modification of Final Judgment, a Bell operating company, or any subsidiary or affiliate of a Bell operating company, that meets the requirements of this section may provide—

"(1) interLATA telecommunications services originating in any area in which it is the dominant provider of wireline telephone exchange service, in exchange access service subject to the extent approved by the Commission and the Attorney General of the United States, in accordance with the provisions of subsection (c).

"(2) interLATA telecommunications services originating in any area where that company is a dominant provider of wireless telecommunications exchange service, subject to the extent approved by the Commission and the Attorney General of the United States, in accordance with the provisions of subsection (d); and

"(3) any services that are incidental services in accordance with the provisions of subsection (e).

(b) SPECIFIC INTERLATA INTERCONNECTION REQUIREMENTS.

"(1) A Bell operating company may provide interLATA services in accordance with this section only if that company has reached an interconnection agreement under section 251 and that agreement provides, at a minimum, for interconnection that meets the competitive checklist requirement of paragraph (2).

"(2) COMPETITIVE CHECKLIST.—Interconnection provided by a Bell operating company to other telecommunications carriers under section 251 shall include:

"(A) Nondiscriminatory access on an unbundled basis to all switched network functions and services of the Bell operating company’s telecommunications network that is at least equal in type, quality, and price to the access the Bell operating company affords to itself or any other carrier.

"(B) The capability to exchange telecommunications between customers of the Bell operating company and the telecommunications carrier seeking interconnection.

"(C) Nondiscriminatory access to the poles, ducts, conduits, and rights-of-way owned or controlled by the Bell operating company at just and reasonable rates where it has the legal authority to permit such access.

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

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

"(F) Long distance transport, local loop transmission, or other services.

"(G) Nondiscriminatory access to—

"(i) 911 and 911 services;

"(ii) directory assistance services to allow the other carrier’s customers to obtain telephone numbers; and

"(iii) operator call completion services.

"(H) White pages directory listings for customers of the other carrier’s telephone exchange service.

"(I) Until the date by which neutral telephone number 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.

"(J) Nondiscriminatory access to databases and associated signaling, including signaling links, signaling service control points, signaling transport points, and signaling points necessary for call routing and completion.

"(K) Until the date by which the Commission determines that final telecommunications number portability is technically feasible and must be made available, interim telecommunications number portability through randomization of digits when using any telecommunications number portability.

"(L) Nondiscriminatory access to whatever services or information may be necessary to allow the requesting carrier to implement local dialing parity in a manner that permits consumers to be able to dial the same number of digits when using any telecommunications carrier providing telephone exchange service or exchange access service.

"(M) Reciprocal compensation arrangement determined by the Commission for the origination and termination of telecommunications.

"(N) Telecommunications services and network functions that are available on an unbundled basis without any conditions or restrictions on the resale or sharing of those services or functions, including both origination and termination of telecommunications services, other than reasonable conditions required by the Commission or a State. For purposes of this paragraph, it shall be a reasonable condition for the Commission or a State to limit the resale—

"(i) of services included in the definition of universal service to a telecommunications carrier who intends to resell that service to a category of customers different from the category of customers eligible for universal service by such carrier if the Commission or State orders a carrier to provide the same service to different categories of customers;

"(ii) of services included in the definition of universal service to a carrier in a manner that allows companies to charge another carrier rates that reflect the actual cost of providing those services to that carrier, exclusive of any universal service support provided for those services in accordance with section 214(d)(5).

"(3) JOINT MARKETING OF LOCAL AND LONG DISTANCE SERVICES.—Until a Bell operating company or its affiliate may apply to the Commission and the Attorney General for authorization to provide interLATA services in a telephone exchange area where that company is the dominant provider of wireline exchange service or exchange access service, the telecommunications carrier may not jointly market in such telephone exchange area telephone exchange service purchased from such company with interLATA services offered by that telecommunications carrier.

"(4) COMMISSION MAY NOT EXPAND COMPETITIVE CHECKLIST.—The Commission may not, by rule or by any other means, extend the terms used in the competitive checklist.

"(5) IN-REGION SERVICES.—No application submitted under this subsection shall limit the authority of the Commission under any other section.

"(b) APPLICATION.—Upon the enactment of the Telecommunications Act of 1996, a Bell operating company or its affiliate may apply to the Commission and the Attorney General for authorization to provide interLATA telecommunications service originating in any area where such Bell operating company is authorized to provide interLATA telecommunications services and network functions.

"(c) IN-REGION SERVICES.—The application shall describe with particularity the nature and scope of the activity and of each product market or service market, and each geographic market for which authorization is sought.

"(d) DETERMINATION OF COMPETITIVE CHECKLIST.—

"(i) The Commission has the right under subsection (b) to determine what the competitive checklist should be.

"(ii) The application for such determination by the Commission under any other section.

"(iii) The Commission shall not consider the antitrust rules used in the competitive checklist.

"(e) IN-REGION SERVICES.—The application shall describe with particularity the nature and scope of the activity and of each product market or service market, and each geographic market for which authorization is sought.

"(f) DETERMINATION BY COMMISSION AND ATTORNEY GENERAL.—

"(i) if the petitioning Bell operating company has fully satisfied the competitive checklist found in subsection (b)(2);

"(ii) if the requested authority will be carried out in accordance with the requirements of section 252 and

"(iii) if the requested authority shall not cause the antitrust effects of such authorization in any market for which authorization is sought. Nothing in this subsection shall limit the authority of the Commission under this section.

If the Commission does not approve an application under this subparagraph, it shall—
state the basis for its denial of the application.

(C) APPROVAL BY ATTORNEY GENERAL.—The Attorney General may only approve the application if the application submitted under paragraph (1) by the applicants or its subsidiary or affiliate that applied to the Commission and the Attorney General under paragraph (1), or any person who would be threatened with loss or damage by the exercise of such company's engaging in the activity described in its application, may commence an action in any United States Court of Appeals for the District of Columbia Circuit reviewing the determination in accordance with section 706 of title 5 of the United States Code.

(4) JUDICIAL REVIEW.—(A) COMMENCEMENT OF ACTION.—Not later than 45 days after a determination by the Commission or the Attorney General is published under paragraph (3), the Bell operating company shall publish in the Federal Register a brief description of the determination.

(4) JUDICIAL REVIEW.—(B) JUDGMENT.—(i) The Court shall enter a judgment after reviewing the determination in accordance with section 706 of title 5 of the United States Code.

(4) JUDICIAL REVIEW.—(B) JUDGMENT.—(ii) Affirming any part of the determination that approves granting all or part of the requested authorization, or

(4) JUDICIAL REVIEW.—(B) JUDGMENT.—(ii) Affirming any part of the determination that approves granting all or part of the requested authorization, or reversing any part of the determination that denies all or part of the requested authorization, shall describe with particularity the nature and scope of the activity, and of each product market or service market, and each geographic market, to which the affirmer or reverser applies.

(5) REQUIREMENTS RELATING TO SEPARATE AFFILIATE; SAFEGUARDS; AND INTRALATA TOLL DIALING.-

(A) SEPARATE AFFILIATE; SAFEGUARDS.—Other than interLATA services au

Mr. THURMOND. Mr. President, I rise today in support of the Thurmond-D’Amato-DeWine-Inhofe amendment which will protect competition and consumers by providing that antitrust principles will be applied by the Department of Justice in determining when the Bell operating companies should be allowed to enter long distance markets.

I wish to explain a modification which I have made to this amendment. With this modification, which clarifies the separate roles of the FCC and the Department of Justice, Senator DORGAN and I have agreed to support our second-degree amendment and not to seek a vote on the Dorgan first-degree amendment. I have appreciated working with Senator DORGAN, Senator LEAHY, and their staffs, and wish to thank them for their cooperation and assistance in this important matter.

The second-degree amendment that I introduced last Thursday contained language to ensure that there is no duplication of functions between the Department of Justice and the FCC. This was accomplished in the amendment by limiting the public interest analysis of the FCC so that the Commission shall not consider the antitrust effects of any company entry into long distance markets. The antitrust effects of Bell entry into long distance should only be conducted by the Department of Justice, the antitrust agency with great expertise and specialization in analyzing competition.

The modification that I have made today clarifies that this restriction of the FCC applies only to FCC’s public interest analysis of Bell entry into long distance. This clarifies the FCC public interest in a way that is entirely consistent with the original goals and purposes of my amendment and ensures that there is no duplication of functions. Although the FCC may appropriately consider competition in other aspects of its analysis, this specialized antitrust analysis of Bell company entry is to be conducted solely by the Department of Justice.

Under my modified amendment, the antitrust standard applied by the Justice Department remains the Clayton Act standard. The standard is: whether Bell company entry would substantially lessen competition or tend to create a monopoly. This is the standard applied to every merger and acquisition in order to determine whether companies can expand or move into new lines of business. That is the issue that requires analysis before Bell companies enter long distance markets.

One issue I wish to emphasize is that my amendment is necessary to reduce duplication in the telecommunications legislation. Currently, S. 652 provides that the FCC will conduct a public interest analysis of Bell entry into long distance, with consultation by the Department of Justice. The result of the fact both agencies being involved in antitrust analysis, which is wasteful and inefficient. The Department of Justice—and not the FCC—has developed special expertise and specialization in antitrust analysis during the past 10 years.

I would also note that the language we are using from section 7 of the Clayton Act also appears in section 2 and section 3 of the Clayton Act. These sections deal with price discrimination and exclusive dealing arrangements which may harm consumers by inhibiting competition in the marketplace. Thus, not only is this standard familiar because of the experience and case law under section 7 of the Clayton Act, but also because of sections 2 and 3.

We all strongly support competition. We all support competition replacing regulation. The question is how to make sure competition exists, and whether competition is achieved by a fixed list of rules or by flexible antitrust analysis.

Mr. President, the bottom line is whether we believe the antitrust laws are the means by which we protect competition or not. It is that simple. If we believe in the antitrust laws—which have protected free enterprise for over 100 years— then we should pass the Thurmond-D’Amato-DeWine-Inhofe amendment.

For all of these reasons, I urge my colleagues to support this amendment. Mr. President, I ask unanimous consent to add Senator DORGAN as a co-sponsor of my second-degree amendment, as modified. Additionally, I ask unanimous consent that I be added as a co-sponsor to the amendment. The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. KERREY. Mr. President, I ask unanimous consent that Laura Phillips, a fellow in the office of Senator LIEBERMAN, be permitted privilege of the floor during consideration of the bill.

Mr. HOLLINGS. Mr. President, I ask unanimous consent that Laura Phillips, a fellow in the office of Senator LIEBERMAN, be permitted privilege of the floor during consideration of the bill.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. PRESSLER. Mr. President, I would like to respond to some of the remarks made here today, in part, to which I already have a second-degree amendment that I have made to this amendment.

Now, we already have several regulatory safeguards that already exist in S. 652, to break up local Bell monopolies without a new Department of Justice bottleneck.

It is my strongest feeling that having the Department involved as a decisionmaker here is a mistake. The Department is already involved. The Department can be a party to any case on appeal from the FCC. Under the Hart-Scott-Rodino Act, it involved the Department as an independent party in all FCC appeals.

The point is, the Department has an antitrust role. It has a role as an independent party in all FCC appeals. It can use the Sherman antitrust standard or it can use the Clayton, or indeed the Hart-Scott-Rodino can be used when there is an application for a merger.

Now, we already have several safeguards in the process. We do not need bureaucracy. Having the Department do the same thing, basically, that the FCC is already doing is a mistake. I might say that even if they do it, it will take them a long time.

My friends have said we will put a time certain. The legislation already requires the Department to try to act within 30 days. That is a requirement that is already on them.

Presently, the appeals last up to 3 or 4 years. I have a bill which will show how long the appeals last. They already have a 30-day requirement that they have not been meeting.

Privilege of the Floor
I want to go through some of the regulatory safeguards in this bill. First of all, the State certifies compliance with market requirements. The State has to act on this. That is a safeguard. That is a check.

Second, the FCC affirms public interest. That is also public interest, convenience, and necessity.

That means that the FCC can look at this from the traditional public interest, convenience, and necessity standpoint. We had a discussion about that here on the floor of the Senate. There was an effort to repeal that by some Members of the Senate who feel that the public interest gives the FCC too much latitude, too much power.

Next, the FCC certifies compliance and requests a 14-point checklist. The FCC has to go through a 14-point checklist to certify that the regional Bells have acted. I have the 14 points on another chart. I will go through that.

The Bell companies comply with separate subsidiary requirement. They must have a separate subsidiary in a certain period of time in many areas. Nondiscrimination requirement. They cannot give all the business to one long distance subsidiary. They have to act in a nondiscriminatory way.

There is a cross-subsidization ban. Fifth, FCC allows the Department full participation in all its proceedings. The Department of Justice will be there as the FCC proceeds. Indeed, the bill, as written, gives the Justice Department a role.

Next, the Bells must comply with existing FCC rules in rigorous annual audits; elaborate cost accounting; computer-assisted reporting, and special pricing rules.

Seventh, there will remain the full application of the Sherman Antitrust, the Clayton Act, and the Hart-Scott-Rodino Act. This is very important.

I think that is something we need to do. If we do not do the Dorgan-Thurmond amendments, that the Justice Department will have no role. They will have a very active role as they have had in the past. I think that is something to remember.

Again, the Bells have acted. I have the 14 points that must be met first of all to be certified by the FCC. Then we also have the so-called public interest requirement. We also have State certification.

What I am saying is, here we have a careful checklist that the Justice has already required much review, and what is being proposed in the Thurmond and Dorgan amendments is that, when we finish all this with the State and the FCC, then we go over to the Justice Department and start all over again with another decisionmaker.

The Justice Department is not supposed to be a decisionmaker in this sense. The Justice Department is not a regulatory agency. It has become one under Judge Greene's rules, but those at the Department of Justice will have a role.

Mr. President, this is the competitive checklist, the 14 points that must be met first of all to be certified by the FCC. Then we also have the so-called public interest requirement. We also have State certification.

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the States be involved. All this has to happen first. This is a formidable task. We are probably talking about delaying competition 3 years at least if this amendment passes in any form.

The way the bureaucracy works around here is that is, just start right now, in terms of competition. We would let everybody compete. There are some problems of unbundling or interconnecting with that, but there are Members of this body, indeed we had two members in the Commerce Committee who voted against this bill who felt strongly about an immediate start. There is much merit to that.

But the bill we came up with is a balance between those two. The bill we came up with allows States to certify, then the FCC to go through a 14-point checklist, then the FCC to go through the public interest test, then competition would begin under our bill.

But under the proposal of my colleagues here today on the Senate floor, the Dorgan-Thurmond proposal, after we finished all that process and went through all those approvals and went through that checklist, then we would go over to the J justice Department and start all over again with some more regulators and you would go through yet more tests. It would take much more time.

What we have here is a lawyer's paradise, a lawyer's dream. Mr. PRESSLER. I will, just as soon as I am finished, I am almost finished. What we have here is a lawyer's paradise if this passes. It will mean the piece of regulation we have before us, which is regulatory, will become in part regulatory. We are trying to simplify, to have less Government making approvals. This amendment would mean we would need a whole other layer of people making the same approvals. It is more regulation, in my judgment.

Let me also say that we have quite a debate in the Commerce Committee and here on the floor on this matter of public interest, convenience, and necessity. There are many in the think tanks in town who would be described as on the conservative side of things who think we should not have the standard of public interest, convenience, and necessity because, they said, that is more bureaucracy, it lets the FCC have too much power.

This Chamber and the Commerce Committee had votes on that and it was determined to leave it in, but a lot of people think that is too much regulation. I believe the senators are going to have to go through all the checklists, the public interest test, State approval, they are going to have to go through all that. Then my friends want them to go on over to the Justice Department with their lawyers and start all over again. We should not allow that. That is my point.

Mr. KERREY. Will the Senator from South Dakota yield?

Mr. PRESSLER. Yes, I will yield.

Mr. KERREY. The Senator twice has said an applicant must go to the FCC, go through all that, and then they have to go to the Department of Justice. Will the Senator from South Dakota agree that lawyers of the applicants call for simultaneous application? It does not call for consecutive application, where you go to one and then have to go to another. You do not get approval at FCC and then get approval at the Department of Justice.

The Senator twice said that you get your approval at the FCC. Then you have to go to another agency. Does the Senator allow that the Thurmond-Dorgan amendment calls for a simultaneous process?

Mr. PRESSLER. If my friend will allow me, the Senators' amendment would require that they go to two places, first of all, for sure. There is no debate about that. You have to go to two places.

Mr. KERREY. The question I am asking—

Mr. PRESSLER. Let me answer the question.

Mr. KERREY. The question is, is there simultaneous application?

Mr. PRESSLER. I do not yield the floor.

The PRESIDING OFFICER (Mr. BROWN). The Senator from South Dakota has the floor.

Mr. PRESSLER. I would like to answer that question, if I may.

First of all, the amendment would require the applicant to go to two places; actually more than that. You have to go to the State, to the FCC, and the Justice Department. It is true that the Senator and the Senator from South Dakota, as a practical matter, most people are not going to hire some lawyers. They are going to see if they meet the public interest test and the checklist first before they go to the Justice Department, as a practical matter. But, even miraculously, if they could do both simultaneously—

Mr. KERREY. I do not give—

Mr. PRESSLER. I will not yield until I complete answering the question.

The point is, you clearly would have to go to two places. One, you have to go to the State and the FCC. Under this amendment, then, you would have to go to J justice. Even if you could miraculously get all of this done simultaneously, if you had three sets of lawyers, you go to the State. Before the FCC could really act, they would have to see the State thing. The fellows over at J justice, I guarantee you, would want to see what the guys at the State and the FCC said.

Let us say, if you had enough lawyers, they could miraculously do it all on the same day, and that each agency plus the Justice Department will not delay things for 3 years, you would still have the situation that you could need three sets of lawyers. As a practical matter, most people, if the State is not going to approve, they will not spend the money to go on to the FCC and go through that test. The point is, if my friend will yield, he has to admit that there is one extra place you have to go. There is clearly one more place. You have to go to the Justice Department.

Mr. KERREY. I am pleased to yield. The Senator keeps saying miraculously, and three sets of lawyers. I just do not think the facts support that. I do not think the facts support that is what a company would do, have to hire a whole separate set of lawyers or, being a miracle, that there would be simultaneous application. The application process is different at the Department of Justice because the Department of Justice is a whole separate agency that has the experience of determining whether or not there is competition. They are the ones with the experience. The FCC does not have that experience. Indeed, the checklist the Senator is referring to is a test for the public interest.

The Senator voted for an VIII(c) test last year. Last year, the Senator from South Dakota was quite willing to have simultaneous application then because the Department of Justice had a ruling with an VIII(c) test involved.

Mr. PRESSLER. I yielded for a question. What is the question?

The PRESIDING OFFICER. The Senator from South Dakota has the floor. Mr. PRESSLER. I will be glad to yield for a question.

Mr. DORGAN. Mr. President, I would like to ask the Senator from South Dakota if he is almost finished. Senator Thurmond has offered a modification, which has been accepted as a second-degree amendment. I would like to describe the circumstances of the bipartisan support for that modification which is the second-degree amendment to the Thurmond-Dorgan amendment. After the Senator is finished, I would like to do that.

Mr. PRESSLER. I will quickly wrap up in deference to the Senator from North Dakota. I have a few more things. In fact, I am trying to keep things moving along. So I will yield the floor so the Senator can do it right now.

I hope other Senators who have amendments will bring them to the floor so we can get them up in order. We are waiting to see how things stack up. We are trying to move this. I will demonstrate an eagerness to move things forward by yielding the floor right now.

Mr. DORGAN. Mr. President, was not my intention to ask the Senator from South Dakota to discontinue if he was not finished. I appreciate very much his courtesy. Again, I think he and the Senator from South Carolina have done a real service in bringing this amendment forward. While we disagree on parts of it, disagree strongly on this part of it, I, nonetheless, admire the work that both managers have done.
But let me describe where we are. We worked over the weekend with Senator Thurmond and his staff, and Senator Kerrey and his staff were apprised. We now have an agreement. Senator Thurmond's second-degree amendment was modified or so says the Senate Parliamentarian. The modification includes some additional language that was agreed to this weekend so that we retain the standard proposed by Senator Thurmond in his second degree. We add some additional language that we wanted to be included in the description. Our judgment a satisfactory resolution on the question of the role of the Justice Department. I, therefore, will be supportive by voting yes on a motion that is offered in the second degree. It represents something that Senator Thurmond, myself, Senator Kerrey, and others agree with and think will advance the interests of this bill.

Mr. President, while I am on my feet, I ask unanimous consent that Senator Leahy be allowed to speak for a short time?

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. DORGAN. Mr. President, I heard the description by the Senator from South Dakota. With all due respect, I disagree very strongly with the description. We are not attempting to establish new barriers. In fact, it is quite the opposite. Just exactly the opposite is happening here. We intended to, and with this amendment describe the different roles for the Federal Communications Commission and the Department of Justice. We have specifically created the circumstance where there is no overlap. That was the entire purpose of what we have done over the weekend with this amendment.

So there is no overlap. We are not talking about creating a level of complexity that will be a lawyers' relief act. In fact, the only relief the lawyers in this country will get is if this is not in the bill. The only one not to include in the bill a role in the Justice Department, I guarantee you that we will have an ocean of litigation on this question forever.

So if one is interested in life and making lawyers happy, one would suppose vote against this because it will result in an ocean of litigation. We have very carefully—and I think in a considered way with Republicans and Democrats—crafted something that says for the Federal Communications Commission, here is the role for the Department of Justice, and they do not overlap but they are both essential roles. And they are both important, in any judgment, in making sure that as we move forward, we do in fact have competition.

I am probably the last one expected to stand here and extol the virtues of lawyers down at the Justice Department involved in the antitrust business. But I represent the House of Representatives, I went to the floor and suppose half a dozen times over the decade of the 1980's, threatening to put the pictures of lawyers down at DOJ on the side of milk cartons, because my notion was we were paying 900 or some attorneys involved in antitrust activity who essentially had vanished. They were not doing anything.

But my assumption was they disappeared and that we ought to find a way. Now we find the old scheme of a Department of Justice that really could not find any activity that they felt threatened the market system. Any merger was just fine. Any hostile takeover was terrible. They became more like cheerleaders for the marketplace than they were the guardians of public interest with respect to competition and those who were fighting against antitrust activities.

If you care about the marketplace, then you care about what is called a free market, and a free market in which competition is a robust, dynamic force that serves the interests of the consumers. A free market requires a little care and attention on our part.

You can no longer pick your pockets in an economy like ours if you do not have free markets. How do people pick your pockets? The influence that can pick your pockets in a marketplace like ours is when you have concentrations of power, those who can actually fix their prices, represent anticompetitive behavior, do things in a way to extract money from the consumers in a manner that protects themselves protects the enterprises from competition. Those things are not healthy. We have been through periods in our country where we had some trustbusters that had to break up the cartels and trusts. Free market systems work only when there is a free market, only when there is competition.

Our whole point about this legislation is we want there to be competition. We believe competition is good. Ancillary to that, I also believe in order for the free market to work, we have many people, there is not going to be much competition. So I ought to make sure that we provide some basic protections for those areas of the country where competition is not going to be the allocator of resources and services. Notwithstanding that, in much of our country, you will have robust competition. But the potential exists in a very substantial way for some to use market advantage to restrict competition. That is why we want to find a mechanism by which we provide guarantees, and we provide assurances for the consumers in our country. That is what we are attempting to do.

So I understand if I were one participant in this battle for the consumers' dollar in the telecommunications industry, I might say, "Gee, it is a real inconvenience for you all to be suggesting that the Department of Justice ought to have any more of a role than a consultative role." This is not about inconvenience. This is about protecting the public interest and protecting the market system to make sure we have a free market with competitive forces.

Mr. PRESSLER. Will my friend yield for a question?

Mr. DORGAN. I would be happy to yield.

Mr. PRESSLER. Indeed, I have enjoyed working with my friend on so many issues, and we do have occasional disagreement. This is one of them. Let me ask a question.

Would this amendment require the Administrative Procedures Act to be applied in Justice Department procedures? What I am getting at here is the procedures at the FCC would be under the Administrative Procedures Act so there is an open process. There are ex parte rules. The Justice Department has rules over there that are prosecutorial, and they do not have to be open; they do not have to meet all of the same requirements that an administrative agency does. What is the status of the Administrative Procedures Act regarding this amendment?

Mr. DORGAN. I do not know the specific answer to the Senator's question except to say that the amendment that we have now modified establishes a C/N test which is a test below the VIII(c) test that we had in our earlier amendment, which, I might say, the Senator from South Dakota and others voted for last year as it moved out of the Commerce Committee. To whatever extent the procedure followed would be under VIII(c), which is a higher threshold which would have been required, I would suggest that same procedure is now required in the Justice Department except that we have agreed with a somewhat lower standard.

We do not agree, however, with a notion that the Justice Department ought to be dealt out of this altogether, reserving only a consultative role for the Justice Department. I understand the question. I will try to get an answer with respect to the Administrative Procedures Act I believe the Senator asked about.

Mr. PRESSLER. Yes. We have to resolve the Administrative Procedures Act matter or clarify it to the Senate. The Justice Department, being a prosecutorial branch of our Government, can operate in secret or does not have to follow the administrative procedures rules. Therefore when you file a last year with respect to VIII(c), which is a telephone company files for a waiver—they do not have the same rights to know what is going on or ex parte rules or rules of openness that one has with an agency such as the FCC.

And under the 14-point checklist that we have and under the public interest rules at FCC, they have to follow the administrative procedures. This provides openness and protects the rights of parties. But when they go over to the Justice Department—and it would be okay with the VIII(c) test very frankly—all that is not openness. The Justice Department does not have to have open meetings.
and hearings. It does not have to have ex parte rules. Your rights over there are less than they are when you are before an agency that has the Administrative Procedures Act. I think this goes to the core of the debate on the Senate floor. The Justice Department is a different sort of an agency. It is a cabinet agency that does not have to be under the Administrative Procedures Act. It can prosecute people. It interprets the antitrust laws. It enforces the Sherman Act and the Clayton Act and the Hart-Scott-Rodino Act, and it does a good job in those areas.

I might say that the present Assistant Attorney General, a fine woman, has done a great job, in my opinion, on Hart-Scott-Rodino, and she has done a great job in administering this huge group of lawyers over there who are regulators presently under the MFJ. And I suppose that somebody fears they are going to have to let all their lawyers go if they leave the Justice Department and go to the FCC and you have openness, you have an open hearing. If one of the commissioners talks to somebody even at a reception about this case, he has to file a report of it and give equal time to somebody else. But you go over here to the Justice Department, you are not under the Administrative Procedures Act. They can operate in secret if they want to. They are a prosecutorial agency. They can operate without the ex parte rules.

I think that is a very important thing. I believe, of course, that you should be able to apply all of the aspects of the Administrative Procedures Act to the Justice Department. They have a different role in the nature of our Government. They have a different mission to carry out. Now, every agency would like to have several rooms full of lawyers who are regulators. And, indeed, if you look in the present Ameritech case, the Department of Justice has regulators checking on the validity of telephone books, to see if they fit into the lines. They have regulators checking into the validity of Yellow Pages. This is in the Department of Justice, where we hold up the hand of the balance of justice. This has nothing to do with the balance of justice. This belongs in the regulatory agency that we spend so much money on, the FCC. So that is I think a very core point here in the nature of this debate.

I adamantly do not want to yield any further time. I will just conclude by saying, because we have to get this debate moving, I challenge my friend from North Dakota to name another area of commerce where the Department of Justice has a decisionmaking role. This is trying to give the Department of Justice a decisionmaking role.

And the answer to that question, which I will get, is none, not another area of commerce, not aviation, not financial services or any other area. Why telecom, which is an important area? Why are they putting them over in the Department of Justice? It is going to take a thousand regulations to put up the Dorgan amendment. And we have this job done twice already, once at the State level and once at the FCC. I hope when we get into the wireless age I will still be around here offering a bill to eliminate the regulation that we have, but that may be 10 years down the road.

In any event, this is a bad concept, from the Administrative Procedures Act to the decisionmaking role.

I yield.

Mr. DORGAN. Mr. President, I just disagree with the Senator from South Dakota. We are not talking about a regulatory role for the Department of Justice. We are talking about a couple different pieces of legislation. We are not talking about putting Justice into a regulatory environment, the Justice Department, although I would admit that the term "justice" itself is a useful term for us to use as we discuss this because this is not about some mom and pop businesses having to confront the Justice Department. The real pawns in this debate are the American people, the consumers who are going to have to pay the bill for whatever communications services they purchase.

We would hope, all of us in this Chamber would hope they can go to a marketplace that is a free, open, competitive marketplace and purchase those services, even in the local exchanges. And the question for the Justice Department is the question of when is there competition and under what conditions this competition exists in the Bell areas, because then the regional Bell operating companies will be able to go out and compete in long distance service.

However, we are not suggesting the role of the Justice Department be a regulatory role. I think, somehow the Senator and others are mistaken about that. I do think, though, that when one makes the point we have crafted an amendment that attempts to set up competing forces here that represent the public interest for all participants is just wrong. It is not the way it is written. It is not what the amendment is about. And it is not what we are trying to do. We are saying the absence of a substantive Justice role in this telecommunication has the potential of cheating the American people.

Mr. KERREY. Will the Senator from North Dakota yield?

Mr. DORGAN. Let me yield the floor. Mr. KERREY, just for a question.

Mr. KERREY. The Senator from South Dakota asked and then raised in the following series of arguments against, after having asserted that the Department of Justice has a different role and function, which it unquestionably does—it has been managing the telecommunication, not aviation, not financial services or any other area.

And to the question the Senator from South Dakota is asking, the language of 652 on page 89 appears to be—and I ask my colleague if he reads it the same way—on line 7, it says:

"The commission shall issue a written determination . . ."

And here is the language that triggered the administrative procedures that the Senator was asking whether or not would exist. As I understand it, case law says this is the language that you need in order to trigger the very administrative review that the Senator is for. The language is:

"on the record after a hearing and opportunity for comment . . ."

I think it is a legitimate concern. I think the question that is being raised by the Senator from South Dakota is quite legitimate.

Mr. EXON addressed the Chair.

The PRESIDING OFFICER. The Senator from Nebraska.

Mr. PRESSLER. Mr. President, if I could just answer that question.

The PRESIDING OFFICER. Will the Senator from Nebraska yield?

Mr. EXON. I yield.

Mr. PRESSLER. On page 89, "determination by the Commission," that is the Administrative Procedures Act applied to the Federal Communications Commission. My point is that it does not apply in Department of Justice proceedings.

The PRESIDING OFFICER. The Senator from Nebraska has the floor.

Mr. EXON. I thank the Chair.

Mr. President, I stand by the committee-reported bill's compromise on the role of the U.S. Department of Justice. As one of the architects of the Justice Department's advisory role compromise, I believe that this compromise delicately balances provisions that hold together very well even the most dedicated scrutiny. The survival of the Federal Communications Commission public interest standard is a testament to that fact.

As a lesson in the art of compromise, the role of the Department of Justice is an example of how Congress should work together. Chairman PRESSLER...
presented a draft on behalf of his Republican colleagues which embraced a day certain for Bell entry into long distance, no role for the Department of Justice in the long distance decision-making, and no savings clause to preserve the independent regulatory agencies.

Our ranking member, Senator Hollings, presented a draft on behalf of the Democrats which held equally firm to the position of no date certain, a separate decisionmaking role for the Department of Justice, and a full preservation of antitrust authority over the telecommunications issue.

What I am explaining is that a lot of thought and compromise and discussions and ‘cussions’ have taken place with regard to this very important matter. I happen to feel that the Commerce Committee, on which I have served for 17 years, since I have been here, has done itself proud on this particular issue. We have, I think, by compromise, by understanding, by persuasion, convinced all that the Department of Justice, indeed, has a role to play.

What we are talking about and debating today—and I think the debate is very worthwhile—is how much authority, how far can the Justice Department go? I think those of us who believe that while this, like most other issues, is not perfect, we are not certain how it is going to work out. But we are certain in that this compromise, this bill, was debated very, very thoroughly, and I believe that we have something that makes a great deal of sense. I hope we will hold to the committee position.

Following months of consultation, negotiations, and bipartisan compromise, the committee recommended to the full Senate a bill which preserves an advisory role for the Department and certainly, without any question, preserves what I think was a necessary role to make sure that the antitrust authority is maintained in the Department of Justice where I think it rightfully belongs.

The compromise did not include a day certain for Bell entry into long distance, but it did include a certain procedure for entry that I think is important. It is a compromise, and I think it will work. It is a compromise which is balanced. It is a compromise which presented a win-win proposition as best we could. I certainly do not think that Chairman Pressler and ranking Democratic member Hollings should be complimented for reaching out to each other and the Democratic and Republican sides of the aisle to come up with something that I think is something that has been debated very, very thoroughly, and I believe that we have something that makes a great deal of sense. I hope we will hold to the committee position.

I have been somewhat proud in the role of breaking the logjam between Democrats and Republicans on this particular critical issue, and certainly I appreciate the fact that there are others in this debate, including my friend and colleague from Nebraska, who have made some excellent points with regard to the debate that has taken place on this vital issue.

At the heart of this debate is the appropriate role for independent regulatory agencies, of which the Federal Communications Commission is an important function to the history that these agencies are a half-step among the legislative, judicial and executive branches of Government. We should keep it that way, I suggest. It has not been my experience that the Justice Department has always been the half-step of understanding of the needs of the public at large. The Senate Commerce Committee has a unique relationship with all of the entities involved in these decisions. I have found over the years that Congress has a much easier time working to implement policy with the independent regulatory agencies than it often does with the executive branch and, specifically, in many instances, with the judicial branch.

The objectives of this telecommunications reform bill is for the Congress, the representatives of the people, to regain control of telecommunications policy. It is ironic that the Justice Department and I judge the central policy and communications policy from the congressional domain, and now here is a move to shift that control back to the world of the unelected, which I think the suggested amendment would do.

Make no mistake the Department of Justice will have a key role in telecommunications policy. Its expertise will not be wasted, and there is a great amount of expertise within the Justice Department on this and other things with regard to communications. Nothing in this legislation repeals the antitrust statutes, and I debated and cited instances of that on Friday last. This legislation specifically requires that the Department consult with the Federal Communications Commission.

The bottom line should be one rule book and one referee. The preservation of the public interest test assures that the Federal Communications Commission will give the Department’s advice the most serious of consideration, as I think, by and large, history will prove they have done in the past.

At this time of reinventing Government, there is added merit to avoiding duplication and overlapping around, looking to different agencies of Government to get relief.

To my colleagues who have expressed shock at the recent attacks on the Federal Communications Commission and the irresponsible suggestion that the Federal Communications Commission should be abolished, I suggest now is an appropriate time to stand up and show confidence in the independent judgment of that important agency.

Mr. President, how the Senate will follow the white-lightout and, I think, well-compromised and well-done effort on the measure that we have been debating now for some time.
Congress have really not substantially written a telecommunications bill for the 1990's. The telecommunications bill that we operate under was written in 1934. Does anyone doubt the technology increases we have had since 1934? We have had technological developments, and we are still being guided by an act written in 1934. You wonder why we have problems in this industry and you wonder why the Department of Justice has had to use not a telecommunications statute but an antitrust statute to help set telecommunications policy for the 1990's.

The reason why it is not being handled very well in many cases is the fact that the law they are applying has nothing to do with telecommunications. It has to do with antitrust. The breakup of the Bell companies was not based on telecommunications policy set by this Congress. It was based on antitrust laws that were concerned about the size and monopolistic practices in this industry. Therefore, all of that was achieved in sort of a haphazard fashion. We have a Federal Judge, who, to his undying credit, has done a heroic job in trying to set policy for the telecommunication industry. Judge Greene here in Washington. He has had to do all of that because we have not done our jobs. We have never tried to come up with policy that makes sense for the nineties and the years thereafter.

I congratulate the chairman, Senator Pressler, and the ranking member, Senator Hollings, for their long contribution in trying to come up with a bill that balances those interests, that says to the billion-dollar companies on this side and the billion-dollar companies on that side that we, for the first time, are going to create an atmosphere in this country that allows the marketplace to work and fashion what is good for the consumers and good for technology. Development and for the companies that provide telecommunications services. That is what this bill tries to do.

There are those who are going to argue that we cannot change the way we have been doing business because that is the way we have been doing business. We are not going to make any changes in the roles of the various agencies in Government because, well, that is what they have been doing since 1934.

I think we have to understand that, with this legislation, we are calling for fundamental changes in the telecommunications business. We are going back to allowing people to be able to compete, and there will be losers and there will be winners among the companies. But I think that the competition that we will provide will make sure that consumers are the ultimate winners in what we do with this legislation. It is very important.

The role of the Department of Justice—and I have a great deal of respect for the junior Senator from Nebraska, Senator Kerrey, for his comments. I understand the points they make, saying that the Department of Justice needs to be involved in order to protect consumers and make sure nobody does things to other people and other companies that they should not. It is under the antitrust statute when the old system existed. I suggest that that is not appropriate under the new system.

Let me give examples of why I think the Department of Justice—which is sort of the policeman or the cop when it comes to looking at various industries in this country—should not be, in this case, the policeman, cop, judge, jury, and everything rolled into one. It will still have a role under the chairman's legislation. Their role will be to enforce the antitrust laws of this country. Nothing changes in that. No one can say that this bill somehow guts the Department of Justice's role in enforcing antitrust laws, because it makes no changes in that. They will still look at the telecommunications companies and apply the antitrust laws of this country to make sure that they are being held up to the standard that the Department of Justice says they should be held to.

But what is different is that they will not be the agency that regulates telecommunications in their day-to-day activity. They will enforce antitrust laws, yes, but they will not have to be an agency that sits back and says to all the people, ''Please come to us and ask if you can provide telecommunications service. Please come to the Department of Justice building and file some more applications which may take 2, 3 years to get filled out because fundamentally the system is being changed. That is the big point that I think needs to be understood by all of our colleagues who are not on the committee—that this legislation of Senator Pressler and Senator Hollings fundamentally changes the way the telecommunications policy is going to be carried out.

Therefore, under the old system when you needed the Department of Justice to enforce the law using antitrust laws, it is no longer necessary, because we have a new document, a new set of rules and regulations, as to how to the industry is going to work in this country. The old way was defective. It was not good for the public. It caused a lot of pure competition. The new rule book says that the Department of Justice's role will be to make sure that antitrust laws are not violated.

Let me give some examples. When you have competition and when you have deregulation, the Department of Justice does not have to take the same role for the Department of Justice, and that is what we are following in this legislation here today. I will give you an example with regard to the airline industry. The airline industry is regulated by the Federal Aviation Administration. They look at questions about safety and make sure that airlines are doing what they are supposed to do to make sure that they have the necessary equipment, and when they come in and start servicing a particular area. When they do that, they do it in a manner that is safe to the consuming public. There is competition and there are prices, and what have you. When you want to start an airline, you do not have to go to the Department of Justice and ask, ''Can I do it?'' You do not go to them for a permit to run an airline in a particular area. Now, if they become involved in antitrust violations, then the Department of Justice can get in right away and say, ''Shut this down; it is in violation of the antitrust laws of this country.''

The airline industry, however, does not have to go and beg to the Department, ''Please approve and give us a permit to serve a particular area.''

Why has it changed? Because they have been deregulated. Now competition is how they operate. As long as they do it within the boundaries of antitrust laws, DOJ is not involved in that endeavor, the FAA is, the Federal Aviation Administration.

Let me give another example; that is, the trucking industry. When I served in the other body for 14 years, I was on the Transportation Committee. We worked the Department of Transportation, dealing with the trucking industry. I was there during decontrol and deregulation of the trucking industry. A carrier today, when they want to operate, goes not to the Department of Justice to get approval. They go to the Interstate Commerce Commission and get a license to serve in a particular area.

They look at the financial condition of the company. Can they operate? They look at the soundness of that company. In terms of its equipment, can they operate safely? Do they have enough equipment to do what they are supposed to do? And then they are granted permission to go out and serve areas—by the Interstate Commerce Commission.

They do not go to the Department to say ''Please let us be a trucking company.''' The Department still has the enforcement rights of the Sherman Antitrust Act. Of course, if they violate that act, the Department of Justice can come in and shut them down.

Now, the two examples I gave, I think, are apropos to the situation we have with the telecommunications industry. We have fundamentally changed how, with this legislation, how they will operate.

We are going to allow long distance companies, which in the past have been prevented from providing local service, to provide local service. There will be more people providing local service. It will just not be the regional Bells. There can be MCI, Sprint, AT&T, and a
whole array of new companies providing local service. Guess what? In return, we will allow local companies, principally the regional Bells, to be able to provide long distance service. There is going to be competition both in long distance and there will be competition in local service.

Therefore, it is the committee's opinion, and I think, wisely reached, that we have a different set of procedures and regulations, we are going to work.

That is why the committee said there is a different role for some of the agencies in Government, that they are not needed to do what they used to do because there is a different setup in the competition of providing telecommunications service.

What some of the Federal agencies want, we have new players, a whole new system, but we still want to play by the old rules. We have sort of a paternalistic attitude by some of the Federal agencies that say, 'Well, we should do that. You mean you are going to change it? We can't do it anymore?'

Yes, because we have fundamentally changed how business is going to operate in the telecommunications business.

This committee, I think, has done a terrific job in trying to say to, for instance, the Bell companies, what they have to do to allow competition to come into the local market.

There are pages of this bill that spell it out. It is a very extensive, very detailed list of what all the Bell companies have to do to allow their competitors to be able to come in and compete.

This is extraordinary in the sense of telling private industry that this is what they have to do in order to let the competitors come in and try to beat your economic brains out. It is there on page 823, called a competitive checklist. It says a Bell company may provide transportation service if first, they go through all of these things that they do, to allow the long distance companies to provide local service.

It is kind of almost a jump-start. You can get in my business when I can get into your business. But I will do everything I have to let you into my business, because we used to be a bottleneck; we used to be a monopoly; we used to control everything.

Now, this legislation says you will not control much of anything. You will have to allow for nondiscriminatory access on an unbundled basis to the network functions and services of the Bell operating companies network that is at least equal in type, quality, and price in the access to the operating company affords to itself.

That is pretty long. It says we will let you do anything with our network that we do with our network that we built. It says, second, the capability to exchange telecommunications between customers of the Bell operating companies and the telecommunications carrier seeking interconnection. So they have to be able to exchange communications between the Bell's customers. That is, we are giving you our customers and you can talk to them. Go for it.

Next, nondiscriminatory access to poles, ducts, conduits, and right of way by the Bell operating company. That is a very significant requirement that not only are we inviting you to come in and compete with us, but we will give you access to all of our equipment—telephone poles, the conduits, the right of ways.

You go in and the system you come in on, you can use it, provide local service, talk to our customers, use our networks, because we want you to have access to our business. In addition, they say that local loop transmission from the central office to the customer's premises, unbundled from local switching or other services; and next, local transport from the trunk side of local exchange carrier switch, unbundled from switching or other services.

Finally, local switching unbundled from transport, local loop transmission, or other services.

All that is very complicated, but what it essentially says is that Bell operating companies, if you take all of these things, give permission to all your competitors to come in and use your equipment, use all of these things so you can compete for local customers, but in return for that we are going to start providing intraLATA service or long distance services.

Legislation says the Commission shall consult with the Attorney General regarding that application. The Attorney General may apply any appropriate approval or any appropriate standard that they desire under their rules and regulations.

The Commission must find that the requested authorization is consistent with the public interest, convenience, and necessity.

Mr. President, I think that pretty well spells out what this bill is trying to do in terms of long distance versus local service. It spells out why I think the committee has crafted a very good proposition, one that protects the interests of the consumer.

The FCC deals with this issue like the ICC deals with transportation, and like the FAA deals with aviation. When we changed the rules in those industries, we changed the rules and bringing about greater competition, of course, the role of the Department was changed, as well. Like those other industries, those industries that do not have to go to DOJ to get approval or to let them say no to an application, that is not their role. Their role is to look at criminal violations, violations of the Sherman Antitrust Act. And all the other criminal rules that the Department has the authority to use when there are potential violations of the antitrust statues are not affected at all.

What is affected is that we are putting into the FCC the proper role that it should have, like we have in these other areas.

If we look at the history of the Department in trying to approve all of these mergers, the time that they have taken to give a ruling has increased dramatically. For approving application of 2 months in 1984 to 3 years in 1993. No wonder we have problems making the bureaucracy work, and I suggest that that is a very good example.

In addition to having a Federal Communications Commission, we have public service commissions in all 50 States plus the District of Columbia which appropriately and properly will be involved in communication and telecommunication policies and issues, as they have been in the past.

Mr. President, I ask that all of our colleagues who are trying to figure out what is the proper answer to this very complicated process that we are involved in will just look at the history of where we have been, the fact that the committee has crafted a very balanced bill.

There were differing opinions in our committee as to what the proper role should be. I think after debate, we reported this bill out with a vote of 18 to 2. I think it is very clear that both Democrats and Republicans agree that this is by far the best approach. I would recommend it to my colleagues in the Congress.

Mr. PRESSLER. Mr. President, I recognize that the leadership would like this matter to be voted on at about 6 o'clock, for the notification of all Senators. That would give Members 2 hours.

I shall have more remarks, but I will yield to other Senators. Those Senators wishing to speak on the Dorgan amendment should bring their speeches to the floor.

The PRESIDING OFFICER (Mr. Grams). The Senator from Nebraska is recognized.

Mr. KERREY. Mr. President, I inform the Senator from South Dakota, I object to the time of 6 o'clock. We should talk about it.

Mr. PRESSLER. Why would my friend object? We debated Friday afternoon and today. We are trying to move this process along.

Mr. KERREY. I understand we are trying to move the process along. It is not so much that I have an interest in delaying this all night long. It is that there have been requests from a number of people who indicated they prefer to stack votes and vote tomorrow morning. I am obliged to tell you I think that is not an unreasonable request.

Mr. PRESSLER. I am a great admirer of my friend and I pledge with the Senator, we must move forward. I received word that there are many who would like to vote at 6. We will have to compromise, perhaps in a private conversation. But for purposes of other Senators in their offices, it is our intention to try to put this to a vote at 6 this evening.
The PRESIDING OFFICER. The Senator from South Carolina is recognized. Mr. HOLLINGS. Mr. President, let me join in the desire of our chairman here to get a vote this evening. When we broke on Friday the understanding was that we would vote at 5 o'clock, perhaps. Not specifically on this amendment. We would have votes. This is the amendment that is up. We discussed it some, actually, on Thursday; all day Friday. This has been a crucial amendment.

I guess the world is not going to end if we put it over to tomorrow morning for this particular Senator. But you could not call a vote at 6 o'clock, or 7 o'clock, or this evening at all, unreasonable. Because we have debated. We look for the Members to come and join in.

In fact, it has been debated on the telephone all weekend long. Because the pressure has been on. As a result, now, the Senator from North Dakota and the Senator from South Carolina have gotten together on the one amendment to get the best vote, I take it, possible on this particular issue.

With respect to the issue, Mr. President, I hearken back to the hearings we had over a year ago. We commenced with the Secretary of Commerce, Secretary Ron Brown. The reason I refer to this is we are constantly being admonished: Wait a minute, you voted for this last year. Wait a minute, you voted for this last year.

I wish I could be as charming as the distinguished Senator from Illinois, the former minority leader—momentarily I think he may have been majority leader but he was mostly minority leader, Senator Everett Dirksen. And he said— I think he was quoting Emerson, "Consistency is the hobgoblin of little minds."

So, yes, the Senator from South Carolina voted for this last year. However, the Senator from South Carolina, and referring to Secretary Brown's appearance in February of last year—I refer on page 40:

Secretary Brown. Well, I certainly respect that view, Senator Danforth, and the one expressed by the Chairman. It is our view that VIII(c), administered by the Department of Justice, which has a good deal of experience, as the Chairman points out, would achieve the purposes of S. 1822. That is the only difference we have. We have the same goal.

We have the same goal. We have the same purpose of S. 1822. That is the only difference we have. That is the only difference we have. The lack of which the Chairman points out, would achieve the purposes of S. 1822. That is the only difference we have. We have the same goal.

The FCC is required to consult with the Attorney General regarding the application during that 90 day period. The Attorney General may analyze a Bell operating company application under the Antitrust Act, other antitrust laws, section VIII(c) the [modified final judgment], the Robinson-Patman Act, or any other antitrust law.

You see, that had not changed and is not changed by S. 652. So what we were trying to do, as I pointed out as we started out on S. 1822, was to cut out the duplication, and certainly not give the Attorney General any additional, additional authority and responsibility, except as I said at the very beginning, the Senate disagreed, and numerous Senators disagreed, and the task of a chairman of a committee is to get the proper product you want in the right hands as you do not do injury to the overall goal of deregulation and fostering competition.

So I went on in the bill S. 1822. But those who continually say, "Well, you voted, you voted—last year. You should be admonished." Rather than admonishing me, my original intent as the chairman of the committee was to do just as Senator PRESSLER has provided in S. 652. So in S. 652 we provide the one-stop shopping, the one-stop shopping. It is just like going to a doctor for a broken arm, on the one hand, and going to a doctor, on the other hand, for diabetes. They do not know anything in broken arms about diabetes, and diabetes cannot set any broken arms.

Similarly, in the legal profession, if you are going before antitrust, I can tell you now as I have had to face anti-trust lawyers and this particular attorney was not expert, I had to go to VanSeiss, in New Jersey, for a solid week seminar, because we did not have any particular antitrust lawyers in Charleston, SC, at the time that were willing to take this case. I told the prospective client, I said, "Wait a minute I am not only a lawyer, I am not steeped in that particular discipline."

I had met VanSeiss and he had a seminar, and we buddied off, my law partner and myself, for a week's seminar and came back and figured we learned enough not only to help us, but to prevail. But that is another story.

But I can tell you from hard experience, the answer is "yes." You do not get the same lawyers before the FCC, necessarily, and the same lawyers before the Justice and the Criminal Division of section 2 of the Sherman Antitrust Act.

The Clayton Act, in all fairness to the amendment of the Senator from South Carolina, Senator THURMOND, that deals strictly with civil penalties, with the matter of measuring whether there is excessive competition that could lead to extensive—not competition but monopolistic practices.

But in any event, let me refer back to page 43 of the hearing committee record so everybody who is interested about how we change—you are going to tell us how change consists about. The chairman which was Senator HOLLINGS, said, and I quote:

Well, let me just comment on the matter about antitrust because I did discuss with Anne Bingaman this particular bill before it was introduced. And I made it known to her that, and she well knows I recommended her for the position of Assistant Attorney General in charge of the Antitrust Division. She is a breath of fresh air. I am the appropriate chairman of the Antitrust Division of the J ustice Department. I have been dealing with monies for this Antitrust Division of the Justice Department for numerous years, and I can tell you categorically we are way behind the curve in this particular field. And she has got more to do that the FCC has its responsibility. On that basis, trying to eliminate lawyering, trying to eliminate the delays, trying to simplify the procedure, we really do not need much more for the Department of Justice other than consultation. Well, there is an egregious situation of monopolization...they do consult, and we put it out there. But that is not what we did not want to get into Justice and get into the judiciary Committee and get bogged down.

That is exactly where we had intended, as I said at the very beginning, the one-stop shopping. But the White House disagreed, and the Justice Department disagreed, and numerous Senators disagreed, and the task of a chairman of a committee is to get the proper product you want in the right hands as you do not do injury to the overall goal of deregulation and fostering competition.

So I went on in the bill S. 1822. But those who continually say, "Well, you voted, you voted—last year. You should be admonished." Rather than admonishing me, my original intent as the chairman of the committee was to do just as Senator PRESSLER has provided in S. 652. So in S. 652 we provide the one-stop shopping, the one-stop shopping. It is just like going to a doctor for a broken arm, on the one hand, and going to a doctor, on the other hand, for diabetes. They do not know anything in broken arms about diabetes, and diabetes cannot set any broken arms.

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June 12, 1995

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with the public interest, convenience and necessity, the Commission shall not consider”—listen to this—“the Commission shall not consider the antitrust effects of such authorization in any market for which authorization is sought.

I am your lawyer. You have a communications company. You come to the lawyer and say, “Lawyer, tell me. What about this thing?” I say, “Well, it says it should not have any authority at the FCC over your antitrust section of marketing, in any market for which authorization is sought. However, we know marketing forces and we know forces of competition. And we know measuring market competition. You have an affirmative action responsibility empowered in the FCC by S. 652.” I say, “It is the present law,” or the law as my client would come to me. And I say, “They have to do all of this unbinding, dialing parity, interconnection, number portability.” And I list all of these particular things. “You have the public interest section in here about marketing. Yet, you have a section in there that says you cannot touch the marketing thing if they reflect antitrust. Well, marketing competition, we know marketing competition could be, as we lawyers say, the mime shows, or the same thing.”

I can tell you here and now you have a bad amendment where they are jockeying for Justice into IT and mess it up. I can tell you, leave the Justice Department Antitrust Division, leave section 2 of Sherman antitrust, leave section 7 of the Clayton Act, leave all of those things as they are. S. 652 does. But do not come wandering down the road with dual committee jurisdiction, dual jurisdiction, two types of attorneys, and everything else. And about the time, if you were going at the same time and think you are making progress now with respect to the Federal Communications Commission, after, say, two or three hearings, some antitrust lawyer gives out a release, saying, “Well, we are concerned about the XYZ communications company getting into this section 2 of the Antitrust Division.” It will stop. Boom. It goes right straight on down because you have the criminal department of the Justice Department, the law enforcement department, it is not regulatory, the public is confused, the market is confused, the Commission is confused. It is a bad, bad amendment.

And let us not talk about where the expertise is.

I want to relate to the function now of the Federal Communications Commission. The Federal Communications Commission for year on end was to maintain a monopoly. They were there to protect AT&T and its monopolistic Bell companies. Today, we are supposed to protect the RBOC’s in a general sense. That has been the primary function in the Federal Communications Commission. But getting in the 1960’s, due to the pressure of Congress, the market and the evolving technology, in 1969 the Federal Communications Commission separated out the equipment from services somewhat as was later done with the modified final judgment in AT&T. We began to sort of measure competition and market forces.

Then in 1971, the Federal Communications Commission allowed competition for long distance services. Then in 1980, for the computer industry to get in, they provided competition for information services. That is the same thing. Then in 1990, the Federal Communications Commission approved video dial tone in competition for the cable companies, which, in short, allowed the telephone companies to get into the cable business.

Most recently, last week—I will get that decision because we have it all lined out here—I think this is powerfully interesting, the Federal Communications Commission was taken to the courts for the District of Columbia in the case of the Warner Entertainment Co., petitioners, versus the Federal Communications Commission.

I wish you could read the lawyers. They are talking about lawyers. This is what we are trying to do. Look. They have three pages of lawyers in this thing; three, four pages, lawyers upon lawyers upon lawyers. I could interest the U.S. Senate no end about the lawyers for Warner Entertainment Co., for Warner Television Association, Inc., for petitioners from the city of Austin and Dayton and King County, WA; Miami Valley Cable; Montgomery County, MD; St. Louis, MO, and the lawyers for the Cable Telecommunications Co.; Larry Tribe, and everybody else for Bell Atlantic, and on and on.

You talk about not getting lawyers in the Justice Department. There are lawyers coming out of my ears in one decision. Guess what the court said in this decision.

With respect to rate regulation, Congress determined that local governments should be permitted to regulate only the basic service rates of those cable systems that are not subject to effective competition.

Yes. Measuring market forces, measuring market competition. You have heard all afternoon, “Wait a minute now. The Department of Justice is the market expert. The Commission is the expert.” The FCC over here is with megahertz, some kind of radio technicians and TV aerial boys. They do not know anything about measuring competition.” That is absolute nonsense.

Here is the most recent decision on measuring market competition saying that they did an outstanding job. The Federal Communications Commission struck an appropriate balance between the competing interests of the cable companies and the subscribers in violation of neither of the 1992 Cable Act nor of the Administrative Procedures Act. It is listed as one of the FCC’s most significant legal victories because it is stated here—and it is the best wording I thought—that not only the Government—I will have to read that part. I wanted to refer to it. But they did an outstanding job in substance, take my word, and we will put the decision in the Record.

The Federal Communications Commission did an outstanding job in measuring competition—that is everybody in the world about measuring market competition.

I think it is highly significant that we do not start dividing the roles in your mind. The role of the Justice Department and the Antitrust Division is law enforcement, antitrust law enforcement, under 2 of Sherman, civil and criminal, civil and criminal penalties. I can tell you here and now that is the fundamental basis of the modified final judgment. That is untouched by S. 652.

What is suggested by the amendment is that we want to start imposing a whole new series of hearings. About the time you think you can get through the FCC, here is the Congress that has come to town and said we are going to reregulate, we are going to let market forces operate but, oh, by the way, we are going to put enforcement into the regulatory and have two regulatory bodies. Here we are getting rid of the ICC because other than railroad mergers it has become deregulated—and the trucking industry. Here we have a FCC and the Justice Department because under section 7 of Clayton it has become difficult to get market competition. And we certainly do not want another division of government coming in. At one time they had it written so you had the Federal Trade Commission because under section 7 of Clayton you have both the Federal Communications Commission and the Justice Department.

And for a while, reading this thing, they had the Federal Trade Commission, the Justice Department, and the Federal Communications Commission, and they refer it to Congress and let them have a hearing and the Congress will say let us get a commission and study like we have done with Medicare. Come on.

Let us kill this amendment here once and for all. I say, if it is anything other than what it is, it is. We have not affected the fundamental responsibility and authority of the Department of Justice. The amendment is a
jerry-built amendment of two interested Senators trying to get the judiciary Committee on the Senate and House side with a say-so. They had a similar move over there. They have not reconciled it over on the House side. But it is not its work, shopping and say come in and here is what you have to prove and here is the entity that has the expertise and they will have it. And we will have the money for them. They made 7 billion bucks the other day in an auction so they have plenty of money at the Federal Communications Commission to do this unbundling, dial parity, nonportability, interconnection, public interest standard, measuring market forces and its competitive nature.

We have all that and let us put it in one place. Let the lawyers get this in one place. Let them get a formative decision. And if at any time the Justice Department does this, as they did against AT&T in the 1970s, and they win in and they went with the antitrust procedures and everything else of that kind on law enforcement enforcing the antitrust laws, fine business.

I admire the Justice Department, particularly the Antitrust Division, particularly Assistant Attorney General, Ms. Bingaman, who has been in charge. She has done wonderful things with Microsoft and many of the other cases. She has a lot of work to do without adding more on now to have another regulatory commission or body resolved into the Antitrust Division of the Department of Justice and come in, walking down the same street, measuring market forces and everything else. There is no separation, as they say, where we have the technology and the technicians and the experts with respect to megahertz and TV towers and radio frequencies and all of these other things, whereas they measure the market.

On the contrary, the FCC has not only measured the market but measured it most successfully according to the circuit court of appeals just last week. I think we ought not to come in particularly with this phrase in here, where here we have the FCC with responsibility and they come in with the phrase that is devastating. It says here—people do not study these amendments that you have to read.

Look at that amendment. I hope they can get a picture of that thing. You need a civil engineer and a compass, not just a lawyer. But it says here:

In making its determination whether the requested information is consistent with the public interest, convenience and necessity, the Federal Communications Commission shall not consider the antitrust effects of such information in any market for which authorization . . .

Well, the antitrust affects all within the marketing measurements that we have in here with the unbundling and the checklist and everything else, plus the public interest. So how in the world can they do half a haircut at one department and another half a haircut at another department and call this good law? It is a terrible amendment and it affects the Antitrust Division of Justice. I happen to have the privilege of serving in the U.S. Senate now, but I once had the responsibility of being attorney general for the State of Missouri. I hope that my comments as an enforcement officer of an antitrust unit carry extra weight as we examine these very important issues.

We have heard the word “power” used often in this debate. On Thursday morning in summarizing this bill, S. 652, one Senator said, “It is about power. Mr. President, power to do what they want to do.”

I see it differently, Mr. President. Let us make no mistake about it, this bill is about change. This is a bill which allows us to look at the future and embrace it. This bill will allow us to look at the technology and opportunity and creativity of the future and take advantage of it. This amendment is about power, and this amendment would layer bureaucracies in the face of change.

Those individuals who want to set another layer of bureaucracy on the communications industry and upon the technology, creativity and innovation, those who would sponsor this kind of an amendment that would place lawyer of the Justice Department in this mix, are individuals who have gone to the precipice of the future. They have looked into the future, and they are running back in fear, running for the old ways of saying that we need protection. Certainly not that never before has there been such intense and continued and high-priced lobbying. I imagine that the two managers must have felt the urge last Wednesday evening to stand up and say, “Mr. President, I rise to bring S. 652 kicking and screaming to the floor of the Senate.”

These two Senators, along with other senior Senators on the Commerce Committee, have fought the telecommunication battle longer than I have ever worked in Congress, the struggle of experience rings through their testimony. This is no ordinary bill. The stakes are higher than any of us can
quantify. This bill is fundamentally about change. As Mr. Gilder told us 15 years ago, change is always the definitive conflict.

So, Mr. President, with these thoughts in mind, I want to focus on the amendment we are now considering, the compromise between Senator DORGAN of North Dakota and Senator THURMOND of South Carolina. Unlike the bill in general, this amendment is not about change in our world, but about power in our Government. It is about whether we choose the winners and the losers in our economy, to stand above the marketplace and to play gatekeeper.

I think it is important for us to resist that temptation, to resist the idea that Government should somehow choose the winners, choose the losers; that the pollution of politics would possibly infect those who would succeed and those who would fail. Let us have a level playing field, let us have a clear competition, let us let the marketplace make those decisions.

The purpose of this amendment is to stand between the marketplace and the people. It is to play gatekeeper. The purpose of the amendment is to hand to the Department of Justice unprecedented power in shaping the future of the telecommunications of America. This is not a light matter. This is not a matter of no consequence. This is an unprecedented power that Congress has never before granted to anyone.

Supporters of this amendment have been asked to give us a precedent for their proposal, but they have not provided one. As we have learned from the debate last week, the precedent is not to be found in the MFJ decree. Jutice only has an advisory role in the court action of Judge Greene, the same role that is reserved and preserved in this bill in its current form.

It is in the direct interest to elevate or escalate that role. I will not get into the entire argument here; however, it is worth mentioning that a very insightful colloquy took place on this floor last Thursday night. I encourage all Senators to read the outstanding arguments presented by the two managers, the Senator from South Dakota and the Senator from South Carolina. This issue should have been put to rest that evening. But proponents of the amendment press ahead, ignoring the experience of those Senators most able to judge whether or not balance has been reached in this bill.

Senator HOLLINGS stood up and admitted he is a good witness to settle this case. I wish the other Senators would accept this.

I do wish to briefly comment on a specific argument that was suggested Thursday night that handling the Justice Department and its lawyers into a historic role of replacing Congress as the Nation’s policy maker.

The transition from monopoly to competition requires great care. Indeed, it requires clearly defined parameters. For this reason, we have developed a substantial checklist. It is in the list of the collective details. The checklist requires safeguards, so we put safeguards into the bill. Some have suggested that it requires experienced counsel, so we provide for an advisory role by the antitrust experts at the Department of Justice.

Let me emphasize this final point about the advisory role. We provide for an advisory role by antitrust experts, as the Department of Justice. Contrast this to what the others are saying. Let me say that the lawyers at the Justice Department are the only experts in competition in this country. I quote from a statement made last Wednesday evening.

Lawyers from the Justice Department understand, energy, agriculture, computers, financial, foreign commerce, professions, intellectual property—take the professions, and then provide for an advisory role by antitrust experts, experienced counsel, so we provide for an advisory role. We provide for the micromanaging influence of the entire economy to them. You could extend the logic of this amendment from the telecommunications industry—it is an important industry, you have to have the Justice Department micromanaging that part of Government, why not apply it to all other commercial industries? Why not start with all of the other departments within the Department of Justice, transporation, energy, agriculture, computers, finance, foreign commerce, professions, intellectual property—take the professions, divisions. Do we hear the call from Congress to regulate lawyers from entering different types of practice? Can you imagine the uproar if Congress proposed to have the Department of Justice determine when each law firm could practice different types of law? Well, we do not have to imagine what they are proposing here. What they propose is to single out the most dynamic economic sector of the American economy, the sector undergoing the most rapid and dramatic change, the sector in which we have perhaps the most dynamic and dramatic change, in which we have perhaps the most dramatic competitive advantage in the marketplace—an area where we are fighting to make the marketplace—a productive competitive marketplace—and they want to add the ingredient of governmental cement to the process. We do not need to freeze and to repress the developments in our industry, we need to energize them, and having the Federal Communications Commission there is enough regulation, particularly when you have the Justice Department with its ability to be advice givers in antitrust.

Then we are told that we should not fear more governmental involvement in the private sector. This is not some “big bureaucracy,” one Senator said. They only have 800 lawyers over there at the Antitrust Division. Imagine that, Mr. President. We are trying to convince the American people that a group of 800 Government attorneys are going to be helpful in providing productivity and competitiveness for our telecommunications industry. In fact, we tell the people that if these 800 lawyers do not help us by picking the economic winners and losers, then the fastest growing industry will fail and rain unknown harm on American consumers.

Well, let us consider, stop and take a look at some of the decisions we have made in this bill that were influenced by the present policies of these 800 lawyers at the Department of Justice. Let us see if their past performance leaves us wanting nothing to take the GTE consent decree. In 1982, GTE purchased a company called Sprint. The Department thought that these two companies getting together provided local and long distance services. I said nothing to change that. Why not start with the GTE consent decree. In 1982, GTE purchased a company called Sprint. The Department thought that these two companies getting together provided local and long distance services. I said nothing to change that. Why not start with the GTE consent decree? In 1982, GTE purchased a company called Sprint. The Department thought that these two companies getting together provided local and long distance services. I said nothing to change that. Why not start with the GTE consent decree? In 1982, GTE purchased a company called Sprint. The Department thought that these two companies getting together provided local and long distance services. I said nothing to change that. Why not start with the GTE consent decree? In 1982, GTE purchased a company called Sprint. The Department thought that these two companies getting together provided local and long distance services. I said nothing to change that. Why not start with the GTE consent decree? In 1982, GTE purchased a company called Sprint. The Department thought that these two companies getting together provided local and long distance services. I said nothing to change that. Why not start with the GTE consent decree? In 1982, GTE purchased a company called Sprint. The Department thought that these two companies getting together provided local and long distance services. I said nothing to change that. Why not start with the GTE consent decree?
Please note, Mr. President, that the GTE consent decree was lifted by Congress—or will be lifted by Congress, not by 800 of the so-called I-am-here-to-help-you friendly lawyers at the Justice Department.

In the case similar to the GTE case, a company called AirTouch has been relieved of its restrictions by this bill. This was a cellular carrier, once a subsidiary of PacTel. It has been an independent, publicly traded company since April 1994. Again, Justice would not remove the MFJ restrictions that were reserved for Bell companies. Again, Congress lifts the restrictions in this bill.

It might be interesting to add here that after AirTouch submitted an opinion at Justice stating its position that it was no longer bound by the MFJ, a competitor in the long distance market filed a letter opposing MFJ relief for the cellular carrier. We cannot say for certain whether pressure from a long distance competitor played any role in the inaction of Justice—their failure to relieve AirTouch of the restrictions. We can say for certain that this is the exact type of legal and political pressure that will be finding its way into an increasingly productive marketplace, one where competitiveness of the telecommunications industry, if we layer bureaucracy upon bureaucracy, intermeddling, and seeking to micromanage what the marketplace can properly regulate, we can say that we do not want this type of legal and political pressure, which would be intensified to a degree beyond comprehension if Justice is put in the position of deciding MFJ relief for all Bell companies.

I am not saying, by any means, that 800 friendly lawyers at Justice do not know what they are doing. I am sure that they are experts in antitrust matters. Again, this amendment does not ask them to investigate antitrust. It authorizes them to implement congressional policy.

The question is whether this is the proper role of Justice. I think the answer is clear, and I think the answer is resounding. I think the answer is simple. I think it is time for the Congress to make that answer unmistakable. The answer is no. Let Justice continue its role as a prosecutor of the Sherman and Clayton Acts.

Let us consider another example in the cellular service industry. As we all know, several years ago in every city and town, two licenses were granted for providers of cellular phone service. In each of the seven Bell service areas, the incumbent Bell company was granted one of the two licenses. But the playing field was not even. One of the great advantages of cellular is its independence of the traditional landline and wire infrastructure. Cellular operators are not subject to the limits of the LATA boundaries. They are, by definition, mobile phone systems. This allows some cellular companies to offer creative price discounts to their customers. I say some companies are allowed to offer these creative price discounts, because others are not. In each service area, some carriers can offer customers one price for all calls, whether they are local or long distance. Some carriers cannot. The law says so.

The Department did not act to change this policy. A combination of court decisions and the Department's inaction has left Bell cellular affiliates unnecessarily restricted to their wireline boundaries, while non-Bell competitors enjoy the flexibility that the wireless world presents.

In fact, an interesting case developed that led to an incredible situation in Arizona. The non-Bell cellular carrier could offer the entire State in Arizona as a local call. The Bell affiliate could not, bound by the rules that govern wire transmission. When the non-Bell operator sold its license to another Bell affiliate, that Bell affiliate, having purchased the cellular company, could now offer the entire State as a local call. Even though it was not even operating as a cellular carrier in its own landline region, the Bell affiliate operating in another part of the country had to respond to criterion that according to the Department, its own operation in the area of the landline.

So on one day, the cellular customer in Flagstaff could call Tucson for the price of a local call. Because the company that he was using was bought by a Bell company, the next day they were charged long distance rates.

Now, the customers in Arizona were denied substantial savings because of the Department policy. It is that simple. That kind of officious intermeddling, micromanagement is counterproductive, distorting competition rather than promoting competition, and costs consumers benefits.

The Department did not move aggressively to change this policy. It is still undecided now on how to proceed.

Making the decision is one of the tough things. The marketplace makes decisions efficiently and effectively. I believe competition also rewards those who make the right decision in the marketplace.

The Department is not the group which, in the words of one Senator, "is out there fighting to make sure that the marketplace really works" in that marketplace. Even Arizona and other cases like we just mentioned really stood between the benefits and the marketplace and the consumer. The Department denied Americans the opportunity to benefit from competition that we all believe brings out the best in each of us and the best in industry.

Mr. President, once again, Congress must act to correct this senseless policy. Parity had to be reinstated, and Congress had the chance. We lifted all restrictions of cellular carriers so there be a level playing field, allowing cellular phone operators and proprietors of cellular companies, saying any call you make is like a local call. Or we could extend the artificial restrictions to all carriers.

Now, the bill that we have here lifts those restrictions. This bill lifts all restrictions on the cellular industry and the cellular carrier to say: Go ahead, make a long distance call for the same price a local call. Congress acts in its proper role, and the FCC is instructed to implement that policy.

Supporters of this bill have expected the delicate balance contained in the bill to be severely tested. The first test was on the definition of public interest. There are many who think that 14 criteria are enough, and that should do it. There was a balance struck in the development of this bill. That balance was that we would protect the public interest by adding a definition including the public interest.

I must admit, Mr. President, I find myself in agreement with the arguments of the Senator from Arizona, [Mr. McCain], among the cosponsors of the amendment that sought to take that public interest out of the bill. I am uncomfortable with the breadth of the term "public interest," and I think the contrary, an effective, as little room for subjective analysis as possible; that the Congress, representatives of the people, actually specify the policy, and that policy be carried out by the FCC.

But the managers called for a balance and they vowed to defend the balance. They are to be commended for defending that balance. I cannot think of two Senators who would better understand this matter than the two Senators who bring this bill to the floor. They may have brought it here kicking and screaming. This has been a hard bill to put together. They deserve our support in maintaining this balance.

This amendment is one of the most serious assaults on the bill's balance. A vote in favor of this amendment would not only destroy the balance of the bill, it would destroy the reason for having the bill, and that is to promote more competition and to extricate from this arena the heavy hand of Government.

The idea that when we look into the face of the future, we are so gripped with fear, we not only have to have regulation, but we have to have layered regulation, is an idea that we need to reject.

Let me leave a few final observations. The committee has heard from over 30 entities with a direct involvement in this legislation. Senator Hollings, to his credit, went through the entire list last week.

Sure, it involved some big companies engaged in big battles. We even have present monopolies battling against former monopolies. The Baby Bells are battling against AT&T and those of AT&T.

But the American people know who has the biggest monopoly of all. The biggest monopoly of all is the monopoly of Government. The biggest battle
of this bill is not between the Baby Bells and Mama Bell, and the long dis-
tance companies and the local ex-
change carriers; the biggest battle is
found right here in this amendment. It
is between the Congress and the De-
partment of Justice over who sets policy
in this country.

I received a copy of a letter sent to
Chairman Pressler by Henry Geller, for-
mer communications policy advisor
under President Reagan, who also hap-
pened to be one of the U.S. Attny
General's key staff at Justice.

Mr. Chairman: We are disadvantaged par-
ties who have participated in the legislative
process leading to S. 652. We address here the quan-
titative role for the De-
partment of Justice on the issue of entry by the
divested Bell Operating Companies (BOCs) into the internet (IX) local dis-
tance and major carrier markets. We urge that
it would be an inappropriate and seri-
ously flawed process to give Justice a
stronger voice in this decision.

The Department and the antitrust
court were necessary to effect the break-up of
AT&T. But that court, using the Department as its"staff", is now engaged in essentially
regulatory activity—namely, the terms and
timing of full entry by the BOCs into all sec-
tors of telecommunications. The FCC, as the
agency with expert centralized authority in the
telecom sphere, is engaged in the same
area, but under an antiquated law.

A main thrust of the pending legisla-
tive effort is to strip the antitrust court from
the regulatory policy making process and to
have the important policy guidelines set by
the Congress and implemented by the estab-
lished policy-making bodies in this field, the
FCC and the State commissions (with the
FCC steering and the States rowing).

That is the sound approach of S. 652.

Justice, however, argues strongly that it
should continue to have a decisional role on
the two remaining MFJ issues—IX and man-
ufacturing—and should apply an antitrust
standard to these issues. But that makes no
sense at all. If these matters are to be set-
tiled against antitrust law, there is no reason to
revisit court or the FCC or legis-
lative court—to, in effect, leave the "staff" as
the decisional point in the antitrust field.

The whole point of the legislative exercise is
to end the antitrust chapter and in its place to
substitute Congressional guidelines imple-
mented by the traditional regulatory
take. Stated differently, with the ant-
trust court removed, what is left is a regu-
latory scheme. Justice's role is to prosecute
antitrust cases—not to be a regulatory agen-
cy duplicating the FCC, so that there will now be
two regulatory bodies.

This is not a new position for us. In a 1989
Report to the Benton Foundation on the
Federal regulatory structure for telecom,
the same conclusion—that Justice is a "cacklacanmiec policy arrangement"—are set
out in the context of the then conten-
tious issue of BOC entry into the informa-
tion services. The pertinent discussion is
attatched as an appendix. We particularly rec-
ommend perusal of the 1989 statement of As-
Sistant Attorney General Charles Rule, who
was then in charge of the Antitrust Division in the Reagan Administration.

The Department asserts that it has devel-
oped considerable expertise on the issues in-
volved. Of course it has. It can fully bring
that expertise to bear in submissions to the
FCC. As a party respondent in any appeal
from an FCC decision, it can make known its
position to the appellate court (and indeed it
can appeal in its own right). It can partici-
uate fully in any oversight proceedings of the
Congress. But its role is to substitute Congressional guidelines imple-
dmented by the traditional regulatory
scheme. Justice's role is to prosecute antitrust cases, not to manage
the BOCs. The BOCs have to face their competition. We
hope, therefore, that S. 652 follows the
appropriate procedure now set forth in the
bill.

Thank you for your consideration of our
views on this important issue.

Sincerely yours,
HENRY GELLER
(For Barbara O'Connor).
Mr. ASHCROFT. I would like to share the
key point expressed:

A main thrust of the legisla-
tive effort is to remove the antitrust court from
the regulatory policymaking process and to
have important policy guidelines set by the
Congress and implemented by the estab-
lished congressional delegates in this field, the
FCC and the State commissions. . . .

That is the sound approach of S. 652.

In closing, what is the role of Con-
gress, if not to set policy? Mr. Geller
goes on to ask the same question I
asked today. He put it this way:

If these matters are to be settled under
antitrust law, then why are we passing this
legislation? One Senator keeps mentioning
the length of this bill. Well, we could reduce
these 140 pages down to one simple para-
graph and let the Justice Department take
over from there. But that is not what we
want to do.

That is not to be the case because the role of
Justice is to prosecute cases, not to manage
or micromanage industry. Congress has the
law, State commissions. These two roles are fundamentally different, and I
know which one I expect to fulfill on behalf of the people of Missouri. I will not vote
to transform the Department of Justice, and I encourage the Senate to reject
this amendment.

Mr. President, in closing, I offer an observation: We are debating fund-
damental differences in attitudes. Some Senators say the competition is not
the best regulator. I say the Amer-
icans are the best regulator. Clope
Congress and State commissions. . . .

The Administration, perhaps uncon-
sciously, may be motivated by what is a
commonly held American delusion in this town—protec-
tion of "turf." There is no question as to
what is motivating the opposition of private
owners of BOC entry. The more hoops the BOCs have to jump through
the more decisional hurdles for them, the more chance
there is of delaying their entry and thus de-
laying having to face their competition. We
will not do that.

As the late Senator Magnuson wisely said,
"All each industry seeks is a fair advantage over its rivals.

But if the Administration for reasons of
"turf" has lost its way, it is all the more rea-
son for Congress to adhere to sound process. We
hope, therefore, that S. 652 follows the
appropriate procedure now set forth in the
bill.

Thank you for your consideration of our
views on this important issue.

Sincerely yours,
HENRY GELLER
(For Barbara O'Connor).

Mr. DOLE. Mr. President, I have been
discussing the situation with the Sen-
ator from Nebraska, Senator Kerrey.
As I understand it, he would be will-
ing—I do not want to cut anybody off. There
is an important amendment, as I
said on Thursday and again on Friday.
If we could agree that we could take up
other amendments and then move to
table the Kerrey amendment, say at
noon tomorrow, would that be satisfac-
tory to the Senator from Nebraska?

Mr. KERREY. That would be satisfac-
tory. I have no objection to that. It is
the Dorgan-Thurmond amendment.
Mr. DOLE. Dorgan-Thurmond, excuse
me. I know the Senator from Nebraska
has an interest in it. I would have to
to check with both Senator Dorgan
and Senator Thurmond to see if we
could get that agreement so at noon the
Senator from South Dakota, Senator
Pressler, could move to table. That
would satisfy the Senator from Ne-
braska.

I think Senator Bumpers is prepared
to come to the floor to offer an amend-
ment and maybe Senator Leahy. I am
advised that may be an amendment
which would take a considerable amount
of time.

As I look at the list of amendments,
there are 24 amendments that are pend-
ing. Maybe there are some that will be
accepted. I only see one here noted
that would be accepted.

That would indicate we still have a
number of amendments to deal with in
addition to the major amendment of-
fered by Senators Dorgan and
Thur-
mond. I hope we could complete action
on this bill tomorrow evening so we
could start on welfare reform on
Wednesday.

I know the managers are prepared. I
have just been advised by the chairman
of the Senate Commerce Committee, Russell
S. 652
of the committee he is prepared to stay here all night if necessary. So I urge my colleagues on both sides, I looked down the list. There are Democrats and Republicans who have amendments. We are open for business. We will have votes. I think most everybody has been able to return from their States, and I hope we can dispose of some of these amendments tonight.

I notice an amendment by Senators EXON, LEAHY, and COATS, a bipartisan amendment. I do not know what it is; some kind of a phone, foreign investor, red lining, burglar alarm. Senator LEAHY has another amendment. Senator FEINSTEIN has three amendments.

So there are a number of amendments on each side. If I could just ask my colleagues to cooperate with both Senator HOLLINGS and Senator PRESSLER.

As soon as we get clearance then, I will seek consent that at noon tomorrow there is a break from South Dakota be recognized to table the Dorgan-Thurmond amendment.

Several Senators addressed the Chair.

The PRESIDENT PRO Tempore (Mr. DEWINE). The Senator from Nebraska.

Mr. KERREY. I know the Senator from Montana is on the floor, and I will be here for a while longer. I just want to respond. There were actually three speakers who opposed this amendment, and said many things. The distinguished Senator from Missouri did not cite me by name, but he quoted me generously during his own presentation, and every quote he opposed.

Let me begin. One of the strongest arguments the distinguished Senator from Missouri and others have made is that you cannot trust the Department of Justice. You should not involve them with this. They do not have a role.

I, last week, made a mistake in assessing the Department of Justice. I said they have approximately 800 lawyers because I was informed that in 1982, when the consent decree was filed, that is approximately how many people were down there. That is true, 800 —about 800 actually, in 1982. But today there are 323 lawyers and 658 total employees, total staff at the Antitrust Division at the Department of Justice. It is a very small agency.

This bill is about power. I do not walk, as the Senator from Missouri implied, to the precipice of change and be afraid of change. I am not afraid of this bill other than what it might do if we do not have the agency that has not only current responsibility but experience in managing what this bill describes we are going to do. This bill says we are going to move from a monopoly to a competitive environment.

That is what it attempts to do. We are going to deregulate the telephone companies in a market—to free market down there, folks. This is a very small mom and pop shop that started in business 10 years ago now with local telephone service. They were given a monopoly franchise.

If the people of the United States of America are trying to figure out who do I trust in this deal, it was not the peoples' Congress in 1982 that bunted up the monopoly to a competitive environment, that managed that transition from monopoly to competition that is cited over and over and over by people who come down here to the floor. It was not the local legislators that were going to Department. A Reagan appointee goes to the court and files a consent decree with AT&T, and that is what this is all about.

To set this thing up as "you are either for the devil or for the angels" sort of an argument does not, it seems to me, lead to a very constructive argument. The question really is how are we going to manage this transition? How are we going to manage this transition now? We have made a decision. There is very little argument. I do not think there is a single Member of this body, maybe there is, maybe there is somebody who believes we ought to preserve the monopoly at the local level. I do not. The argument here: Choose the market or choose a regulatory environment. Have the Government tell you what to do or let the market tell you. That is nonsense, baloney. That is not the argument. The argument here is, that is not the question that needs to be answered.

If you believe you want to preserve the local monopoly and keep it the way it is, fine. I do not hear anybody or have not heard anybody yet argue that is what ought to occur. I caution Members that when we move from that monopoly to a competitive environment, there is going to be trauma, there is going to be real trauma, and we better make sure we get this thing right because it is not the demand for change that we are talking about and I am an advocate for. The demand for change is not coming from townhall meetings. It is not coming from citizens in Missouri or citizens in Nebraska or citizens in Ohio who are saying, "I am unhappy with local telephone service, I am unhappy with my cable service, I am unhappy with broadcast, except for some of the things having been raised having to do with obscenity and violence and that sort of thing from the last set of townhall meetings. But as far as, "Do I want a monopoly or do I want to deregulate?" That is hardly a debate going on there on Main Street.

We have made a reasoned judgment based upon input from a variety of different people that we can go to a competitive marketplace in local service. These arguments have a way of turning it around every now and then. In 1966, a couple of years after the consent decree was in place, the divestiture had occurred, I supported legislation in the Nebraska Legislature to deregulate the telephone companies on the question of pricing. I tried to get them to change the law. The legislature changed the law to allow competition at the local level and was told—indeed I was rolled at the time, not told—I was told and rolled we were not going to do that. Technology would not allow us to do that. And lest anybody think I have walked to the precipice of change and am fearful of embracing change, as was suggested earlier, in 1966 I asked and was given the authority to be the lead Governor for telecommunications for the National Governors’ Association. We reached a conclusion—I had a little task force—that we ought to, in an expedient fashion, eliminate the restrictions that were currently in place in the modified final judgment. I thought we had the votes. I lost that battle. I lost that vote. I have walked to the precipice of change and am fearful of embracing change. It is not coming from citizens in Ohio who are saying, "I am unhappy with local telephone service." It is not coming from citizens in Nebraska or citizens in Missouri. It is not coming from citizens in the United States. It is not coming from citizens in other parts of the world.

Mr. President, I ask unanimous consent of a letter from 24 State attorneys general be printed as part of the RECORD at this point. There being no objection, the letter was ordered to be printed in the RECORD, as follows:

STATE OF WISCONSIN,
DEPARTMENT OF JUSTICE,
Madison, WI, June 2, 1995.

DEAR MEMBER OF CONGRESS:

We would like to address several telecommunications communications bills that are pending in Congress. One of the objectives in any such legislation must be the promotion of deregulation that fosters competition while at the same time protects consumers from anti-competitive practices.

In our opinion, our citizens will be able to look forward to an advanced, efficient, and innovative information network only if such legislation incorporates basic antitrust principles and recognizes the essential role of the states in ensuring that citizens have universal and affordable access to the telecommunications network. The antitrust laws ensure competition and promote efficiency, innovation, low prices, better service, and greater choice. If telecommunications reform legislation includes a strong commitment to antitrust principles, our states will be able to achieve the same results that the federal government and the telecommunications industry have worked so hard to achieve.

Sincerely,

Joe Gill, Wisconsin Attorney General
principles, then the legislation can help preserve existing competition and prevent parties from using market power to tilt the playing field to the detriment of competition and consumers.

Each of the bills pending in Congress would lift the court-ordered restrictions that are currently in place on the Regional Bell Operating Companies (RBOCs). After sufficient competition exists in their local service areas, the bills would allow RBOCs to enter the fields of long distance services and equipment manufacturing. These provisions raise a number of antitrust concerns. Therefore, telecommunications deregulation legislation should include the following features:

First, the United States Department of Justice should have a meaningful role in determining, in advance, whether competition at the local level is sufficient to allow an RBOC to enter the long distance services and equipment manufacturing markets for a particular region. The Department of Justice has unmatched experience and expertise in evaluating competition in the telecommunications field. Such a role is vital regardless of whether Congress adopts a “competitive checklist” or “modified final judgment safeguard” approach to evaluating competition in local markets.

Second, legislation should continue to prohibit restraints among telephone companies in the same service area. Such a prohibition is essential because local cable companies are the likely competitors of telephone companies in such markets. Such mergers raise the possibility of a “one-world, one” with only successful antitrust litigation to prevent it. Congress should narrowly draft any exceptions to such prohibitions.

Third, Congress should not preempt the states from ordering an “intralATA dialing parity in appropriate cases, including cases where the incumbent RBOC has yet to receive permission to enter the interLATA long distance market. With a mere flip of a switch, the RBOCs can immediately offer “one-stop shopping” (both local and long distance services). New entrants, however, may take some time before they can offer such services, and only after they incur significant capital expenses will they be able to develop such capabilities.

In conclusion, we urge you to support telecommunications reform legislation that incorporates provisions that would maintain an important decision-making role for the Department of Justice; preserve the existing prohibitions against mergers of telephone companies and cable television companies located in the same service areas; and protect the states’ ability to order “intralATA dialing parity in appropriate cases.

Thank you for considering our views.

Very truly yours,


I would like to offer a couple of things. Earlier the Senator from South Dakota I believe had a question having to do with administrative law with the Department of Justice, a very good question. I will try to restate the question—I do not know if I will get it right again. The question was with the Federal Communications Commission, we have an open process. You have an administrative law that governs hearings and so forth. It has to be open. Then the Senator from South Dakota asked—at that time it was the Senator from North Dakota on the floor—would the Department of Justice have that same kind of law apply to it? The amendment specifically inserts on the page that the Senator from South Dakota referenced on page 89, and it refers to the determination by the Commission and the Attorney General. They would issue a written determination on the record—after hearings and the opportunity for a commitment. So the language that we discussed earlier, I say to the distinguished chairman of the committee, does not just refer to the Commission. It also refers to the Department of Justice.

Second, I say it again for emphasis, we are not talking lawyering or a new bureaucracy. It is a parallel process. You apply specifically what one does, and what the other one does. You ask the guy that has the experience. We are trying to figure out. Do we have the competitive market, perhaps in a perfect fashion? You are looking for the person that got the job done before this, the person you ought to call on in the agency, a very small agency I point out, again to attempt to manage this transition again.

Then one of the questions that comes up says, “Well, we did not do this with airlines, we did not do this with trucking, we should not do this with telecommunications.” Telecommunications is by many people’s estimate one-half of the U.S. economy directly or indirectly. It is a big part of the economy, probably two or three times the size of the entire health care industry which was of great concern to us during our debate in 1993-1994. At least that is what has been represented to me. It leads directly to the manufacturing and the production of goods and services, or indirectly the information industry is now roughly half the U.S. economy. Not all of these are regulated. Many of these are unregulated businesses. We are talking about in any event managing a substantial amount of the U.S. economy; that is to say, not managing it. We are managing from a monopoly situation trying to transfer the control of the situation from regulators so that the marketplace is making those decisions. The reference earlier was that airline and trucking...
would be a good example to use and based upon the success of airline and trucking deregulation we should not have a DOJ role.

However, Mr. President, I look at a couple of incidents.

From 1986 to 1990 during the transition from airline regulation to competition, the Department of Transportation (DOT) had the authority to approve airline mergers, subject to advice from DOJ. In 1986, DOT approved two mergers over DOJ’s vigorous objections: Northwest Airlines’ deal with its main rival in Minneapolis, Republic, and TWA’s acquisition of Midway Airlines of Chicago, Ill. Ozark. DOJ advised DOT that each transaction would sharply reduce competition for air travel into and out of the affected city. DOT rejected this advice, concluding that the deals would not result in a substantial reduction of competition in any market. Unfortunately, DOT—with little expertise in assessing competition—was wrong. Just as DOJ predicted, the transactions resulted in higher air fares and less choice for travelers at the Minneapolis and St. Louis hubs. In fact, a study by the General Accounting Office found that TWA’s air fares at St. Louis shot up at two to three times the rate of all other air fares in the wake of the merger.

The Department of Transportation now concedes that assigning the job of making competitive assessments to it, instead of DOJ, just was a mistake.

Mr. President, we are not talking about an assignment of responsibility here that is heavily bureaucratized. We are talking about a question that we ought to be able to assess, particularly given the fact that I believe it is the case that a lot of us believe that we should be held accountable for this vote. Those of us who are advocates of deregulation are attempting to answer the question, “How do we do this in a fashion so that our consumers get the benefit of lower prices and higher quality that comes at a competitive environment?” We want to make sure that, as you move from a monopoly to a competitive environment, the consumers indeed benefit from that transition. DOJ still has the role. It is not enough. DOJ has the role after the fact, not prior to the decision being made. The Antitrust Division is not doing the same thing as the FCC. It is not duplicative, as has been alleged.

As to the delays, I can go through that argument. I have gone through it once before. If you examine the detail of why there has been delay, I think the presentation of the charts going up to the right, in fact, fall on their face. The time of the Antitrust Division is not asking to be a regulator in this thing. I am not coming to the floor because I am concerned about the Department of Justice. I am not coming to the floor because I am asking to be a regulator in this thing. I am on the Agriculture Committee, the Appropriations Committee, and the Intelligence Committee. I am not trying to figure out how to give some additional authority. They are not asking for regulatory authority. They are merely asking, and I think it is a fair point in this case, is that some additional authority as we try to move from a regulated sector at the local level, at the local loop, and regulated sector in manufacturing as well to a competitive environment. If we got it right, we will end up being rewarded right along with the consumers with the praise as a consequence.

Mr. President, I believe again that the 246 pages that we are about to vote on, will likely be the last on this issue, we will be voting on final passage. I presume, is one of the most important pieces of legislation that I have had the opportunity to be a part of in my entire political career.

I really feel that I have done before, to pay tribute to the Senator from South Dakota and the Senator from South Carolina both who have pushed on this thing. Leadership in the majority changed in November 1994. That change did not result in the stopping of this legislation. These two men have worked very, very closely together. They have worked to try to come up with a reasonable solution. I think they have made a good-faith effort.

I think this amendment improves the legislation. It does not repeal the legislation. It improves the legislation. The risk that we will be taking in giving the Department of Justice this role is relatively small given the risk of not giving them this role, in my opinion. If it turns out that things get towed down and the wheels of progress start to grind, we can always reverse it. We are literally in uncharted waters. To my knowledge this has never been done before with a sector of the economy as large as this and which is growing. We are trying to figure out how to go where we have not gone before. This bill does not deregulate in a massive fashion. It is a structured for the movement from a monopoly situation to a competitive situation.

I hope that this amendment can continue to be argued in a straightforward fashion, as the ranking Democrat and the chairmen of this committee have thus far. I hope, in fact, that it is to be debated and adjudged not by me or the legislation. I believe the compromise worked out between the distinguished Senator from North Dakota and the distinguished Senator from South Carolina, though it lowers the test, does not remove the strength from the amendment which is to keep the Department of Justice, the agency that has demonstrated its capacity to get the job done, involved in this process.

Mr. President, I yield the floor.

Mr. President, I do not ask unanimous consent that the pending Doran-Thurmond amendment be laid aside until 12 noon Tuesday and at 12 noon Senator PRESSLER be recognized to make a motion to table the amendment.

The PRESIDING OFFICER. Is there objection? Without objection, it is so ordered.

Mr. DOLE. Thank the Senator from Nebraska. I think this will work. He is not going to be inventive that time before noon for final argument, maybe from 11 to 12 to be equally divided between—you would have 1 hour of debate before the motion to table. So from 11 to 12 noon, unless there is objection, will be an hour equally divided on that amendment.

Mr. HOLLINGS. Right. The PRESIDING OFFICER. Is there objection? Without objection, it is so ordered.

Mr. DOLE. The time will be allotted by the managers or their designees. Mr. HOLLINGS. Right.

Mr. DOLE. So now we are down to real business if we can get some other amendments over here.

Mr. PRESSLER addressed the Chair. The PRESIDING OFFICER. The Senator from South Dakota.

Mr. PRESSLER. Mr. President, I might review these checklists here.

Mr. President, earlier today, I pointed out the system that we have set up that really explains this bill, how you get into other people’s business under this bill, how we really do not need a Justice Department review.

If all of the first thing that happens under the bill that we worked out in the Commerce Committee between Senator Hollings and myself and other members—with all the other Members of the Senate invited to participate—is, this thing is that it certifies compliance with market-opening requirements. The States are involved first of all.

Next, the FCC affirms the public interest and convenience and necessity. That is another test. We debated that here on the Senate floor and in the Commerce Committee. Some of the conservative publications in town said we should eliminate public interest, but we decided not to. So that is another test.

The next step is that the FCC certifies compliance with the 14-point checklist. I have a chart of the checklist over here, to prove there is competition. This is in place of the VIII(c) test. This says the regional Bells have opened up to their market.

Next, the Bells must comply with a separate subsidiary requirement, that is, the Bell companies, to have a separate subsidiary, for at least a period of 5 years.

Next, they have to meet the non-discrimination requirement. They cannot give all their business to one subsidiary or stack it so the subsidiary is not a subsidiary.

Next, there is a cross-subsidization barrier, all the Bells must comply with.

Now, during all the time that this is going on, the FCC allows the Department of Justice full participation in all its proceedings. In fact, under the Hobbs Civil Appeals Act, the Department of Justice is an independent party in all FCC appeals. That is, if something happens here that the company is not satisfied with the FCC, they can appeal and the Justice Department can be their partner. So the Justice Department is involved in our bill’s active participation.

Now, also the Bells must comply with existing FCC rules in rigorous annual audits, elaborate cost accounting,
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computer assisted reporting, and special pricing rules.

Meanwhile, when all this is going on, you still have the full application of the Sherman Antitrust Act, the Clayton Act, and the Hart-Scott-Rodino Act. The Justice Department is involved. There is sort of an implication here that if we do not give the Department of Justice an administrative decisionmaking role they are not involved. They are very much involved. They are very involved in antitrust laws, and if you are going to still involve full participation in all the proceedings, and they are involved in the Hobbs Civil Appeals Act. The Department of Justice can be an independent party in all FCC appeals.

In addition to all this, the FCC must confer with the Attorney General and the Attorney General can recommend an VIII(c) test or a Clayton test or a public interest standard, those three things.

So I would like to point out that we already have a lot of conditions. By the time you go through all of this, it is going to cost a company and the taxpayers a lot of money, and it is going to require a lot of tests—14 tests. The Justice Department, the separate subsidiaries. It goes on and on and on. So there is plenty of regulation and plenty of review in the proper regulatory agency.

Now this is the so-called competitive checklist. This is the heart of the compromise that was reached. Some of the conservative magazines and some of the Senators wanted a so-called Le Mans start where you set a certain date and everybody competes. The problem in telecommunications is you cannot get on everybody's wire; you have to use the other guy's wires and interconnections and unbundling of his system before you can compete. So we decided after weeks of meetings—and all Senators were invited to these meetings, and their staffs—to develop the checklist. I must commend the Senator from Nebraska and his staff because they were present and helped write this bill. But so did several other Senators, Democrats and Republicans. This bill has been around a long time. It is the product of all 100 Senators' work.

But in any event, the competitive checklist was developed, and at the FCC the companies come before the FCC and the FCC goes through this checklist, hopefully very quickly, and this replaces the market test, the VIII(c) or replaces the Clayton Act or it replaces some other types of tests. But this is the test.

First of all, access to network functions and services. That means interconnect. It means that the Bell company has to open up its wires. I went down to the big wire store of Bell Atlantic in Washington to see all those wires. They have to open them up. What is interconnect means. Let us say you and I wanted to form a local telephone company. We would be able to get into the wires of the regional Bell. That is interconnection.

The second checklist item that the FCC uses before certifying is capability to exchange telecommunications between Bell customers and competitors' customers.

Third, there has to be provided access to poles, ducts, conduits, and rights of way.

Fourth, local loop transmission unbundled from switching. These next three are unbundling. That is, again, the company has to open up its system, unbundle so somebody else can get in. I guess this has been compared to if you are making pizza and somebody else delivers your pizza. It probably would not be in such good shape. But we are requiring in these unbundlings that the other person, the competitor with the Bells, is treated well. Ninth to gets into the regional Bell's wire, he does not get a buzz tone or be told to wait 3 minutes or a tape recording saying his call will be handled when it becomes convenient. The competitors will be given quality treatment.

Unbundling. That is Nos. 5, 6, and 7. Local transport from trunk sites unbundled from switch. Local switching unbundled. And No. 4, the loop transmission unbundled from switching. These three are the so-called unbundling tests.

Then No. seven is access to 911 and enhanced 911. Enhanced 911 is where you just push one button for an emergency. Also access is required to jury assistance and operator call completion services. That is an important one in many cases. Next is white pages directory listing being available at a reasonable price.

The ninth test is access to telephone number assignment; tenth, access to databases and network signaling, important if you are going to compete and get into the market; eleventh, interoperability; twelfth, local dialing parity; thirteenth, reciprocal compensation; and fourteenth, resale of local service to competitors.

What I am saying is we have a competitive checklist, which is the basis for getting into the local telephone business. So we are trying to get everybody into everybody else's business here. These are the portions of requirements that the FCC certifies.

What the Dorgan-Thurmond amendment suggests is that after we finish all this, we then go over to the Justice Department for yet another test, though it is not a regulatory agency. We then ask the Justice Department to give their approval under the Clayton 7 standard, what standards. If you survived in your State, if you met the competitive checklist, if you have met the public-interest test, if you have met the subsidiary test, if you have met the nondiscrimination test and the cross-subsidization test, then you have to go over to the Justice Department.

We are told this will only take 90 days; we are going to put a 90-day requirement on it. Even taking 90 days is another delay. Some say you can do this simultaneously. As a practical matter, you cannot. You have to get through your State, you have to get through the FCC, anyway, before you come here at the Justice Department. We do not need this additional review. That is more regulation. That is what we are trying to avoid.

It is true, in the past, there have been suggestions for VIII(c), but we have come up with, to replace it, which is quicker and covers all the subjects and has been agreed to by everybody. So we have a bill that finally has crafted a balance between the long distances and the Bells. We are now ready to go into business, but if the Dorgan-Thurmond amendment is adopted, no, wait a minute, we have another layer of bureaucracy.

What is wrong with giving the Justice Department this authority? There are a number of things wrong with it. First of all, the Justice Department's enabling statute does it is a regulatory agency. The Antitrust Division's enabling statute does not say that it is a regulatory agency.

The Justice Department got into regulation the first time with Judge Green's consent in 1982. They have several lawyers over there who carry this out. They are involved in the Hobbs Act. They are involved. They are very much involved. They are involved. There is sort of an implication here that if we do not give the Justice Department this authority, there is a number of things wrong with it. First of all, the Justice Department's statute does not enable it to do it. So still the Justice Department is involved. There is sort of an implication here that if we do not give the Justice Department the authority, there is another layer of bureaucracy.

What is wrong with giving the Justice Department this authority? There are a number of things wrong with it. First of all, the Justice Department's statute does it is a regulatory agency. The Antitrust Division's enabling statute does not say that it is a regulatory agency.

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But our friends would have us make the Justice Department for the first time in history by law a regulatory agency. There is no other area in commerce that is true. It is not true in aviation, it is not true in transportation, it is not true in railroads. Originally, the ICC was created in about 1887. The FCC was created in 1934. Both agencies were intended to be the regulatory agencies. There is talk of abolishing the ICC. There is talk of abolishing the FCC. There is talk when we get into the wireless age of substantially reducing FCC, or that perhaps we will not need the FCC. I do not know about that. That is another debate for a later time.

But this bill will take us into transition from the wired age to the wireless. We are in the last stages of the wired communications age. I think it will last 10 years. Some people think 15; others think it will last about 5. But this bill will provide us with competition and deregulation in the last stages of the wired telecommunications era.

But to give the Justice Department a regulatory role at this time would be a step backward. That is regulation. That is another layer of regulation. Even putting aside the fact that here and there, even my friend Al Gore, talks about deregulating and privatizing. Here it is. Here is our chance.
So I think that debating whether or not to have a justice role on this particular part of this bill is very important. Let me say that in all aspects of this bill, we are trying to deregulate, whether it be the utilities into the telecommunications with safeguards, moving toward deregulation of cable with safeguards, getting the Bell companies manufacturing and letting them get into other areas, such as cable, letting the long distance people into the local market, deregulating the broadcasters—this is a vast bill. It deregulates almost everything.

But if we adopt this amendment, we are going back to a major layer of regulation regarding the Bell companies in long distance. I cannot conceive of why we would do that. Our consumers have an interest in deregulation and competition. They are protected by the FCC with the public interest necessity and convenience standard. They are also protected at a state level by other safeguards. If the FCC appeals, the Justice Department can join independently on that appeal. So there is already heavy Justice Department involvement.

So I say to my friends that we really need to decide if we are deregulating or if we are shuffling along with more regulation. If we allow the Dorgan-Thurmond amendment to be adopted, we would be delaying competition at least 2 or 3 years. My friends say, “Oh, it will only take the Justice Department 90 days to get this done.” That is not true. They already have a 30-day requirement on them, and they are taking as much as 3 years to get something done over there.

I see some other Senators on the floor. If anybody else would like to speak, because I am going to be here all night, if necessary, I will yield the floor to anyone who wishes to speak.

Mr. DOLE. I would like to speak in response.

Mr. DOLE. Can I just change the consent?

The PRESIDING OFFICER. The majority leader.

MODIFICATION OF UNANIMOUS-CONSENT AGREEMENT

Mr. DOLE. Mr. President, earlier I asked that the Senator from South Dakota be recognized at 12 o’clock to move to table. I modify that part of the agreement and ask unanimous consent that he be recognized at 12:30 p.m. to move to make a motion to table the Dorgan-Thurmond amendment, and that the hour for debate be from 11:30 to 12:30 instead of 11 to 12.

The PRESIDING OFFICER. Is there objection? Without objection, it is so ordered.

Mr. DOLE. I might indicate, this is made to accommodate a number of Senators, Vietnam veterans, who have a special event that does not end until about 12:35, as I understand. Before the Senator from Nebraska speaks, let me say that it is my understanding that there will be a vote fairly soon, as soon as Senator Feinstein comes to the floor. She has an amendment with Senator Lott. It should not take much debate.

So I tell my colleagues, or members of their staff, there probably will be a vote in the next 45 minutes. I am now advised she cannot be here until about 6:30. Let me think about that, and I will say something after the Senator from Nebraska speaks.

Mr. KERREY addressed the Chair.

The PRESIDING OFFICER. The Senator from Nebraska.

Mr. KERREY. Mr. President, we have been debating this particular amendment, although in its current incarnation just about 4 or 5 hours, but we have been debating the overall role of the Justice Department for a couple of days now.

I am beginning to learn that in debate—I had not noticed it used quite so often—but one of the devices that one uses in debate is you set up a strawman and you say, “Do you want that strawman?” And you say, “No, I don’t want that strawman,” and then you knock it down with your argument.

The strawman in this argument is to say that we just require the poor old phone company, little old mom-and-pop phone company, to go through all this burdensome procedure before the Federal Communications Commission and then go over to the Department of Justice and that we are setting up a whole new level of bureaucracy.

It is not true. That is not what is going on. It is a simultaneous process. The idea that somehow it is not going to occur simultaneously is an idea that is sold, but I do not believe is an effective sale. The question is not do you want the Department of Justice to regulate—we are not asking for regulatory authority—the question before the body is, do you want, as you proceed to deregulate, to have the Department of Transportation did, as referenced earlier, when TWA tries to acquire Ozark, or when Republic is the target of Northwest Airlines. In the deregulation of the airline industry, we did not give the Department of Justice the authority to say we do not approve of it. We do not think there is competition. The question before the body is, do you want, as you proceed to deregulate, to have the Department of Transportation try to acquire Ozark? We do not think there is competition. The question before the body is, do you want, as you proceed to deregulate, do you want the Justice Department to try to regulate, to have the Department of Justice, as the Department of Transportation did, when you get right down to the application, the FCC will be making a judgment, just as the Department of Transportation did, as referenced earlier, when TWA tries to acquire Ozark, or when Republic is the target of Northwest Airlines. In the deregulation of the airline industry, we did not give the Department of Justice the authority to say we do not approve of it. We do not think there is competition. We do not think there will be competitive choice. We think this will decrease that.

That is the question before us is not do you want the Department of Justice, in an unprecedented fashion, to regulate, but do you want the Department of Justice to have a role more than “What do you think?” The Department of Justice, under this amendment, would have a role to say, “There is not competition at the local level, and we do not believe this application should be approved.” That is the question before us.

We are going from a monopoly to a competitive environment. We are not citing enormous power in a conspiratorial fashion. With or without this amendment, there is substantial deregulation. Without this amendment, if this fails, your cable company can still price its premium service without being regulated. Without this amendment, Rupert Murdoch can still acquire 50 percent of the television stations in a local area. With or without this amendment, you have companies out there that will be doing things they were previously prevented from doing. This bill will deregulate without this amendment.

So this is not a question before the body that you have to answer, such as, “Do I want to deregulate, or do I want to continue the current regulatory structure?” We are going to deregulate either way.

The question before the body is, do you want the Department of Justice, with a date-certain requirement, involved not just, “Oh, what do you think about this proposed”—I almost said merger. But that is what it becomes. One of the ironies is, if a local telephone company acquires or merges with a local cable company, the Department of Justice will have an impact. Nobody suggests that is undue regulatory authority. Effectively, when you go from a monopoly with a local franchise into long distance, it is effectively the same thing. The question before us is: Do you want the Department of Justice involved, or do we not think there is competition? Now, very instructive for Members, as you try to reach that decision, I think, would be to go through either one of the checklists. There are two, by the way. In section 251 there is a checklist that says here is what a local company has to do, if a long distance or another carrier—and my vision for competition, by the way, again, is that you get competitive choice not for the marketplace of businesses, but you get it for a package of information services. So it is likely to come, this desire to compete at the local level, and the competition and the desire is just as likely to come from a medium-sized entrepreneur that wants to deliver information services to a resident in Cleveland, or Omaha, or wherever. That is apt to happen.

In section 251 there is a checklist, as well, that says here is what you have to do for a pretty small company. In fact, it may be tougher than in 255. In 255, you have a checklist that says this is what you have to do if you want to do interLATA, or long distance service. If you are a local telephone company, this is what you have to do. Well, I do not doubt—and indeed I know—that the committee spent a long time putting this checklist together. There are 14 things. But read them. Read them and then ask yourself the question: Does this mean I have competition? Does this mean I have a competitive choice at the local level? For the consumer a competitive choice means that if they do not like the business
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that is offering to sell them something, they can shop it someplace else. That is a competitive choice. Competitive choice means that business person that is selling you something has to make sure that the price and quality and all of the goods and services of the sale are what you want, or you take your business someplace else. That is what a competitive choice provides a consumer.

Well, I do not know if this 14-point checklist will do it. Maybe it does. I do not know. Again, it is a very impressive checklist. Members ought to read it. Ask yourselves what does it mean if I have "nondiscriminatory access on an unbundled basis to the network functions and services of the Bell operating company’s telecommunications network that is at least equal in type, quality, and price to the access the Bell operating company affords to itself or any other entity."

That is a very simple way to mean that you have a competitive opportunity. I do not know. The real test of competition is going to occur when the consumer says, "I have competitive choice," and when that person in the neighborhood says, "I do not like my service"

We are trying to move from that monopoly situation to a competitive situation, and we are merely saying with this amendment: Ask the Department of Justice—not giving them regulatory control in some sort of dark and mysterious fashion, but ask the agency that, on a regular, routine basis, is charged with a responsibility of assessing whether or not you have competition. If you do not think they can do it, look at their success in this industry.

A majority of the members of the Senate that stood up at AT&T. Congress did not stand up at AT&T and say we have had enough of this monopoly, our consumers and citizens are complaining; we are going to pass legislation and divest you. Congress did not do that. The people’s Congress did not respond to that and pass legislation. It was the Department of Justice that filed a suit against them originally, and eventually, as a consequence of Justice believing they would win the suit, wrote up a consent decree and file it with the judge.

I hope that colleagues understand that this amendment is not offered as a consequence of our desire to continue regulation. As I said, we are deregulating telecommunications with or without this amendment. So the choice is not do I favor deregulation. With or without this amendment, you will have deregulation. I hope my colleagues do not fall into the illusion that this is a choice between do I want another layer of bureaucracy, or do I want to prolong the process? If there is a specific objection to the language of this bill that implies there might be an unreasonable delay or might layer on bureaucratic barriers, bring it. We have made modifications already in the amendment. I do not want to layer on excessive bureaucratic requirements.

I urge my colleagues to go back and look at airline deregulation, in particular, not with the purpose of trying to revisit and reargue that thorny, old problem, but to look at what happened to the Department of Transportation, which was making the decisions, and how the Department of Justice was merely in a consultative role. They merely said, "We advise against them," rather than being in a position where the companies understand that they do have the ability to say there is competition, thus, let us go forward, or say there is no competition, do not allow it to go forward.

I yield the floor.

Mr. GORTON. Mr. President, as one of the members of the Commerce Committee, I want to make a point in connection with this amendment. The purpose to balance this legislation in the fashion that it appears here on the floor, and also as a Senator who has great respect for the views of the Senator from Nebraska, I must say that I find myself unpersuaded by his case—unpersuaded on a number of grounds.

First, it is not necessary to bandy about the word "bureaucracy" to understand that the fundamental nature of this amendment is to substitute a significant aspect of the law. The very distinct Federal agencies with two very distinct roles for a single such determination, before a regional Bell operating company can go in to the long distance business.

Now, Mr. President, there is no question but that the entry of a regional Bell operating company in the long distance business will be competitive in nature. The long distance business is highly competitive at the present time. Not large number of small companies which constantly advertise in the newspapers and on television, but by dozens, if not hundreds, of smaller companies, as well.

Now, it is true that those companies presently in the long distance business, naturally enough, fear the entry of the Bell operating companies into their business. They make the case—not entirely persuasively, but not entirely unpersuasively, either—that allowing the Bell operating companies into that business may give the Bell company the competitive advantage.

It is in order to meet that argument, Mr. President—not the argument about local service, but the argument about long distance service—that this bill says to the Bell operating companies, "No, you cannot start competing in that very competitive business unless and until your own system is open to those who want to provide competition where competition in large measure does not exist now, in the local exchange service."

It is to assure that companies now providing long distance service or cable television service or simply seeking to get into the long exchange business, are able to do so that the various conditions—some of which have been referred to by the Senator from Nebraska—are included in the bill.

I wish to make the point, Mr. President, in adding the Department to this mix directly as a regulatory rather than as an advisory entity, the amendment, it seems to me, creates the worst situation, worse then abolishing the FCC and having this done only by the FCC, worse than having the Government involved in a consultative role. The way it is in the bill at the present time.

Because, Mr. President, the Attorney General expressly has advisory authority to the Federal Communications Commission in this connection.

I suspect that in most cases, the Attorney General goes to the Commission and says, "This is a terrible idea, to let this Bell into the long distance business." We think it is going to, somehow or another, create a tremendous mess.

I strongly suspect that the FCC will listen to and abide by that advice unless, in its own greater expertise in the communications business, it feels that the Attorney General is flat out wrong, just does not know very much about this particular subject.

The sponsors of the amendment, in their desire to have two different entities involved in this business, have really created a most curious division of authority. Where the bill as it stands without this amendment, the authority of the Federal Communications Commission in dealing with a determination of
public interest, convenience, and necessity, is essentially unlimited, this amendment deprives the Commission of the ability to consider the effects of the authorization in any market for which the authorization is sought, with respect to monopolization or the enforcement of the antitrust laws.

Mr. President, it is very likely that may be the centerpiece of what the FCC would base its determination of public interest, convenience, and necessity on under normal circumstances.

This mention of public interest, convenience, and necessity is carved out in order to be given to the antitrust division of the Office of the Attorney General. In other words, the FCC is really going to no longer be able to consider all of the elements which go into a determination that authorization is in the public interest, convenience, and necessity.

Just last week, Mr. President, in balancing this bill, we turned down an amendment which would have stricken that authority. We did not feel, a majority of the Members did not feel, any more than a majority in the committee felt, that we could absolutely and under all circumstances rely on the 14 categories.

So now, in the interests of speaking out on antitrust matters, the sponsors of this amendment were normally thought to be on this side of the debate. The amendment that sponsored last week’s amendment were on that side, and the committee in the middle, are doing much of the work that the sponsors of last week’s amendment sought to do themselves and were rejected in that course of action by, I believe, all of the sponsors and most of the supporters of this amendment.

So, to recapitulate, this proposal deprives the Federal Communications Commission of authority it ought to have to uphold the law. This amendment has not been supported by the sponsors of last week’s amendment sought to do themselves and were rejected in that course of action.

I want to go back. The Attorney General in this bill is to be consulted by the Federal Communications Commission, and in this bill the Attorney General is not deprived of any of the authority of that office with respect to monopolization or the enforcement of the antitrust laws. Just as it can stop a merger if it finds that the ultimate impact of such authority is to create a monopoly, it may bring the same kind of litigation that it brought that resulted in the breakup of the old AT&T. But one further matter, as that is brought up as something which took place through the Department of Justice, not through the Congress, the Department of Justice did not determine to sue AT&T to break up that monopoly in 90 days. And here in this bill the Attorney General is given only 90 days to make this determination, not of something that has happened in the past—which is fairly easy to determine—but something that might possibly happen in the future. I do not believe that the authority given the Attorney General in this bill can effectively be used in a period of time like that. It is clear that we now have two different Federal entities under this amendment having authority over the same matter. The matter has been granted on two quite different sets of tests and that, apparently, they will not relate to one another.

Finally, it is clear to this Senator, at least, that it is more likely than not that this additional authority, this additional authority of the Federal Government rather than one, is likely to slow down the creation of competition, certainly in long distance, and very unlikely to speed it up in connection with the local telephone market.

So, I would summarize by saying I do not believe the committee on which I serve and on which this structure was worked out by the careful work of the chairman and the ranking Democratic member, and for that matter almost all the members of the committee, is some kind of political compromise. It is the result of careful and sober thought as to what was the best system available for reaching two goals: one, the creation of competition in the most rapid possible fashion, both in long distance and in the local exchange; and at the same time the prevention of monopoly and the service of the public interest.

So, my own summary is that the bill, as it stands, is, greatly superior, from the perspective of the public interest and competition and consumers, than it would have been had the McCain amendment been adopted last week striking the public interest section and, equally, than it will be if this amendment is adopted putting two different entities of the Federal Government into the same mix, artificially divorcing them from one another, frustrating the traditional role of the Federal Communications Commission and, in my view, frustrating the development of new technology and of competition.

For those reasons I trust when the distinguished chairman of the Commerce Committee moves to table this amendment tomorrow, that his motion will be successful.

Mr. PRESSLER. If my friend will yield for a question? Let me say, in the context of this, I hope the Senator from California will offer her amendment. The leader has asked that there be a vote—if that is agreeable to everybody—at about 6:30 on the Feinstein-Lott amendment. But I would like to, just in concluding, commend the Senator from Washington, a former State attorney general. There is one question, if he could make a response before, hopefully, the Senator from California responds on the floor, and that is the extraordinary, unprecedented decision-making role for the Department of Justice that is proposed in the Doran-Thurmond amendment.

As a former State attorney general, has he ever seen a proposal where the Justice Department would become the decision-maker, a regulatory decision-maker? I guess this question goes to the heart of the division of powers in our Government. Mr. GORTON. I do not believe I have. I would hate to make a totally generalized statement on that, but certainly I would say not in the memory of my experience as State attorney general nor do I find the Department of Justice have such authority.

I yield the floor.

Mrs. FEINSTEIN addressed the Chair.

The PRESIDING OFFICER. The Senator from California.

Mrs. FEINSTEIN. Mr. President, I have actually two amendments, one involving the cities and a preemption clause in the bill, and the second is an amendment, I would like to send to the desk right now.

AMENDMENT NO. 1269

(Purpose: To provide for the full scrambling of multichannel video services of sexually explicit adult programming)

Mrs. FEINSTEIN. Mr. President, I send an amendment to the desk and ask for its immediate consideration. The PRESIDING OFFICER. The clerk will report.

The legislative clerk read as follows:

The Senator from California [Mrs. FEINSTEIN] for herself and Mr. LOTT, proposes an amendment numbered 1269.

Mrs. FEINSTEIN. Mr. President, I ask unanimous consent that reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

SEC. 407A. SCRAMBLING OF SEXUALLY EXPlicit ADULT VIDEO SERVICE PROGRAMMING.

(a) REQUIREMENT.—Part IV of title VI (47 U.S.C. 551 et seq.), as amended by this Act, is further amended by adding at the end the following:

"SEC. 641. SCRAMBLING OF SEXUALLY EXPLICIT ADULT VIDEO SERVICE PROGRAMMING.

(a) REQUIREMENT.—In providing sexually explicit adult programming or other programming that is indecent and harmful to children on any channel of its service primarily dedicated to sexually-oriented programming, a multichannel video programming distributor shall fully scramble or otherwise fully block the video and audio portions of such channel so that one not a subscriber to such channel or programming does not receive it.

(b) IMPLEMENTATION.—Until a multi-channel video programming distributor complies with the requirement set forth in subsection (a), the distributor shall limit the access of children to the programming referred to in that subsection by not providing such programming during the hours of the day (as determined by the Commission) when a significant number of children are likely to watch it.

(c) DEFINITION.—As used in this section, the term "scramble" means to rearrange the content of the signal of the programming so that the audio and video portions of the programming cannot be received by persons unauthorized to receive the programming."
b) Effective Date.—The amendment made by subsection (a) shall take effect 30 days after the date of the enactment of this Act.

Mr. PRESSLER. Will my friend yield?

Mrs. FEINSTEIN. I certainly will.

Mr. PRESSLER. Mr. President, I ask unanimous consent a vote occur on the Feinstein and Lott amendment at 6:30 this evening and the time between now and 6:30 be equally divided in the usual form.

I might say I am going to yield as much of my time to the Senator from California as she wishes. And I ask unanimous consent no second-degree amendments be in order to the amendment.

The PRESIDING OFFICER. Without objection, it is so ordered.

The Senator from California.

Mrs. FEINSTEIN. I thank the Senator from South Dakota and I thank the Chair.

Mr. President, on behalf of myself and Senator LOTT I offer this amendment, which is a rather simple and direct amendment. It concerns the proliferation of adult video programming that is readily available for children to view. It is a commonsense amendment and it is simple. It would require multichannel video programmers, such as cable operators, to fully scramble or otherwise block sexually explicit adult programming unless a subscriber specifically requests such programming.

The full blocking requirement would apply to those channels primarily dedicated to adult sexually oriented programming, such as the Playboy and Spice channels. Until these channels are fully blocked, cable operators would have to restrict their broadcasts to certain times of the day when children are least likely to view it, such as at night.

Last year I learned that in many households across America, adult programming was being broadcast around-the-clock on certain primarily sexually oriented channels, with only partial audio and video scrambling.

This issue first came to my attention when a local city councilman in Poway, CA, a suburb of San Diego, wrote to me about the problem in his community. He said that in San Diego County, partially scrambled video pornography—replete with unscrambled and sexually explicit audio—was being automatically transmitted to more than 320,000 cable television subscribers.

Unfortunately, many subscribers and parents were unaware of these transmissions until they or their children accidentally discovered the programming. In San Diego County, for example, the partially scrambled pornography signal was broadcast only one channel away from a network broadcasting cartoons unless it was easily accessible for children to view.

Parents would come home after work only to find their children sitting in front of the television watching or listening to the adult’s-only channel, a channel that many parents did not even know existed. In Poway, the city councilman’s young son learned about the adult’s-only channel at school, where the easily accessible programming was a hot topic among children.

This is not new. In just a few months ago, the local cable company here in Washington also automatically transmitted partially scrambled video pornography—replete with unscrambled and sexually explicit audio—to all of its subscribers. To their credit, some local cable companies are taking voluntary steps to address this problem. For example, in San Diego, one local cable company restricted the times when such programming was broadcast. In Washington, the local cable company eventually fully blocked the programming so that both the video and audio portions of the signal are now indistinguishable.

However, numerous other cable services are still transmitting similar adult video and audio programming that is not sufficiently scrambled, with many subscribers and parents unaware of its contents. And, with the emerging information superhighway, forms of video programming now or soon to be available, such sexually explicit adult programming will be even more prevalent.

The problem is that there are no uniform laws or regulations that govern such sexually explicit adult programming on cable television. Currently, adult programming varies from community to community, as does the amount and effectiveness of scrambling on each local cable system. Right now, it is up to the local cable operator to regulate itself. This is like the fox guarding the hen house.

Following complaints from myself and other officials—and the threat of legislation—the National Cable Televised Programming Association recognized that this was indeed a problem and adopted voluntary guidelines that local cable operators can follow. The California Cable Television Association also adopted similar guidelines.

However, the voluntary guidelines simply recommend that local cable operators “block the audio and video portions of unwanted sexually-oriented premium channels at no cost to the customer, upon request.” While this is a commendable effort on the part of the industry, I do not believe that it goes far enough.

First, the guidelines are only voluntary and simply recommended that local cable operators take action. There is no guarantee that such blocking will be provided and no enforcement mechanism.

Second, the guidelines put the burden of action on the subscriber, not the cable company, by requiring a subscriber specifically request the blocking of indecent programming. As I stated earlier, many subscribers do not even know that such programming exists, only to discover their children watching and listening to adults-only channels.

I do not believe that sexually explicit adult programming should automatically be broadcast into a program subscriber’s home. On the contrary, I believe that sexually explicit adult programming should be automatically blocked, unless a program subscriber specifically requests the programming.

The amendment I am proposing today is similar to language approved by the Commerce Committee last year as part of S. 1822 and contained in Senator Exxon’s bill, the Communications Decency Act of 1995. It would require that all sexually explicit adult programming be fully scrambled unless requested by a subscriber.

This amendment does not prohibit or out-right block indecent or sexually explicit programming. Anyone requesting such programming is entitled to receive it, as long as it is not obscene, which is not protected by the First Amendment. The amendment protects children by prohibiting sexually explicit programming to those individuals who have not specifically requested such programming.

The cable television industry, in meetings over the past year or so with my staff, have expressed their opposition to this amendment, citing technological and fiscal concerns. The bottom line, however, is that fully scrambling both the audio and video portion of a network channel is technologically feasible. In fact, several cable operators have already instituted such blocking, such as here in Washington. With regard to their fiscal concerns, I have never been given any information from the industry to document what the actual costs to cable operators would be.

This amendment gives the industry flexibility in implementing the requirement to fully scramble all sexually explicit adult programming.

The voluntary guidelines adopted by multi-channel video programming distributor is in full compliance, access to such programming will be limited to protect children from the sexually explicit material. The programming will be prohibited from those times of the day—to be determined by the FCC—when a significant number of children are likely to view it, such as during the mid and late morning, afternoon, and early evening.

So, the amendment leaves it up to the local cable operator on how and when to come into full compliance. Some cable operators, for example, are already in full compliance. For those operators that are not in full compliance, children will be still be protected while the adult programming can be fully scrambled or otherwise blocked.

This amendment also does not become effective until 30 days after enactment, so cable operators will have plenty of time to either fully block the programming or restrict access to certain times of the day.

While I realize that some cable operators may incur costs in implementing
this amendment, I believe that the price to protect children from sexually explicit programming is well worth it. In addition, as I stated above, the amendment gives the industry flexibility in coming into compliance; it lets individual cable operators decide what costs if any, they wish to incur and when they will incur such costs.

It is unfortunate that this amendment is necessary. One would have hoped that cable operators and other multichannel programming distributors would have automatically fully blocked or scrambled sexually explicit adult programming or, at a minimum, restricted the programming to certain times of the day.

But, industry has only taken baby steps to address this problem through voluntary policies that simply recommend action. The end result is that numerous cable operators across the country are still automatically broadcasting sexually explicit adult programming across America, regardless of whether parents want this or subscribers want it.

So I believe the provision is both necessary, timely, will be helpful, and will not disadvantage one. I urge my colleagues to support this commonsense amendment.

I ask unanimous consent that a CRS analysis of this amendment as it relates to the first amendment, which is in support of the amendment of Senator LOTT and myself, and some recent court decisions, be printed in the RECORD.

There being no objection, the material was ordered to be printed in the RECORD, as follows:


To: Hon. Dianne Feinstein, Attention: Robert Mestman.

From: American Law Division.

Subject: Indecent Programming on Cable Television.

This memorandum is furnished in response to your request for a brief analysis of the constitutionality of your proposal to limit "sexually explicit adult programming or other programming that is indecent and harmful to children on any channel . . . primarily dedicated to sexually-oriented programming." Subsection (a) of the proposal provides that "a multichannel video programming distributor shall fully scramble or otherwise fully block the video and audio portions of such channel so that one not a subscriber to such channel or programming does not receive [such programming]," Subsection (b) of the proposal states that, until a different time is specified in subsection (a), it shall not provide "such programming during the hours of the day (as determined by the Commission) when children are likely to view it." To the extent that the captions used by the FCC had cited to justify its action against the nighttime broadcasters, and found it "in substantial," and found the FCC's findings "more ritual than real." The court of appeals concluded that "in view of the curtailment of broadcaster freedom and adult listener choice that channeling entails, the Commission failed to consider fairly and fully what time lines should be drawn." 10

The First Amendment prohibits Congress from abridging the freedom of speech, and the Supreme Court has held that speech on cable is not a public forum. 11 Instead of blocking they could not provide "such programming during the hours of the day (as determined by the Commission) when children are likely to view it." To the extent that the captions used by the FCC had cited to justify its action against the nighttime broadcasters, and found it "in substantial," and found the FCC's findings "more ritual than real." The court of appeals concluded that "in view of the curtailment of broadcaster freedom and adult listener choice that channeling entails, the Commission failed to consider fairly and fully what time lines should be drawn." 10

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Furthermore, the Commission "never intended to place an absolute prohibition on the broadcast of this type of language, but rather sought to prohibit broadcasts of explicit language during hours when children most likely would not be expected to hear it." 14

In 1992, Congress enacted Public Law 102-356, section 16 of which required the FCC, within 180 days of enactment, to promulgate regulations that prohibit broadcasting of indecent programming during the hours of 6 a.m. to midnight, for public radio and television stations that go off the air at or before midnight, which may broadcast such material before 10 p.m.11 This statute was challenged, and, in Action for Children's Television v. Federal Communications Commission (ACT III), a three-judge panel of the U.S. Court of Appeals for the D.C. Circuit declared it unconstitutional.12 The full court of appeals agreed to decide the case, but a decision has not yet been issued.

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June 12, 1995

HENRY COHEN, Legal Advisor.  

Footnotes at end at article.


4 18 U.S.C. § 1464 "to regulate a radio broadcast that is indecent but not offensive to children." 10

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We made calls to the industry. Yet in many instances, they have not adequately taken action to safeguard the children. It is an example in my opinion of where we need more corporate responsibility. But since we have not gotten that yet, we need this amendment.

In the amendment, the critical definition is this:

The term 'scramble' means to rearrange the content of the signal of the programming so that the audio and video portion of the programming cannot be received by persons unauthorized to receive the programming.

I think that sums it up. I think it is a very simple amendment, but I do think it is one that should be added to this very important bill. And it will be well received by a lot of people who are concerned by what we have seen in the past months in the cable programming of this type of material.

So I yield the floor, Mr. President, at this time unless there are any other Senators wishing to speak on this particular amendment.

Could I inquire, Mr. President, about the parliamentary procedure. Has there already been an agreed to vote at 6:30? The PRESIDING OFFICER. The vote will occur at 6:30.

Who yields time?

Mr. HOLLINGS. Mr. President, I ask for the yeas and nays on the Feinstein amendment.

Mrs. FEINSTEIN. Mr. President, I believe that the amendment is an amendment that is needed. It is one that will complete the effort that is being made by a number of groups and a number of people that are very much concerned about sexually explicit programming on our televisions.

But I do not want to exaggerate what this amendment will do. It simply requires cable operators to fully scramble sexually explicit programming if someone has not subscribed for such programming.

Cable systems, in many cases, are not fully scrambling the audio and video of their adult programs. The pictures fade in and out. You can hear the audio. Clearly, that is not what should be done if the person purchasing these services has not subscribed to have that type of programming. It should be fully scrambled. I think we do need this amendment for many reasons. Today, the cable systems across the country are sending uninvited, sexually explicit and pornographic programming into the homes. I want to emphasize that not all cable operators are doing that, but there are too many that are doing it.

Children are being exposed to these obscene and harmful programs, and the Nation has been shocked to learn just in the last month of the rape of a 6-year-old by a 10-year-old and an 8-year-old.

Studies and exposes are showing young people, elementary-age children, are acting out the behavior they are seeing in this type of programming. Teachers and the FCC itself has been alarmed by the effect of such programming. It is time that we do something about it. We have expressed for over a year our concerns about this matter.

We will try to stack the votes. I know there is an event tomorrow morning, and the Les Aspin ceremony. There is the one vote that has been ordered on the Dorgan-Thurmond amendment at 12:30, after 1 hour of debate. We will be taking other amendments in the morning. We want to move this bill forward.

Mr. HOLLINGS. Mr. President, on the adoption of the Feinstein amendment, I move to reconsider the vote. Mrs. FEINSTEIN. Mr. President, I move to lay that motion on the table. The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. HOLLINGS. Let me join in the remarks of the distinguished Senator from South Dakota with respect to amendments. We have killed the day looking for amendments. We started on this bill last Wednesday.

I have been in the vanguard of opposing cloture, but I would have to support it in this particular instance because we cannot get amendments drawn and presented and voted upon. So a day passes by and everybody talks about how they would like to get out early and do these other things.
This is the Senate's business. We hope that we can move along now expeditiously on this side of the aisle. If there are any amendments, we do appreciate the Senator from California, ready and willing and able to present the next amendment. Beyond that, I hope we can get some other amendments. I yield the floor.

**AMENDMENT NO. 1270**

(Purpose: To strike the authority of the Federal Communications Commission to preempt State or local regulations that establish barriers to entry for interstate or intrastate telecommunications services.

Mr. President, on behalf of Senator KEMPThORNE and myself, I send an amendment to the desk and ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report.

The bill clerk read as follows:

The Senator from California [MRS. FEINSTEIN], for herself and Mr. KEMPThORNE, proposes an amendment numbered 1270.

MRS. FEINSTEIN. Mr. President, I ask unanimous consent that further reading be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows: On page 55, strike out line 4 and all that follows through page 55, line 12.

MRS. FEINSTEIN. Mr. President, I come to the floor today joined by our colleague, Senator KEMPThORNE, to offer this amendment on behalf of a broad coalition of State and local governments. Since announcing my intention to proceed with this amendment, I have received letters of support from hundreds of cities across the country, including the States of Arizona, Colorado, Florida, Illinois, Indiana, California, Kentucky, Louisiana, Maryland, Massachusetts, Michigan, Minnesota, Missouri, Nebraska, North Carolina, Oregon, Ohio, Texas, and Washington.

This amendment is supported by the National Association of Counties, the National Association of Cities, the National Conference of State Legislatures, the National League of Cities, and the U.S. Conference of Mayors, to name a few.

Mr. President, as a former mayor, I fully understand why Governors, mayors, city councils, and county boards of supervisors question allowing the Federal Communications Commission to second-guess decisions made at State and local government levels.

On one hand, the bill before the Senate gives cities and States the right to levy fair and reasonable fees and to control their rights of way; with the other hand, this bill, as it presently stands, takes these protections away. The way in which it does so is found in section 201, which creates a new section 254(d) of the Cable Act, and provides sweeping preemption authority.

This amendment gives any communications commission the right, if they disagree with a law or regulation put forward by a State, county, or a city, to appeal that to the FCC.

That means that cities will have to send delegations of city attorneys to Washington to go before a panel of telecommunications specialists at the FCC, on what may be very broad questions of State or local government rights.

In reality, this preemption provision is an unfunded mandate because it will create major new costs for cities and for States. I hope to explain why. I know my colleague, the Senator from Idaho, will do that as well.

A cable company would, and most likely will, appeal any local decision it does not like to the telecommunications experts at the Federal Communications Commission.

The city attorney of San Francisco advises that, in San Francisco, city laws provide that all street excavations must comply with local laws tailored to the specifics of the local communities, including the geography, the density of development, the age of public streets, their width, what other utilities are under the street, the kind of surfacing the street has, et cetera.

The city attorney anticipates that whenever application of routine, local requirements interfere with the schedule or convenience of a telecommunications supplier, subsection (d), the provision we hope to strike, would authorize a cable company to seek FCC preemption. Any time they did not like the time and location of excavation to preserve a productive traffic flow or to prevent hazardous road conditions, or to minimize noise impacts, they could appeal to the FCC.

If they did not like an order to relocate facilities to accommodate a public improvement project, like the installation, repair, or replacement of water, sewer, our public transportation facilities, they would appeal.

If they did not like a requirement to utilize trenches owned by the city or another utility in order to avoid repeated excavation of heavily traveled streets, they would appeal.

If they did not like being required to place their facilities underground rather than overhead, consistent with the requirements imposed on other utilities, they could appeal.

If they were required to pay fees prior to installing any facility to cover the costs of reviewing plans and inspecting excavation work, they could appeal.

If they did not like being asked to pay fees to recover an appropriate share of increased street repair and paving costs that result from repeated excavation, they would appeal.

If they did not like the particular kinds of excision requirements or techniques that a city mandate that they use, they could appeal.

If they did not like the indemnification, they could appeal.

The city attorney feels that, preemption would severely undermine local governments' ability to apply locally tailored requirements on a uniform basis.

Small cities are placed at risk and oppose the preemption because small cities are often financially strapped. As the city attorney of Redondo Beach, a suburb of Los Angeles writes, every time there is an appeal, they would have to find funds to come back to Washington to fight an appeal at the FCC.

Recently, the engineering design center at San Francisco State University, conducted an interesting study for San Francisco on the impact of street cuts on public roads. The expected life and value of public roads and streets declines as the number of cuts into the road.

Although this is rather dull and esoteric to some, the study reveals that streets with three to nine utility cuts are expected to require resurfacing every 18 years, a 30-percent reduction in service life, relative to streets with fewer than three cuts. For road cuts, the steeper the decline in value of the public's asset will be. Streets with more than nine cuts are expected to require resurfacing every 13 years, a 50-percent reduction in the service life of streets with less than three cuts.

An even more dramatic decline in a street's useful life is found on heavily traveled arterial streets with heavy wheel traffic. For those streets, the anticipated useful life declines even more rapidly, from 26 years for streets with fewer than three cuts to 17 years for streets with three to nine cuts, a 35-percent reduction, to 12 years for streets with more than nine cuts, a 54-percent reduction.

What does this mean? It means that financially struggling cities and counties will undoubtedly be forced to include in franchise fees, charges to recover the cost of the local maintenance requirements that constantly cutting into streets requires. The exemption means that every time a cable operator does not like it, the Washington staff of the cable operator gets to file a complaint with the FCC and the city has to send a delegation back to fight that complaint.

It should not be this way. Cities should have control over their streets. Counties should have control over their roads. States should have control over their highways.

The right-of-way is the most valuable real estate the public owns. State, city, and county investments in right-of-way infrastructure was $86 billion in 1993 alone. Of the $86 billion, more than $22 billion represents the cost of maintaining these existing roadways. These State and local governments are entitled to be able to protect the public's investment in infrastructure. Exempting communication providers from paying the full costs they impose on States and local governments for the use of public rights-of-way creates a subsidy to be paid for by taxpayers and other businesses that have no exemptions.
I would also like to point out the preemption will change the outcome in some of the dispute between communication companies and cities and States. The FCC is the Nation's telecommunications experts. But they do not have the experience and does not answer directly to public. They are "inconsistent with the very governmental action it wishes (either sua sponte or at its own request)."

The FCC proceeding and its appeal in Washington will be very different from the Federal court action in a locality. Both the city and the communications company are more likely to be able to develop a more complete and thorough record if the proceeding is before the local Federal court rather than before a Government body in Washington. We also believe the FCC lacks the expertise and experience. As I said, if you have a city that is complicated in topography, that is very hilly, that is very old, that has very narrow streets, where the surfacing may be fragile, where there are earthquake zones, you are going to have different requirements on a cable entity constantly opening and recutting the streets. The fees should be able to reflect these regional and local distinctions.

Mr. President, this stack of letters opposing the preemption includes virtually every California city and virtually every major city in every State.

What the cities and the States tell us they want us to give local governments the opportunity for home rule on questions affecting their public rights-of-way. If the cable company does not like it, the cable company can go to court in the preemption clause. Under the preemption, we can increase fairness, minimize cost to cities, counties, and States, and prevent an unfunded mandate.

If the preemption provision remains, a city would be forced to challenge the FCC ruling to gain a fair hearing in Federal court. This is important because presently they can do so directly to their local Federal court. Under the preemption, a city, State, or county government would have to come to the Federal court in Washington after an appeal to the FCC.

Matters involving communication issues, courts are likely to require a tough, heightened scrutiny standard for matters involving first amendment rights involving freedom of speech. Courts are likely to defer to the FCC judgments.

Section 254(d) reposes sweeping review powers in the FCC and in effect converts a federal administrative agency into a federal administrative court. The FCC literally would have the power to review any local government action it wishes (either sua sponte or at its own request). There is an extremely difficult for a court to find that the FCC has exceeded its authority. Consequently precludes the voice of Local Governments and the local courts (enforcement decisions) should be the forum for resolution of local issues.

An important point that needs to be explained is that Congress is trying to resolve some of the disputes associated with the FCC resolving local issues in Washington. First is the obvious problem. Most citizens, community groups, and cities do not have the financial wherewithal to litigate before a federal agency located in Washington. Even if an action of the FCC is reviewed by the Courts, that will occur in the Western District of Washington, D.C. Circuit miles away. Section 254(d) does contain due process language and such a provision may meet the technical requirements of the U.S. Constitution. However, it, after notice and an opportunity for public comment "* * *" provides little solace for local governments and their citizens. The FCC and its bureaus are often able to respond to its rules and rulemaking proceedings for anyone other than the expensive FCC bar. It is impractical for local people to respond in a timely fashion and FCC preemption consequently precludes the voice of those most effected.

Second, as a general rule the courts pay great difference to administrative agencies that are created for specific purposes. There is no argument with that proposition because of the proven expertise of federal agencies in matters properly within their purview. However, a serious problem is created when a federal administrative agency is given power over issues where it has little expertise, such as the management of local rights-of-way. This is largely so because of the legal standards for review of administrative decisions. Generally, a decision will stand unless the agency has abused its discretion or has exceeded its authority. Again, for matters properly within an administrative agency's purview there is no quarrel. However, the sweeping review powers that Section 254(d) places in the FCC would create for anyone other than the expensive FCC bar. It is impractical for local people to respond in a timely fashion and FCC preemption consequently precludes the voice of those most effected.

Second, the FCC proceeding and its appeal in Washington will be different from the Federal court action in a locality. Both the city and the communications company are more likely to be able to develop a more complete and thorough record if the proceeding is before the local Federal court rather than before a Government body in Washington. We also believe the FCC lacks the expertise and experience. As I said, if you have a city that is complicated in topography, that is very hilly, that is very old, that has very narrow streets, where the surfacing may be fragile, where there are earthquake zones, you are going to have different requirements on a cable entity constantly opening and recutting the streets. The fees should be able to reflect these regional and local distinctions.

Mr. President, this stack of letters opposing the preemption includes virtually every California city and virtually every major city in every State.
In addition, because if the procedural structure of the FCC, the normal right to cross examine witnesses and their testimony is not present. The right to comment and reply to another interested party’s comments theoretically permits the FCC to make a fair and impartial judgment. However, these comments are not under oath and the testimony that is filed under penalty of perjury is never is reality tested for truth and accuracy. The practical effects is that anybody may say anything they wish with impunity. The decision-makers, therefore, may be misled into believing erroneous “facts”. This view is reinforced by the fact that the courts are the answer for all issues. There exist some practical problems with the courts; they may be too slow and they may lack the technical expertise. However, Section 254(d) appears to effectively eliminate the courts because of the absence of any real or effective review of FCC decisions. Senate Bill 652 must be amended to leave local issues to local government and thereby permit local citizens, local governments and local courts to be active participants in the resolution process.

Finally, the industry has clearly captured the decision making of officials at the FCC. In recent years the voice of local government and its citizens have been routinely rejected by the FCC and the industry appears to have a lopsided influence. We therefore urge that section 254(d) be eliminated in its entirety. If that is accomplished, violations of S. 652 will be decided in the forum properly equipped to do so—the local Federal Courts.

As an additional note, we wish to comment that section (a) of S. 652 also represents a serious invasion of local government authority over local interests. Most any action taken by local government in this area can be construed as having “the effect of prohibiting or regulating interstate and foreign telecommunications services.” Surely more precise wording can be developed which would not so significantly erode the power of local governments over local matters. Please advise if you would like further comment regarding this section.

If I can be of further assistance, please do not hesitate to call on me.

Very truly yours,

Hon. DIANNE FEINSTEIN,
Re Telecommunications Competition and
Re: The Telecommunications bill to preserve
to the telecommunications bill to preserve
to the public of repeated street excavation.
Throughout the country, such local laws are
tailored to the specific characteristics of each local community, including local geog-aphy, density of development and the age of public streets and facilities. The language of subsection (d) would severely undermine local government ability to apply such local tailored requirements on a uniform basis.

Whenever application of routine local require-
ties interfere with the schedule or convenience of a telecommunications sup-
plier, subsection (d) would authorize the company to seek FCC preemption. To iden-
tify just a few examples, my colleague from California has said that we must send an attorney off to Washington every time a tele-
communications company challenges our authority:

1. Regulate the time or location of excava-
tion to preserve effective traffic flow, pre-
vent hazardous road conditions, or minimize noise impacts.
2. Require a company to relocate its fa-
cilities to accommodate a public improve-
ment project, like the installation, repair or replacement of water, sewer or public trans-
portation, for the benefit of the public.
3. Require a company to place facilities in joint trenches owned by the City or another utility company that would require repeated excavation of heavily traveled streets.
4. Require a company to place its facili-
ties underground, rather than overhead, con-
sistent with changes in technology imposed on other utility companies;
5. Require a company to pay fees prior to installing any facilities to cover the costs of reviewing plans and inspecting excavation work;
6. Require a company to pay fees to re-
cover an appropriate share of the increased street repair costs that result from repeated excavation;
7. Require a company to use particular kinds of excavation equipment or techniques suited to local circumstances to minimize the risk of major public health and safety hazards;
8. Enforce local zoning regulations; and
9. Require a company to indemnify the City against any claims of injury arising from the company’s excavation.

All of the requirements described above are routinely imposed by local governments in exercise of our responsibility to manage the public rights of way. Granting special fa-
vors to telecommunications companies, com-
pared for example to other utility compa-
nies, will undermine the uniformity of local law and could dramatically increase the costs to local taxpayers of maintaining pub-
lic streets.

In these times, when the federal govern-
ment is asking state and local governments to take on many additional duties, the FCC should not be empowered to interfere in this area of classic local authority. This is espe-
cially true because, for many cities, the FCC is a relative newcomer to the arena in which to resolve disputes. The courts are well-suited to resolve any disputes that may arise from the ‘Removal of Barriers to Entry’ language of Section 254 without plac-
ing heavy burdens on local governments. I appreciate the leadership you have shown on this difficult issue. Please let me know if I can offer any further assistance with your efforts on behalf of cities.

Very truly yours,

LOUISE H. RENNE,
The Presiding Officer.

The Presiding Officer. The Senator
from Idaho.

Mr. KEPHTHORNE. Mr. President, I
am honored to join my friend from

California, Senator Feinstein, in this amendment. This is not the first time we have teamed up together. I think perhaps our background as both being former mayors has allowed us to bring to this position some perspective to help us realize, with regard to local and state/local partnerships, that unfunded mandates legislation is well out of order.

The Senator from California was very helpful when we brought forward the bill, the Unfunded Mandates Reform Act of 1995, which the majority leader had designated Senate bill 1, and which allowed me to team up with the Senator from Ohio, John Glenn. In March of this year, as you know, Mr. President, that unfunded mandates legisla-
tion was signed into law.

Part of that new law in essence says that Federal agencies must develop a process to enable elected and other officials of State, local, and tribal units of government to provide input when Federal agencies are developing regula-
tions.

The conference report of that legisla-
tion passed overwhelmingly. In the Senate it was 91 to 9. In the House it was 394 to 28.

An overwhelming majority said in es-
A very straightforward. This move-
television companies, has consistently been expressed in the legis-
legislative reform occurring in both Houses of Congress. But I feel, as I think the Senator from California feels, that this provision in this tele-
communications bill is causing a slippage back to our old habits. What we have before us in section 254 of the bill before us is a reversal of the positive progress that we have been making.

As the Senator from California pointed out, in subsection (d) the committee has added a broad ambiguous preemption language that states, if the FCC “determines that a State or local government has permitted or imposed any statute, regulation, or legal requirement that violates or is inconsistent with this section, the FCC shall im-
mediately preempt the enforcement of such statute, regulation, or legal requirement to the extent necessary to correct such violation or inconsistency.”

We are going to give this power to the FCC over the jurisdictions of the local communities and the State gov-

governments. This is a disturbing directive that instructs the Federal Commission to invalidate duly adopted State laws and local ordinances that the independ-
ent Commission may deem inappropriate. This preemption would be gener-
ated by a commission that in a majority of cases would be thousands of miles away from the local government jurisdiction that would be affected by their decision.

I know of no one in local government who objects to the language which en-
sures nondiscriminatory access to the
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public right of way. But what they do vigorously object to is that this proposed FCC preemption does not allow them the prerogative to manage their right of way in a manner that they deem to be appropriate and in the best interests of their community.

If I may, Mr. President, let me give you an example. When I was the mayor of Boise, ID, we had a particular project that on the main street, on Idaho Street, from store front to store front, we took everything out 3 feet below the utility and we put in brand new utilities. I think it was something like 11 different utilities all being coordinated, put in at the same time, then building it back up, new sidewalks, curbs, gutters, paving of the main street. I will tell you, Mr. President, that there is no way in the world that the FCC, 3,000 miles away, could have coordinated that.

I think one of the things that you hear so often if you are in local government is that when you get into the Federal world, the radio talk shows, is when a new street has been paved, within 6 months you see crews out there cutting into that new pavement, and they are putting in a new utility. That is expensive, and it is unnecessary if you can coordinate things. Surely, we do not think that an independent commission in Washington, DC, is going to be able to better coordinate that than the local government in San Francisco or the local government in Boise, ID. It just does not happen.

This proposed preemption is based on two assumptions. First, that it is the role of the Federal Government to tell others what to do; second, that local units of government are not capable or responsible enough to make the right decisions. I reject both of those presumptions.

Like the Senator from California, with the hands-on experience that she has had at the local government level, we realize that Federal solutions do not always meet local problems. You have to take into account the local conditions and the local innovations. These Federal solutions have not worked in the past. They are not working now. They will not work in the future.

So why would we step back with all of the progress that we have been making in this congressional session in reordering the partnership between the Federal, the State, and the local governments if you are taking part in this? This language which introduces expanded FCC jurisdiction into the local decisionmaking process is ill-conceived, and it should not be included in the final language of this important legislation. Our amendment would strike the offending subsection in its entirety. This would leave control of local right of way matters with local elected officials, which is exactly where it belongs.

The goal of Congress in regulatory reform should be to remove existing Federal roadblocks that limit productivity and creativity and innovation. We should legislate in a manner that enhances Federal-local intergovernmental partnerships for mutually beneficial results. We should not be guilty of imposing new, unnecessary bureaucratic hurdles as has been done in this case.

So, again, I am so proud to join the Senator from California in this effort. We make a good team. This is a worthy effort to team up with because this present preemption needs to be removed from the telecommunications bill.

I yield the floor, Mr. President.

Mrs. FEINSTEIN addressed the Chair.

MR. PRESIDENT, the Senator from California.

Mrs. FEINSTEIN. Mr. President, I would like to thank the Senator from Idaho for those excellent remarks. I think he hit the nail on the head with respect to the rights of local government, and the way in which this Congress is moving. This preemption sets all of our progress regarding the relationship between Federal and local government back, and hurts cities, counties, and States in the process.

So I want the Senator to know how much I appreciate him on this. I thank him very much.

MR. PRESSLER addressed the Chair.

The PRESIDING OFFICER. The Senator from South Dakota.

MR. PRESSLER. Mr. President, I reluctantly rise in opposition to this amendment from two of my most respected colleagues in the Senate. The issue addressed in this amendment goes to the very heart of § 522, eliminating barriers to market entry.

In the case of section 254, which I have here in front of me, entitled “Removal of Barriers to Entry,” we do preempt any State or local regulation or statute or State or local legal requirement that may prohibit or have the effect of prohibiting the ability of any entity to provide telecommunications services.

The actual authority granted to the FCC in subsection (d) is critical to ensuring that State and local authorities do not get in a way that precludes or has the effect of precluding new entry by firms providing new telecommunications services. At the same time, make no mistake about it, the authority granted in subsections (b) and (c) to the State and local authorities respectively in turn protect them. For example, in subsection (c) it says, “Nothing in this section affects the authority of local government to manage the public rights of way.”

Mr. President, this is a particularly difficult problem because all of us want to leave authority with State and local government. But this is a deregulatory bill to allow companies to enter and to compete without barriers. If this section were allowed to fail, it could mean that certain requirements would be placed on companies, such as public service projects or certain types of payments of one sort or another for a local universal service, or whatever. We are trying to deregulate the telecommunications markets in the United States. I know it sounds great to say let every city and municipality have a virtual veto power over what is occurring in their area.

Now, it is my strongest feeling that sections (b) and (c) to the State and local authorities, respectively, are more than sufficient to deal in a fair-handed and balanced manner with legitimate concerns of State and local authorities. Sections (b) and (c) take into account State and local government authority, (b) says:

State Regulatory Authority. Nothing in this section shall affect the ability of a State to legislate, on a competitively neutral basis and consistent with section 253, requirements necessary to preserve and advance universal service, protect the public safety and welfare, ensure the continued quality of telecommunications services and safeguard the rights of consumers.

Section (c):

Local Government Authority. Nothing in this section affects the authority of a local government to manage the public right of way or to require fair and reasonable compensation from telecommunications providers, on a competitively neutral and non-discriminatory basis, of public rights of way on a nondiscriminatory basis if the compensation required is publicly disclosed by such Government.

Now, the preemption clause (d) reads as follows:

If, after notice and an opportunity for public comment, the Commission determines that a State or local government has permitted or imposed any statute, regulation, legal requirement or, if inconsistent with this section, the Commission shall immediately preempt the enforcement of such statute, regulation, or legal requirement to the extent necessary to correct such violation or inconsistency.

The intent therefore is to leave protected State regulatory authority, to leave protected local government authority, but there have to be some cases of preemption or a certain city could impose a requirement of some sort or another that would be very anticompetitive, and that is where we come out.

I have joined in a lot of efforts here to ensure that our State and local authority be preserved. And I understand there will possibly be a second-degree amendment. We have worked closely with Senator HUTCHISON and the city, county, and State officials to achieve that balance. That is where the committee came out.

I feel very strongly that it is a fair balance. It takes into account State regulatory authority, takes into account local government authority. But it also recognizes the need to open up markets, the removal of barriers to entry. In many cases these do become barriers to entry, barriers to competition.

So I rise in reluctant opposition to the amendment.

MR. HOLLINGS addressed the Chair.

The PRESIDING OFFICER. The Senator from South Carolina.
Mr. HOLLINGS. Mr. President, you have to be sure of foot to be opposing two distinguished former mayors. The Senator from California is the former mayor of San Francisco, and the distinguished Senator from Idaho is a former mayor of Boise. Both had outstanding records.

But let me suggest that what they have read into the preemption section is a requirement and an idea that just does not exist at all. I will have to agree with them in a flash that the Federal Communications Commission has no idea of coordinating, as the Senator from Idaho has outlined, the digging up in front of all of the sidewalks and stores and everything else, putting in the regular necessary conduit, refirming the soil and the sidewalks again in front. We have no idea of the FCC doing it.

Let us tell you how this comes about. Section 254 is the removal of the barriers to entry, and that is exactly the intent of the bill, and it says for your city how these councils work. We know how in many a city the cable folks took care of just a couple of influential councilmen, and they would not give service or could give service or run up the price and all that kind of stuff.

We have had experience here with the mayors coming and asking us. And this is the response. That particular section (c) is in response to the request of the mayors. If they do not do that, if they do not put it, if they do not have a competitively neutral basis or if they put it in a discriminatory basis, then who is to enjoin? And we say the FCC should start it. Let us not go through the Administrative Procedures Act. Let us not go through every individual.

Yes, we want those mayors and all to come here and everybody to understand rules are rules and we are going to play by the rules and the rules protect those mayors to develop, to administer to the 100 percent. I say to the Senator from Idaho, that the FCC has never performed the job of a city mayor. But they shall and must perform this job here of removing the barriers to entry. And if we do not have them doing it, then I will yield the floor and listen to the suggestions they have. But do not overread the preemption section to other than centralizing the authority and responsibility in the FCC to make sure, like they have in administering all the other rules relative to communications here and all the other entities involved in telecommunications, they have that authority to make sure while the cities got their rights of way, while the States have got their public welfare and public interest sections to administer, that it is done on a nondiscriminatory basis.

Mr. KEMPTHORNE addressed the Chair.

The PRESIDING OFFICER. The Senator from Idaho.

Mr. KEMPTHORNE. Mr. President, I would like to respond to my two friends, the floor managers of this bill, and then I know the Senator from California would also like to respond.

They referenced, of course, section 254, which is removal of barriers to entry. That is the section and that is the key. They stated it:

Nothing shall affect the authority of a State or other State or local legal requirement or other State or local legal requirement may prohibit or have the effect of prohibiting the ability of any entity to provide any interstate or intrastate telecommunications services.

Period. Period. And nothing in this amendment alters that at all. We affirm that. It is my impression, Mr. President, that when it is referenced to section (b), Senator, the authority, yes, the States feel that that language is good; and section (c), local government authority, yes, mayors had something to do with the writing of that language. They feel good about that. But the problem is, then you go on to section (d), which is, it is my understanding, came very late in the process. In section (d), there is this line that says: "The Commission shall immediately preempt.

Let us see just so many times with Federal legislation: On the one hand, we give but, on the other hand, we take it away. In section (b) and section (c) we give, but, by golly, we have section (d) that then says that this Commission will immediately preempt. That is the problem. We are not saying that we should not be held accountable to this. That is why there is no language in this amendment to alter the opening statement of section 254. No problem.

It is section (d) that then comes right along and, after everything has been said, preempts and pulls the plug, and that is wrong. We should not do this to our local and State partners. It is absolutely wrong.

I yield the floor.

Mrs. FEINSTEIN addressed the Chair.

The PRESIDING OFFICER. The Senator from California.

Mrs. FEINSTEIN. Mr. President, my colleague from Idaho took the words right out of my mouth. I think he is exactly right in his interpretation of this section. The barrier for entry is clearly done away with by this section. Nothing. Senator KEMPTHORNE or I would do would change that. What we do change, however, is simply delete the ability of a remote technical commission to overturn a city decision and create an enormous hassle for cities all across this Nation.

I would like to just give you the exact wording of what the city attorney of Los Angeles said this section does. He says:

It proposes sweeping review powers for the FCC, in effect, converts a Federal administrative agency into a Federal administrative court. The FCC literally would have the power to review any local government decision, either on its own or at the request of the industry.

A Federal agency, with personnel who do not directly respond to the public, will be dictating in fine detail how local government and their citizens across the country shall have to follow. The FCC would be
given plenary power to decide what actions of local government are "inconsistent with" the very broad provisions in the bill and, without further review, hold the authority to nullify or preempt state and local governmental actions. That is an unprecedented and far-reaching authority for a Federal agency to have over local government.

I could not agree more. Senator KEMPThORNE and I were both mayors at one time and we both understand that every city has different needs when it comes to cable television.

I remember as the mayor of San Francisco when Viacom came into the city. They refused to wire the affluent areas of the city. They refused to wire the poorer areas of the city. Unless local government had the right to require that kind of wiring, it was not going to be done at all. That is just one small area with which I think everyone can identify.

But when it comes to the rights-of-way and what is under city streets, the city must be in the position to set rules and regulations by which its street can be cut. This preemption gives the FCC the right to simply waive any local rulemaking and say that is not going to be the case. It gives the FCC the right to waive any local fee and say, "That's not the way it is going to be."

That is why countless cities and counties across the country, not just one or two, but virtually all of the big organizations, including the League of Cities, the national Governors, local officials and others, say, "Don't do this."

If a city has a problem with anything we in local government do, let them go to court. Let a court in our jurisdiction settle the issue. I think that is the right way to go. For the life of me, I have a hard time understanding why people would want to preempt these kinds of things with the technical, far-removed FCC agency.

So I think Senator KEMPThORNE has well outlined the situation. I think we have made our case.

I think this point.

Mr. HOLLINGS addressed the Chair.

The PRESIDING OFFICER. The Senator from South Carolina.

Mr. HOLLINGS. Mr. President, the distinguished colleague from Idaho said "came so late in the process." I want to correct that thought. I am referring back over a year ago to a bill with 19 cosponsors, this same language: * * * the Commission determines that a State or local government has permitted or imposed any statute, regulation, or legal requirement that violates or is inconsistent with this subsection, the Commission shall immediately preempt the enforcement of such statute, regulation, or legal requirement to the extent necessary to prevent such violation or inconsistency.

It did not come late in the process. We have been working with mayors and we have several former mayors who were my sponsors. That is S. 1822. So this is S. 652, which is, of course, a year subsequent thereto.

Is it the language that is inconsistent with this subsection? Is that the bothersome part? Is it sort of bothers this Senator. I think if you are going to violate your authority with respect to being neutral and nondiscriminatory and you have to have somewhere this authority, in the entity of the FCC, to do it rather than the courts, each with a plethora of different interpretations and law, I would think if we could take that, maybe that would satisfy the distinguished Senator from California and the Senator from Idaho.

I yield the floor. I make that as a suggestion.

Mr. KEMPThORNE addressed the Chair.

The PRESIDING OFFICER. The Senator from Idaho.

Mr. KEMPThORNE. Mr. President, I appreciate the good efforts of the Senator from South Carolina, because I have always found him to be a gentleman whom I can work with and we can find areas to barriers to entry, if there are problems, if a cable company is getting a bad deal and being put off by a local government, they can go to court, but they go to court in that area, they do not have to come to Washington.

The avenue for remedy already exists, why do we then say, again, every city has its own set of problems with city officials. It was in S. 1822 last year, and it is here. I think we have to take a step back and look at some of the cable deals and problems that have occurred in our cities. The cities have granted exclusive franchises in some cases and are not allowing competition. They require certain programming or other requirements on those companies.

Our States have granted, in the telephone area, certain exclusive franchises, not allowing competition. And the point is, if we are having deregulation here, removal of barriers to entry, we have to take this step. I think that is very important for us to considerate this point.

Now, section 254 goes to the very heart of this bill, because removal of barriers to entry is what we are trying to accomplish with this bill. We preempt any State or local regulation or statute or local legal requirement that may prevent the effect of prohibiting the ability of any entity to provide telecommunications services.

The authority granted to the FCC in subsection (d) is critical if we are going to open those markets, because a lot of States and cities and local governments may well engage in certain practices that encourage a monopoly or that demand certain things from the business trying to do business. That would not be in the public interest.

At the same time, make no mistake about it, Mr. President, the authority granted in subsection (b) and (c) to the State and local authorities, respectively, are more than sufficient to deal in a fair-handed and balanced manner with legitimate concerns of State and local authority. These were negotiated out with State and local authorities.

We have worked closely with Senator HUTCHISON and the city, county, and State officials to strike a balance. We have gone to great pains and length to deal with concerns of the cities, counties, and State governments that are legitimately raised. We dealt with the concerns in subsection (b) and (c), while at the same time setting up a procedure to preempt where local and State officials act in an anticompetitive way, by taking action which prohibits, or the effect of prohibiting, entry by new firms in providing telecommunications services.

Now, the real problem created by the amendment offered by my friends, Senators FEINSTEIN and KEMPThORNE, is that the very certainty which we are trying to establish with this legislation is put at risk. Certainly, a company has the right to do what they want. If a local city or State will put some requirement on it to provide some kind of programming, or even to do something in...
the city to provide some service, or if it will grant an exclusive monopoly. What we are trying to get are barriers to entry, and we are reserving to the State and local governments certain authorities. So the certainty we are looking for is taken away—in fact, there is no guarantee that entry barriers will be toppled and no guarantee of uniformity across the country.

The committee has dealt with federalism concerns throughout this legislation. I believe that this goes to the heart of a technical detail of federalism and the Federal Government's relationship to State and local government. It is one of the most complicated areas of this bill. Believe me, it is hard to strike a balance. But if we strike this out, it gives every city in the country the right to put up barriers to entry. It lets every State have the right to have a monopoly unless they can extract something for the State in one way or another. I would not blame cities if we did that, it goes to the very heart of this bill.

Now, I take a back seat to no one in advocating federalism principles. I like much power in the State and local government. It must be balanced with our other efforts to remove the anticompetitive restrictions at the local level which restrict competition. Exclusive franchising in the cable and telephone markets is the very way that established monopolies in the past.

So, any statements on this, I understand that there may be a possible second-degree amendment to this tomorrow at some point. I want to give Senators notice of that. There may not be, but I rise in opposition to the amendment.

Mr. LOTT. Mr. President, I do have some business to conduct, including the closing statement. At this juncture, I would like to do a couple of things, and if the Senator from Nebraska wants to make a statement, I will withhold on the closing unanimous consent.

CLOTURE MOTION

Mr. LOTT. Mr. President, I send a cloture motion to the desk.

THE PRESIDING OFFICER. The cloture motion having been presented under rule XXII, the Chair directs the clerk to read the motion.

The assistant legislative clerk read as follows:

CLOTURE MOTION

We the undersigned Senators, in accordance with the provisions of rule XXII of the Standing Rules of the Senate, do hereby move to bring to a close debate on S. 622, the Telecommunications Competition and De-regulation Act:

Trent Lott, Larry Pressler, Judd Gregg, Don Nickles, Rod Grams, Rick Santorum, Craig Thomas, Spencer Abraham, Robert F. Bennett, Hank Brown, Conrad R. Burns. THE PRESIDING OFFICER. The act-
ing majority leader.

REMOVAL OF INJUNCTION OF SECRECY—EXTRADITION TREATY WITH BELGIUM (TREATY DOCUMENT NO. 104-7); SUPPLEMENTARY EXTRADITION TREATY WITH BELGIUM TO PROMOTE THE REPRESSION OF TERRORISM (TREATY DOCUMENT NO. 104-8); AND EXTRADITION TREATY WITH SWITZERLAND (TREATY DOCUMENT NO. 104-9).

Mr. LOTT. Mr. President on behalf of the leader, as in executive session. I ask unanimous consent that the injunction of secrecy be removed from the following three treaties transmitted to the Senate on June 9, 1995, by the President of the United States: Extradition Treaty with Belgium (Treaty Document No. 104-7); Supplementary Extradition Treaty with Belgium to Promote the Repression of Terrorism (Treaty Document No. 104-8); and Extradition Treaty with Switzerland (Treaty Document No. 104-9).

The PRESIDING OFFICER. Without objection, it is so ordered.

The messages of the President are as follows:

To the Senate of the United States:

With a view to receiving the advice and consent of the Senate to ratification, I transmit herewith the Extradition Treaty Between the United States of America and the Kingdom of Belgium signed at Brussels on April 27, 1997. Also transmitted is the report of the Department of State with respect to the Treaty.

This Treaty is designed to update and standardize the conditions and procedures for extradition between the United States and Belgium. Most significantly, it substitutes a dual-criminality clause for the current list of extraditable offenses, thereby expanding the number of crimes for which extradition can be granted. This treaty also provides a legal basis for temporarily surrendering prisoners to stand trial for crimes against the laws of the Requesting State.

The provisions in this Treaty follow generally the form and content of extradition treaties recently concluded by the United States. Upon entry into force, it will supersede the Treaty for the Mutual Extradition of Fugitives from Justice Between the United States of America and the Kingdom of Belgium, signed at Washington on October 26, 1901, and the Supplementary Extradition Conventions to the Extradition Convention of October 26, 1901, signed at Washington on June 20, 1935, and at Brussels on November 14, 1963.

This Treaty will make a significant contribution to international cooperation in law enforcement. I recommend that the Senate give early and favorable consideration to the Treaty and give its advice and consent to ratification.

WILLIAM J. CLINTON.


To the Senate of the United States:

With a view to receiving the advice and consent of the Senate to ratification, I transmit herewith the Supplementary Treaty on Extradition Between the United States of America and the Kingdom of Belgium to Promote the Repression of Terrorism, signed at Brussels on April 27, 1997 (the "Supplementary Treaty"). Also transmitted for the information of the Senate is the report of the Department of State with respect to the Supplementary Treaty.
This Supplementary Treaty is designed to facilitate the extradition of terrorists, and is similar to the protocols to extradition treaties currently in force with other countries, including Australia, Canada, Spain, the Federal Republic of Germany, and the Kingdom of Belgium. Upon entry into force, it will supersede the Extradition Treaty of May 14, 1900, and the Supplementary Extradition Treaties of January 10, 1935, and January 31, 1940, between the United States of America and the Swiss Confederation.

This Treaty will make a significant contribution to international cooperation in law enforcement. I recommend that the Senate give early and favorable consideration to the Treaty and give its advice and consent to ratification.

WILLIAM J. CLINTON.

To the Senate of the United States:

With a view to receiving the advice and consent of the Senate to ratification, I transmit herewith the Supplementary Treaty of May 14, 1963, if that Treaty is still in force, and the Supplementary Treaty Between the United States of America and Switzerland. Most significantly, it substitutes a dual-criminality clause for a current list of extraditable offenses, so that the new Treaty will cover numerous offenses now covered by our extradition treaty with Switzerland, including certain narcotics offenses, important forms of white-collar crime, and parental child abduction. The Treaty also provides a legal basis for temporarily surrendering prisoners to stand trial for crimes against the laws of the Requesting State.

The Treaty further represents an important step in combatting terrorism by excluding from the scope of the political offense exception offenses typically committed by terrorists for which both the United States and Switzerland have an obligation under a multilateral international agreement to extradite or submit to their authorities for the purpose of prosecution. These offenses include aircraft hijacking, aircraft sabotage, crimes against internationally protected persons (including diplomats), and hostage-taking.

The provisions in this Treaty follow generally the form and content of extradition treaties recently concluded by the United States. Upon entry into force, it will supersede the Extradition Treaty of May 14, 1900, and the Supplementary Extradition Treaties of January 10, 1935, and January 31, 1940, between the United States of America and the Swiss Confederation.

This Treaty will make a significant contribution to international cooperation in law enforcement. I recommend that the Senate give early and favorable consideration to the Treaty and give its advice and consent to ratification.

WILLIAM J. CLINTON.

EXECUTIVE AND OTHER COMMUNICATIONS

The following communications were laid before the Senate, together with accompanying papers, reports, and documents, which were referred as indicated:

EC-955. A communication from the Secretary of Defense, transmitting, pursuant to law, the report on accounting for U.S. assistance under the Cooperative Threat Reduction Program; to the Committee on Armed Services.

EC-956. A communication from the Assistant Secretary of State (Legislative Affairs), transmitting, pursuant to law, the report on the extent of compliance of the independent states of the former Soviet Union with the Biological Weapons Conventions; to the Committee on Armed Services.

EC-957. A communication from the Secretary of Housing and Urban Development, transmitting, pursuant to law, the 1993 consolidated annual report on fair housing programs; to the Committee on Banking, Housing, and Urban Affairs.

EC-958. A communication from the Chairman of the Board of Governors of the Federal Reserve System, transmitting, pursuant to law, a report relative to intermarket coordination; to the Committee on Banking, Housing, and Urban Affairs.

EC-959. A communication from the Secretary of Housing, and Urban Development, transmitting, pursuant to law, a report relative to a collaboration between the National Science Foundation and the Department of Housing and Urban Development; to the Committee on Banking, Housing, and Urban Affairs.

EC-960. A communication from the General Counsel of the Department of Treasury and the General Counsel of the Department of Housing and Urban Development, transmitting a draft of proposed legislation entitled “Federal Home Loan Bank System Restructuring and Modernization Act of 1995”; to the Committee on Banking, Housing, and Urban Affairs.

EC-961. A communication from the Secretary of Housing and Urban Development, transmitting, pursuant to law, a report relative to a collaboration between the National Science Foundation and the Department of Housing and Urban Development; to the Committee on Banking, Housing, and Urban Affairs.

EC-962. A communication from the Secretary of Housing and Urban Development, transmitting, pursuant to law, a report relative to the availability of housing close to places of employment; to the Committee on Banking, Housing, and Urban Affairs.

EC-963. A communication from the Secretary of Housing and Urban Development, transmitting, pursuant to law, a report relative to a collaboration between the National Science Foundation and the Department of Housing and Urban Development; to the Committee on Banking, Housing, and Urban Affairs.

EC-964. A communication from the Chairman of the Board of Governors of the Federal Reserve System, transmitting, pursuant to law, the annual report of the Commission for fiscal year 1994; to the Committee on Banking, Housing, and Urban Affairs.

EC-965. A communication from the Chairman of the Board of Governors of the Federal Reserve System, transmitting, pursuant to law, the annual report of the Board for calendar year 1994; to the Committee on Banking, Housing, and Urban Affairs.

EC-966. A communication from the President and Chairman of the Export-Import Bank, transmitting, pursuant to law, a report relative to U.S. transactions with the Philippines; to the Committee on Banking, Housing, and Urban Affairs.

EC-967. A communication from the Chairman of the Securities and Exchange Commission, transmitting, pursuant to law, a report relative to intermarket coordination; to the Committee on Banking, Housing, and Urban Affairs.

EC-968. A communication from the Executive Director of the Thrift Depositor Protection Oversight Board, transmitting, pursuant to law, a report relative to the number and condition of savings associations; to the Committee on Banking, Housing, and Urban Affairs.

REPORTS OF COMMITTEES

Under the authority of the order of the Senate of June 8, 1995, the following reports of committees were submitted on June 9, 1995:

By Mr. PACKWOOD, from the Committee on Finance, with an amendment in the nature of a substitute and an amendment to title:

H.R. 4: A bill to restore the American family, reduce illegitimacy, control welfare spending and reduce welfare dependence (Rept. No. 104-96).

INTRODUCTION OF BILLS AND JOINT RESOLUTIONS

The following bills and joint resolutions were introduced, read the first and second time by unanimous consent, and referred as indicated:

By Mr. HEFLIN (for himself and Mr. KYL):

S. 914. A bill to delineate acceptable drug testing methods, and for other purposes; to the Committee on the Judiciary.

By Mr. D’AMATO:

S. 915. A bill to govern relations between the United States and the Palestine Liberation Organization (PLO), to enforce compliance with standards of international conduct, and for other purposes; to the Committee on Foreign Relations.

By Mr. FRIST (for himself, Mrs. KASSEBAUM, Mr. JEFFORDS, Mr. COATS, Mr. DEWINE, Mr. KENNEDY, Mr. PELL, Mr. DODD, Mr. SIMON, and Mr. HARKIN):

S. 916. A bill to amend the Individuals with Disabilities Education Act to extend the Act, and for other purposes; to the Committee on Labor and Human Resources.

STATEMENTS ON INTRODUCED BILLS AND JOINT RESOLUTIONS

By Mr. HEFLIN (for himself and Mr. KYL):

S. 914. A bill to delineate acceptable drug testing methods, and for other purposes; to the Committee on the Judiciary.
a variety of drug testing processes. I believe that it is important to fight drug abuse and supply law enforcement agencies with all the available tools. By expanding the range of acceptable drug testing methods State and Federal agencies will be able to weigh the costs and benefits of the different processes to determine the one which best suits their needs. Congress should not enact legislation that limits drug testing alternatives but should let the agencies, with their expertise, make informed choices.

This bill will amend the recently passed Violent Crime Control and Law Enforcement Act of 1994 in three areas. The amendments would strike the references to urinalysis as the only drug testing method specifically listed pursuant to conditions of supervised release, conditions of parole, conditions of probation, and residential substance abuse treatment for prisoners. In its place it will include but not limit the choices of testing to: urine, hair, and blood. This will ensure that State and local agencies can make use of innovative technology.

When drug testing was first introduced, the methods available for testing provided only narrow windows of detection with limited accuracy. This bill will encourage law enforcement to incorporate new technology, such as hair analysis, into their current drug testing regimes.

Field studies conducted by the National Institute of Justice show that hair analysis is more effective than urine testing in detecting cocaine, PCP, and opiate users. Also, this innovative form of drug testing promises to be a less invasive, and potentially more revealing, alternative to urine screening. Finally, the individual will probably be more willing to submit a lock of hair than to provide a second, newly collected sample can be analyzed as a safety net. This is not possible with urine because the original 3-day surveillance window will have passed and the subject can merely abstain from drug use in the few days prior to submitting a sample.

In sum, the availability of hair analysis will give law enforcement another tool for drug testing.

By Mr. D'AMATO:
S. 915. A bill to govern relations between the United States and the Palestine Liberation Organization (PLO), to enforce compliance with standards of international conduct, and for other purposes.

MIDDLE EAST PEACE COMPLIANCE ACT OF 1995
Mr. D'AMATO. Mr. President, I rise today to introduce the Middle East Peace Compliance Act of 1995.

The fact of the matter is simple. The PLO is not complying with its responsibilities. It has failed to restrain the radicals in Gaza; it has failed to change the PLO Covenant; and it has failed to come clean with the amount of its assets. Most importantly, the PLO's overwhelming failure to restrain the radical elements has made its areas of control an insult to Israel and everyone who had placed hope in Yasser Arafat's ability to deliver the peace. In return for all of this is the fact that the United States will be sending $100 million to the PLO and Palestinian authorities over the next year, if the administration is allowed to have its say.

Mr. President, while it is plain to see that the PLO has not lived up to its commitments, despite the State Department's protests to the contrary, one need only look at the facts to understand the situation. Between September 13, 1993, the signing of the Declaration of Principles, and May 4, 1994, the beginning of Gaza-Jericho self-rule, there were 373 attacks, with 110 Israelis killed, 70 of them civilians. There are said to be thousands of illegal weapons in the Gaza-Jericho area, at least 26 of which are according to the Israeli newspaper Ma'ariv.

Furthermore, reports by independent peace monitors, the Judge Advocate General of the Israel Defense Forces (JAG) and the Congressional Peace Monitoring Teams, point to an additional and consistently widening pattern of PLO non-compliance that includes:

- Failure to preempt terrorism;
- Failure to control the flow of illegal weapons into and inside of Gaza;
- Failure to apprehend, prosecute and adequately punish individuals accused of criminal or terrorist acts against Israelis;
- Failure to prevent the illegal diversion of international assistance to PLO activities;
- Failure to restrict the growth of the Palestinian police force in Gaza which now is conservatively estimated to be 17,000 instead of the 9,000 permitted by agreement with Israel; and
- Failure to confine Palestinian administrative offices to Gaza, while allowing them to proliferate, illegally, in Jerusalem.

It is said that there are networks of terrorist training camps in Gaza, and there is even film of recruits drilling chanting anti-Israeli slogans. Despite sweeping arrests in which the Palestinian authorities round up hundreds of Palestinians for questioning in relation to various bombings, attacks, and other violations, these demonstrations of supposed compliance with Israeli complaints amount to just public relations, in the words of Prime Minister Rabin, himself. Soon after, most of these mass arrests, the suspects are let go. Some system of justice.

As far as the covenant is concerned, the PLO shows no interest in abrogating those sections calling for the destruction of Israel. Despite promises to do so, the PLO has not even convened the Palestine National Council in order to amend the covenant. All the State Department can say is that they "hope that Arafat will do so, and [we] have encouraged him to follow through with this," in reference to changing the Covenant. This does not exactly exude confidence or the ability to influence a change.

It is for this reason that I am introducing the Middle East Peace Compliance Act of 1995. This legislation places a series of requirements on the PLO before the country releases money from the United States. Briefly, the requirements are as follows:

Require that U.S. assistance may only be used for humanitarian projects for the benefit of Palestinians living under the Palestinian Authority. All assistance must be channeled only through U.S. Government agencies or private voluntary organizations (PVOs).
Condition any U.S. assistance upon full financial and managerial accountability of the Palestinian authority;

Require the President to certify that no aid will go to individuals suspected of having harmed American citizens, while requiring that the PLO assist in the apprehension of and extradition to the United States of all such individuals now, or previously under its control;

Direct the President to provide specific counterterrorism technology and technical assistance to Israel; and

Require that the PLO pay compensation to U.S. victims of terrorism committed with PLO support and under its direction.

Mr. President, this bill is not the panacea. Nor is it the popular thing to do. It is however, the right thing to do. I want peace for Israel as much or more than anyone else does, but I don't want it on the wrong terms. Neville Chamberlain believed that he had more than enough time to play ‘‘in our time’’ after Munich, and there wasn’t. I want Israel to be safe and secure. I don’t want Israel to become locked into an agreement with an organization that cannot deliver on its end of the bargain. It also do not want to have the U.S. taxpayers’ money wasted. The issues are paramount.

This peace agreement is like a contract. When one side abides by the contract’s terms and the other does not, then the deal has been broken. Now, I know that there will be some who will say that this aid should continue regardless, and that the violations are really not violations. Let me tell you, the violations of the PLO are real and they cannot be ignored or forgiven. They must be dealt with. If this is done, then there should be no problems. The terms for aid in this bill are not onerous, they are not overreaching and they are not unreasonable. They are consistent with the requirements that the government places upon all recipients of U.S. foreign assistance.

I urge my colleagues to support this important measure.

Mr. President, I ask unanimous consent that the text of the bill be included in the RECORD. There being no objection, the bill was ordered to be printed in the RECORD, as follows:

S. 915

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SEC. 1. SHORT TITLE.

This Act may be cited as the ‘‘Middle East Peace Compliance Act of 1995’’.

SEC. 2. DEFINITIONS.

For the purposes of this Act—

(1) the term ‘‘Palestine Liberation Organization (PLO)’’ shall be defined as a membership organization encompassing all constituent groups that belong to the Palestine National Council and all individuals that have or continue to publicly demonstrated their allegiance to the Palestine Liberation Organization, or receive funds, directly or indirectly from sources controlled by the PLO.

(2) for the purpose of this section, the term ‘‘foreign assistance’’ shall be the same as that used under section 634(b) of the Foreign Assistance Act of 1961 (P.L. 87-195); and

(3) the term ‘‘Palestine Liberation Organization (PLO)’’ shall be defined as the administrative entity established in the self-rule areas of Gaza and the West Bank in accordance with the Declaration of Principles on Interim Self-Government Arrangement signed in Washington, D.C., September 13, 1993, between Israel and the Palestine Liberation Organization (PLO).

SEC. 3. POLICY.

It is the policy and interest of the United States—

(1) to contribute to the advancement of peace and security in the Middle East by supporting efforts by Israel and the Palestine Liberation Organization to reach a non-violent resolution of their conflict under the terms of the Declaration of Principles on Interim Self-Government Arrangement signed in Washington, D.C., September 13, 1993;

(2) to ensure that both Israel and the PLO fully and meaningfully comply with the terms and conditions of all agreements made between them;

(3) to demonstrate firm, consistent and unambiguous optimism by insisting that Israel and the Palestine Liberation Organization take significant, material and timely steps to preempt terrorist attacks;

(4) to ensure that the Palestinian Authority fully accounts for basic human needs and infrastructure development funds expended by the United States in Gaza and Jericho in accordance with standard commercial principles and practices;

(5) to ensure that Israel and the Palestine Liberation Organization cooperate fully with U.S. law enforcement agencies to apprehend, prosecute and convict all individuals involved in the criminal injury or death of United States citizens or the willful damaging of United States property;

(6) to hold the PLO and its administrative authority in Gaza and Jericho accountable for unlawful acts carried out within its jurisdiction or emanating from territory under its administrative control;

(7) to ensure that all recipients of U.S. foreign assistance evidence a clear commitment to democracy, justice and the rule of law and foreign assistance evidence a clear commitment to their complete fulfillment;

(8) to contribute to the long-term security, stability and economic health of the State of Israel through the maintenance of close bilateral ties and, to the greatest extent possible, to provide such levels of assistance to the State of Israel as are necessary and sufficient to provide for its administrative control as any other recipient of such assistance shall be held to the same standard of financial accountability and management control as any other recipient of U.S. foreign assistance;

(9) to contribute to the long-term security, stability and economic health of the State of Israel through the maintenance of close bilateral ties and, to the greatest extent possible, to provide such levels of assistance to the State of Israel as are necessary and sufficient to provide for its administrative control as any other recipient of such assistance shall be held to the same standard of financial accountability and management control as any other recipient of U.S. foreign assistance;

(10) to ensure that the Palestinian Authority complies with the terms and conditions of all agreements made between it and the State of Israel;

(11) to ensure that the PLO complies with the terms and conditions of all agreements made between it and the State of Israel;

(12) to ensure that the PLO complies with the terms and conditions of all agreements made between it and the State of Israel;

(13) to ensure that the PLO complies with the terms and conditions of all agreements made between it and the State of Israel;

(14) to ensure that the PLO complies with the terms and conditions of all agreements made between it and the State of Israel;

(15) to ensure that the PLO complies with the terms and conditions of all agreements made between it and the State of Israel;

(16) to ensure that the PLO complies with the terms and conditions of all agreements made between it and the State of Israel;

(17) to ensure that the PLO complies with the terms and conditions of all agreements made between it and the State of Israel;

(18) to ensure that the PLO complies with the terms and conditions of all agreements made between it and the State of Israel;

(19) to ensure that the PLO complies with the terms and conditions of all agreements made between it and the State of Israel;

(20) to ensure that the PLO complies with the terms and conditions of all agreements made between it and the State of Israel;

(21) to ensure that the PLO complies with the terms and conditions of all agreements made between it and the State of Israel;

(22) to ensure that the PLO complies with the terms and conditions of all agreements made between it and the State of Israel;

(23) to ensure that the PLO complies with the terms and conditions of all agreements made between it and the State of Israel;

(24) to ensure that the PLO complies with the terms and conditions of all agreements made between it and the State of Israel;

(25) to ensure that the PLO complies with the terms and conditions of all agreements made between it and the State of Israel;

(26) to ensure that the PLO complies with the terms and conditions of all agreements made between it and the State of Israel;

(27) to ensure that the PLO complies with the terms and conditions of all agreements made between it and the State of Israel;

(28) to ensure that the PLO complies with the terms and conditions of all agreements made between it and the State of Israel;

(29) to ensure that the PLO complies with the terms and conditions of all agreements made between it and the State of Israel;

(30) to ensure that the PLO complies with the terms and conditions of all agreements made between it and the State of Israel;

(31) to ensure that the PLO complies with the terms and conditions of all agreements made between it and the State of Israel;

(32) to ensure that the PLO complies with the terms and conditions of all agreements made between it and the State of Israel;

(33) to ensure that the PLO complies with the terms and conditions of all agreements made between it and the State of Israel;

(34) to ensure that the PLO complies with the terms and conditions of all agreements made between it and the State of Israel;

(35) to ensure that the PLO complies with the terms and conditions of all agreements made between it and the State of Israel;

(36) to ensure that the PLO complies with the terms and conditions of all agreements made between it and the State of Israel;

(37) to ensure that the PLO complies with the terms and conditions of all agreements made between it and the State of Israel;

(38) to ensure that the PLO complies with the terms and conditions of all agreements made between it and the State of Israel;

(39) to ensure that the PLO complies with the terms and conditions of all agreements made between it and the State of Israel;

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(46) to ensure that the PLO complies with the terms and conditions of all agreements made between it and the State of Israel;

(47) to ensure that the PLO complies with the terms and conditions of all agreements made between it and the State of Israel;

(48) to ensure that the PLO complies with the terms and conditions of all agreements made between it and the State of Israel;

(49) to ensure that the PLO complies with the terms and conditions of all agreements made between it and the State of Israel;

(50) to ensure that the PLO complies with the terms and conditions of all agreements made between it and the State of Israel;

(51) to ensure that the PLO complies with the terms and conditions of all agreements made between it and the State of Israel;

(52) to ensure that the PLO complies with the terms and conditions of all agreements made between it and the State of Israel;

(53) to ensure that the PLO complies with the terms and conditions of all agreements made between it and the State of Israel;

(54) to ensure that the PLO complies with the terms and conditions of all agreements made between it and the State of Israel;

(55) to ensure that the PLO complies with the terms and conditions of all agreements made between it and the State of Israel;

(56) to ensure that the PLO complies with the terms and conditions of all agreements made between it and the State of Israel;

(57) to ensure that the PLO complies with the terms and conditions of all agreements made between it and the State of Israel;

(58) to ensure that the PLO complies with the terms and conditions of all agreements made between it and the State of Israel;

(59) to ensure that the PLO complies with the terms and conditions of all agreements made between it and the State of Israel;

(60) to ensure that the PLO complies with the terms and conditions of all agreements made between it and the State of Israel;
and between the PLO leader and the Foreign Minister of Norway, substantial, material and timely progress in meeting their legal obligations as set forth in the agreements between the PLO and Israel and as enunciated in section 6 of this Act. The President shall submit to the relevant congressional committees a quarterly report that:

(A) comprehensively evaluates the compliance record of the PLO according to each specific commitment set forth in its agreements with Israel and;  

(B) establishes, as appropriate, both objective and subjective measures to assess PLO compliance; and

(C) measures PLO compliance against each provision quarterly assessment and demonstrates significant and continual improvement each quarter.

(2) FINANCIAL ACCOUNTABILITY.—Sixty days following the enactment of this Act and every 180 days thereafter, the President of the United States shall:

(a) report to the relevant congressional committees a comprehensive report that:

(i) details the budget, expenditures, and net income of the PLO/PAO for the period covered by the report; and

(ii) includes an audit of the financial statements of the PLO/PAO for the period covered by the report by an independent public accounting firm.;

(b) makes timely adjustments to any deficiency in the financial statements of the PLO/PAO for the period covered by the report; and

(c) provides a statement showing the appropriation of each line item in the budget for the period covered by the report.

(3) SEC. 7. REQUIREMENTS FOR THE TRANSFER OF FUNDS. —In general.—Notwithstanding any other provision of law, none of the funds authorized or appropriated under this Act and recognized by the United States are to be provided in any form to the Palestinian Authority, its agents, employees, or any other entity, for any project or activity that is not consistent with the following requirements set forth in this section and in the relevant congressional committees a quarterly report that:

(A) comprehensively evaluates the compliance record of the PLO according to each specific commitment set forth in its agreements with Israel and;  

(B) establishes, as appropriate, both objective and subjective measures to assess PLO compliance; and

(C) measures PLO compliance against each provision quarterly assessment and demonstrates significant and continual improvement each quarter.

(2) FINANCIAL ACCOUNTABILITY.—Sixty days following the enactment of this Act and every 180 days thereafter, the President of the United States shall:

(a) report to the relevant congressional committees a comprehensive report that:

(i) details the budget, expenditures, and net income of the PLO/PAO for the period covered by the report; and

(ii) includes an audit of the financial statements of the PLO/PAO for the period covered by the report by an independent public accounting firm.;

(b) makes timely adjustments to any deficiency in the financial statements of the PLO/PAO for the period covered by the report; and

(c) provides a statement showing the appropriation of each line item in the budget for the period covered by the report.
benefits, directly or indirectly, the projects, programs or activities of the Palestinian Authority in Gaza, Jericho or any other area it may control, since September 13, 1993, including: (A) the obligation and disposal of all funds, by project, activity, and date, as well as by prime contractor, all subcontractors, and third parties; (B) the organization(s) or individual(s) responsible for the receipt and obligation of U.S. aid; (C) the amount of both private and international donor funds that benefit the PLO or the Palestinian Authority in Gaza, Jericho or any other area it may control, and by which the United States may be a contributor; (D) the ultimate beneficiaries of the assistance; and (E) the manner and mechanism(s) by which the resources were misdirected.

(3) REPORT ON THE POSSIBLE MISUSE OF FUNDS.—Pursuant to section 7(a), the President shall also provide the relevant congressional committees with a comprehensive accounting of all United States and international donor funds, credits, guarantees, insurance, in-kind assistance and other resources to the Palestine Liberation Organization, the Palestinian Authority or other associated entities under their control which the General Accounting Office believes may have been misused, diverted from their intended purpose or diverted for purposes other than those originally intended by the donors and shall include a decision of—(A) the possible reasons for the diversion of resources and the likely uses toward which they were put; (B) the manner and mechanism(s) by which the resources were misdirected; (C) the person(s) or institution likely responsible for the misdirection of the resources; and (D) all efforts being made by the Palestinian Authority, the President and the international community to account for and recover the misdirected resources.

(4) PENALTIES AND DEDUCTIONS.—Not less than thirty (30) days following the issuance to Congress of the findings set forth in section 7(a), the President shall deduct one dollar from the amount of funds or other resources appropriated to benefit Palestinians living in areas controlled by the Palestinian Authority for each dollar which the General Accounting Office believes may have been diverted by Palestinians for purposes other than what they were originally intended.

(5) RESPONSIBILITY FOR PAST TERRORISM.—The President shall certify to the relevant congressional committees that the Palestine Liberation Organization has taken substantial, material and timely steps to provide information to United States law enforcement agencies leading to the arrest and extradition to the United States for prosecution of individuals who have been directly or indirectly involved with the Palestine Liberation Organization and alleged to have been responsible for terrorist acts against American citizens or property and whose identities may include, but not be limited to, the kidnapping, and/or murders of:

(A) David Berger, in Munich, Germany, September 11, 1972;
(B) Cleo A. Noel, Jr., United States Ambassador to the Sudan, and G. Curtis Moore, U.S. Diplomat, in Khartoum, March 2, 1973;
(C) Gail Rubins, in Israel, March 11, 1976;
(D) Leon Klinghoffer on the cruise ship Achille Lauro, October 8, 1985; and

(6) REPORT TO THE CONGRESS.—Pursuant to subsection (B) of this section, the President shall report to the relevant congressional committees on the status of the certification of the PLO, as defined and set forth in the Fiscal Year 1996 for the purposes set forth in this Act and the status of the PLO as a terrorist organization, no later than September 1, 1995, and every 180 days thereafter, on:

(A) the name, date, location, and circumstances of all Americans alleged to have been killed or injured, directly or indirectly, by members, agents, supporters or associates of the Palestine Liberation Organization from 1964 to the present; (B) the name, date, precise location, and circumstances of all violent incidents against innocent citizens of any terrorist group, organization, entity or individual operating in Israel or the territories controlled by Israel or the PLO and to indicate—

(i) where the incident was planned, organized and launched; (ii) how and through what means the violent incident occurred; (iii) the source and type of any lethal equipment used in any violent incident; and (iv) the disposition of all past and current investigations into the criminal activities of the Palestine Liberation Organization as well as the warrants for the arrest of alleged members of the Palestine Liberation Organization that have been revoked or suspended by agencies of the United States government since 1964 and the reason for the revocation or suspension; and

(E) Does any senior official of the PLO engage in, encourage, or facilitate the incitement, recruitment, training, planning, or provision of terrorist operations being conducted by the United States, Israel or other states or conducted internationally in the territories controlled by the PLO?

(G) Has the PLO investigated aggressively all cases in which any citizen of the United States or member of the United States government has been the victim, since 1964, of acts or threats of violence, inflicted by or with the complicity of any agent of the PLO or any political subdivision or supporter thereof, or given haven to any known terrorist, drug trafficker or other accused or convicted of a serious criminal offense, and has it expeditiously processed extradition requests relating to acts of terrorism or narcotics trafficking made by other countries?

(7) MATTERS TO BE CONSIDERED.—In determining whether to make the certification required by paragraph (A), the President shall consider and report, in both classified and unclassified form, the relevant congressional committees that full and fair consideration has been given to:

(A) Have the actions of the PLO resulted in the maximum reductions in terrorism carried out by members or affiliates of the PLO? Has the PLO leadership publicly, in Arabic and English, and using all major print and electronic media outlets, strongly condemned acts of violence committed against Israel and the West when they occur?

(B) Has the PLO taken legal and law enforcement measures to enforce in areas under its control, to the maximum extent possible, the elimination of terrorist acts and the suppression of criminal elements responsible for terrorism as evidenced by the seizure of illegal weapons, the closure of offices and training areas belonging to terrorist organizations and the arrest and prosecution of violators involved in the inciting, training, planning, or operation, or conduct of terrorist operations affecting the United States, Israel or other countries?

(C) Has the PLO taken the legal and law enforcement steps necessary to eliminate, to the maximum extent possible, the laundering of profits derived from smuggling, narcotics trafficking, illegal weapons transfers or any financial support, as evidenced by the enactment and enforcement of the PLO laws prohibiting such conduct?
further, the President shall negotiate the transfer of this technology no later than September 30, 1995, and prior to the obliga-
tion of not more than $50,000,000 in United States funds for the benefit of Palestinian people living in Gaza, Jericho or any additional territories which might be administered by the PLO: Provided further, That it is the purpose of this section that the United States will support efforts by both Israel and the PLO to meet their compliance obligations and—
(A) to assist them in combating terrorism;
(B) to assist them in combating narcotics smuggling and other contraband smuggling; and
(C) to assist them in ensuring proper manifesting and customs regulation compliance and revenue collection.

(10) REVIEW OF LEGISLATION.—Prior to the disbursement of any funds authorized under this Act or any other Act for the benefit of the PLO, the Palestinian Authority or any of its constituencies, activities or projects, the President shall carry out, and report to the relevant congressional committees, a thorough review of pertinent legislation affecting the status of the PLO to include, but not be limited to, Title X of Public Law 100±204 and section 114 of the Department of State, Foreign Operations, and Related Programs Appropriations Act, 1995, as a consistent with U.S. policy toward countering terrorism and promoting peace in the Middle East.

(11) PRESIDENTIAL DISCLOSURE.—No later than 60 days following the enactment of this Act, the President shall disclose in a classified manner to the relevant congressional committees, the substance of any secret agreements, understandings, or promises, either formal or informal, between the United States and Israel, and the United States and the PLO, consistent with the implementation of the Declaration of Principles, that—
(A) commits the United States to any action of its foreign, diplomatic or security policies;
(B) commits the United States to provide funds or other forms of assistance for particular projects or activities;
(C) provides assurances to particular individuals who may or may not be targets of a U.S. or international criminal investigation; and
(D) extends to particular individuals the promise of protection or safety should future circumstances warrant it.

(12) PROHIBITION.—Provisions that may be suspended.—Subject to the requirements of section 7 and the prior approval of the Chairman of the relevant committees of the Congress of the United States and the Senate Appropriations Committee, the President may suspend only the following provisions of law for a period not to extend beyond May 31, 1996—
(A) Section 307 of the Foreign Assistance Act of 1961 (22 U.S.C. 2277) as it applies with respect to the Palestine Liberation Organization or entities associated with it;
(B) Section 114 of the State Department Basic Authorities Act (22 U.S.C. 287 note) as it applies with respect to the Palestine Liberation Organization or entities associated with it;
(D) Section 37 of the Bretton Woods Agreement (22 U.S.C. 286q) as it applies with respect to the granting to the Palestine Liberation Organization of observer status or other official status at any meeting sponsored by or associated with international financial institutions. As used in this paragraph, the term ‘other official status’ does not include membership in the International Monetary Fund.

SEC. 8. FINANCIAL DISCLOSURE.
(a) Within thirty (30) days of the enactment of this Act, the President shall request that both the Palestine Liberation Organization and the Palestine Authority provide to the United States, comprehensive financial statements of their assets and income for the current year and prior years. In addition to these statements, the President shall certify to the Congress that—
(1) the United States Government has no knowledge of information as to further assets or income of the Palestine Liberation Organization or Palestinian Authority; and
(2) the Palestine Liberation Organization and Palestinian Authority are spending and investing substantially all of their respective assets and income for the welfare and benefit of the Palestinian people in the area of the Middle East administered by the Palestinian Authority and for purposes related exclusively to the duties and functions of the Palestinian Authority as authorized under agreements between Israel and the PLO.
(b) No funds shall be obligated or expended for the benefit of the Palestinian people in the Middle East until the President has delivered to the relevant congressional committees the information required in section 8(a).
(c) President shall report to the relevant congressional committees, in both classified and unclassified form, no later than September 1, 1995, and every 180 days thereafter, on: the activities of the Palestinian Authority and the international community to the PLO and the Palestinian Authority, or any affiliated organization or entity, both directly and indirectly, to include—
(1) the amount of such assistance, by project, and whether the assistance is provided in cash or in kind;
(2) the organization or entity through which the international assistance is disbursed;
(3) the use(s), by project, to which the international assistance is being put; and
(4) the ultimate beneficiaries of the assistance.

SEC. 9. PROHIBITION ON FORMAL DIPLOMATIC REPRESENTATION.
Notwithstanding any other provision of law, the President shall make no commitments and shall provide no funds for the obligation or expenditure, for any activity leading to the establishment, on a temporary or permanent basis, of any United States diplomatic post, to include an embassy, consulate or interest section in any territory under the administrative control of the PLO or the Palestinian Authority.

SEC. 10. RELEVANT CONGRESSIONAL COMMITTEES DEFINED.
As used in this Act, the term ‘relevant congressional committees’ means—
(1) the Committee on International Relations, the Committee on Banking and Financial Services, and the Committee on Appropriations of the House of Representatives; and
(2) the Committee on Foreign Relations, the Committee on Appropriations, and the Committee on Banking, Housing, and Urban Affairs of the Senate.

SEC. 11. TERM OF THIS ACT.
This Act shall become effective upon the day of enactment and expire no earlier than May 31, 1996 unless amended.

By Mr. FRIST (for himself, Mrs. KASSEBAUM, Mr. JEFFORDS, Mr. COATS, Mr. DEWINE, Mr. KENNEDY, Mr. PELL, Mr. DODD, Mr. SIMON, and Mr. HARKIN);
S. 916. A bill to amend the Individuals With Disabilities Education Act to extend the act, and for other purposes; to provide for the Committee on Labor and Human Resources.

ADDITIONAL COSPONSORS
S. 25

At the request of Mr. HELMS, the name of the Senator from Mississippi [Mr. LOTT] was added as a cosponsor of
S. 25, a bill to stop the waste of taxpayer funds on activities by Government agencies to encourage its employees or official to accept homosexuality as a legitimate or normal lifestyle.

At the request of Mr. Santorum, the name of the Senator from Montana [Mr. Burns] was added as a cosponsor of S. 304, a bill to amend the Internal Revenue Code of 1986 to repeal the transportation fuels tax applicable to commercial aviation.

At the request of Mr. Hatch, the names of the Senator from Minnesota [Mr. Grams] and the Senator from New Hampshire [Mr. Smith] were added as cosponsors of S. 327, a bill to amend the Internal Revenue Code of 1986 to provide for a tax exemption for health risk pools.

At the request of Mr. Cochran, the names of the Senator from Louisiana [Mr. Breaux] was added as a cosponsor of S. 539, a bill to amend the Internal Revenue Code of 1986 to provide a tax exemption for high risk pools.

At the request of Mrs. Kassebaum, the names of the Senator from Indiana [Mr. Coats] and the Senator from Pennsylvania [Mr. Santorum] were added as cosponsors of S. 673, a bill to establish a youth development grant program, and for other purposes.

At the request of Mr. Hatfield, the name of the Senator from Tennessee [Mr. Frist] was added as a cosponsor of S. 664, a bill to amend the Public Health Service Act to provide for programs of research regarding Parkinson's disease, and for other purposes.

At the request of Mr. D'Amato, the name of the Senator from Pennsylvania [Mr. Santorum] was added as a cosponsor of S. 715, a bill to provide for portability of health insurance, guaranteed renewability, high risk pools, medical care savings accounts, and for other purposes.

At the request of Mr. Thurmond the names of the Senator from North Dakota [Mr. Dorgan], the Senator from Wisconsin [Mr. Kohl], and the Senator from Nebraska [Mr. Kerrey] were added as cosponsors of amendment No. 1265 proposed to S. 652, an original bill to provide for a pro-competitive, deregulatory national policy framework designed to accelerate rapidly private sector deployment of advanced telecommunications and information technologies and services to all Americans by opening all telecommunications markets to competition, and for other purposes.

At the request of Mr. Leahy his name was added as a cosponsor of amendment No. 1285 proposed to S. 652, supra.

AMENDMENTS SUBMITTED

TELECOMMUNICATIONS COMPETITION AND Deregulation ACT OF 1995

FEINSTEIN (AND OTHERS) AMENDMENT NO. 1269

Mrs. FEINSTEIN (for herself and Mr. LOTT) proposed an amendment to the bill (S. 652) to provide for a pro-competitive, deregulatory national policy framework designed to accelerate rapidly private sector deployment of advanced telecommunications and information technologies and services to all Americans by opening all telecommunications markets to competition, and for other purposes; as follows:

On page 145, below line 23, add the following:

SEC. 407A. SCRAMBLING OF SEXUALLY EXPLICIT ADULT VIDEO SERVICE PROGRAMMING.

(a) REQUIREMENT.—Part IV of title VI (47 U.S.C. 551 et seq.), as amended by this Act, is further amended by adding at the end the following:

"SEC. 641. SCRAMBLING OF SEXUALLY EXPLICIT ADULT VIDEO SERVICE PROGRAMMING."

(c) DEFINITION.—As used in this section, the term "scramble" means to rearrange the audio and video portion of the programming, a multi-channel video programming distributor shall fully scramble or otherwise fully block the video and audio portion of such channel so that one not a subscriber to such channel or programming does not receive it.

(b) IMPLEMENTATION.—Until a multi-channel video programming distributor complies with the requirements set forth in subsection (a), the distributor shall limit the access of children to the programming referred to in subsection (a) to not more than onehalf hour of the day (as determined by the Commission) when a significant number of children are likely to view it.

(d) DEFINITION.—As used in this section, the term "tag" means a part or segment of the name, address, or text of electronic file.

ADDITIONAL STATEMENTS

SMALL BUSINESS TAX ISSUES

Mr. BOND. Mr. President, a few weeks ago the Senate made good on its historic opportunity to balance our Nation's budget, and we voted to save our children and tomorrow's children from a burden that they did not cause and do not deserve. The American people made their position on this issue crystal clear—a balanced budget is their top priority.

Even many of those who have long-standing interests in tax relief, including the small business owners that I represent from as chairman of the Small Business Committee on Small Business, do not want tax cuts at the expense of a balanced budget. One poll conducted by a nationwide organization representing over 600,000
small businesses showed that 95 percent favored a constitutional amendment requiring the Federal Government to balance the budget and that 88 percent believed Congress should focus its attention primarily on deficit reduction.

The Senate listened to the American people on this issue. We worked hard, debated earnestly, made difficult decisions, and fulfilled our obligation by voting to bring the budget into balance by the year 2002. The result of that action is not only a better financial legacy for America, but the production of an economic dividend of approximately $170 billion over the next 7 years.

When the opportunity for tax cuts arrives as a result of our control over budget deficits, Congress should view the economic dividend as a young, growing business would view a small influx of cash. It should be invested very carefully. I strongly believe that some tax relief needs to go to families with children, I also believe that we should use a portion of the dividend in a way that will create jobs and stimulate investment and growth in our economy by providing tax cuts for small businesses.

Year after year small businesses generate a significant number of new jobs, even while corporate America downsizes. In fact, according to the Small Business Administration, small businesses provided 100 percent of the net new jobs from 1990 to 1992. By targeting some of the tax cuts toward small business we will not be spending the dividend but rather reinvesting it in our economy. That way, all Americans will benefit through an improved standard of living. Small businesses need cash to meet payroll, pay their day-to-day bills and to invest in capital improvements. In a recent study, small business owners identified tax burdens as their No. 1 problem. The economic dividend provides us with an opportunity to rectify the single most important concern of that portion of our economy that can contribute to America's economic growth.

When the Committee on Finance is determining what tax cuts should be enacted as a result of the budget resolution and the economic dividend, I strongly encourage the members to include on the priority list at least the following four targeted tax cuts to promote economic growth and job creation by American small business:

First, increase the small business expensing provision. Allowing a current deduction for newly purchased assets improves the cash flow of a small business. It also would encourage a small business to invest in new equipment which in turn helps manufacturing and related industries. This is a formula for maintaining and enhancing job growth.

Second, provide a 100-percent deduction for the health insurance costs of the self-employed. With the passage of H.R. 831 earlier this year, we gave the self-employed a permanent but only a partial deduction for health insurance. Corporate employers already are able to deduct the full cost of health insurance. This disparity in treatment continues to put the entrepreneurs of America at a disadvantage—23 percent of the self-employed are uninsured today. About 4 million of the uninsured are in families headed by a self-employed worker. A 100-percent deduction will make their insurance more affordable and help these families purchase the health insurance coverage they need and deserve.

Third, estate tax relief targeted specifically for small business. Generally, this would be a tax deferral for a family-owned and operated business that is passed to heirs who continue to own and operate the business. As you know, this is a vital change because some owners of a small family businesses find they cannot afford to pass the business on to their children simply because they cannot afford to pay the estate taxes. A recent survey of family businesses showed that a mere 57 percent of owners planned on keeping the business in the family; taxes were cited as one of the prime reasons for their plans to sell out. Unfortunately, our system of taxation is working against us here. Rather than promoting and stimulating business growth, the law is forcing people to make decisions to sell or close what otherwise could be a viable enterprise.

Finally, cut the capital gains tax rate and index it for inflation. In order to unlock built up asset values, entrepreneurs that have become successful might repeat their job-creating activities in a new company if it were not for the disincentive in the tax laws against realizing and reinvesting these gains. The effect of permitting all capital gains to be reinvested more freely would be to give our economy a boost that it otherwise would not enjoy, and much of this reinvestment likely will be directed at small business. Simply said, a reduction in the capital gains rate will expand economic activity so all Americans will be able to reap the benefit of that growth by additional jobs and an improved standard of living.

As chairman of the Committee on Small Business, I urge my colleagues to look at tax-cutting opportunities as a way to make an intelligent, long-term investment in our small business sector but will benefit the entire economy.

HARRY ZIMMERMAN MEMORIAL AWARD TO LEONARD FLORENCE

Mr. KERRY. Mr. Present, this is the 10th anniversary of the Mary and Harry Zimmerman Memorial Dinner to benefi the Muscular Dystrophy Association. The city of Nashville and the Cardinal Cushing Memorial School host this event and I am proud to say that this year the prestigious Harry Zimmerman Award, named for the founder of the company, is being presented to a constituent of mine, Leonard Florence, for his philanthropic efforts and dedication to the cause of the mentally challenged.

Mr. Florence has served on the board of trustees of the Cardinal Cushing Memorial School and Training Center for exceptional Children of All Faiths since 1967 and has been instrumental in raising over $10 million for the school. The Charlotte and Leonard Florence Dental Clinic and Auditorium at Tufts University Dental School and the Charlotte and Leonard Florence Courtyard in the nursery school at Temple Mishkan Tefila also testify to his generosity.

In 1993, Pope John Paul II appointed Mr. Florence a Knight of the Order of Saint Gregory the Great. This is the highest award granted by the Pope and is awarded to persons of conspicuous virtue and notable accomplishment on behalf of society regardless of their religious belief.

Mr. Florence is an outstanding citizen who has given freely of his time and talents to the Commonwealth of Massachusetts and the Nation. I congratulate him on this richly deserved award.

NGA GROCERS CARE AWARDS

Mr. NICKLES. Mr. President, I wish to bring to the attention of the Senate the community contribution of the American independent retail grocers and their wholesale suppliers.

In the past years, through the celebration of National Grocers Week, the House and Senate have recognized the important role these businesses play in our economy. The week of June 11-17, 1995, commemorates the ninth year that National Grocers Week has been observed by the industry to encourage and recognize grocers' leadership in private sector initiatives. Across the Nation, community grocers, through environmental initiatives, political involvement, and charitable support, demonstrate and build on the cornerstone of this great country—the entrepreneurial spirit.

In this annual celebration, the National Grocers Association (N.G.A.) and the Nation honor outstanding independent retail and wholesale grocers, State associations and food industry manufacturers for their community leadership with N.G.A.'s Grocers Care awards.

Grocers Care recognizes the involvement of the entire food industry in community, civic, and environmental programs, including support for private charities, education, and the performing arts, and community efforts to shelter and feed the homeless.

GROCERS CARE AWARD NOMINEES

Representatives from companies, organizations, and associations around the United States will be honored. The honorees include:

Arkansas: Steve Edwards, GES, Inc., dba Food Giant, Marianna.
California: John D. Denney, Denney’s Market, Inc., Bakersfield; Donald W. Dill, Certified Grocers of CA Ltd., Los Angeles.
Colorado: Harold J. Keloff, Keloff’s Food Market, Alamosa; John M. Todd, Teddy’s Supermarkets, Greeley.
Florida: Lorena J. Jaeb, Pick Kwik Food Stores, Mango; Donald M. Kolvenbach, Affiliated of Florida, Tampa.
Iowa: Scott Havens, Plaza Food Center, Norwalk.
Maine: Richard A. Goodwin, Dick’s Market, Clinton.
Michigan: Robert D. DeYoung, Sr., Fulton Heights Foods, Grand Rapids; Patrick M. Quinn, Spartan Stores, Inc., Grand Rapids; Parker T. Feldpausch, Feldpausch Food Centers, Hastings; Richard Glidden, R.P. Glidden, Inc., Kalamazoo; Mary Dechow, Spartan Food Stores, Salt Lake City.
Montana: John N. Leivers, Leivers Supermarkets, Inc., Devils Lake; Dalles E. Krause, Krause, Inc., Hazen; William Pauling, Bill’s Fairway, Dickinson; Wallace J. Jersz, Bill’s Super Valu, Mandan; Richard Bronson, Bronson’s Super Valu, Inc., Beulah.
Nebraska: John F. Hanson, Sixth Street Food Stores, North Platte.
New Hampshire: Charles P. Butson, Butson’s Supermarkets, Woodsville; Martin Kashulines, The Cracker Barrel, Hanover.
New Mexico: Glenn Holt, Thriftyway Supermarket, Ruidoso; Martin G. Romine, California Supermarket, Gallop.
Ohio: Jack V. Buchanan, Buchanan Food Mart, Inc., Ohio; Robert D. DeYoung, Sr., Tusco Foods, Inc., Muskegon; Gary Nichols, Nichols SuperThrift, Checotah; Maurice D. Box, Box Food Stores, Tahlequah; R.C. Pruett, Pruett’s Food, Inc., Antlers; John Redwine II, J. OGA, Inc., Spiro; Darold Anderson, Affiliated Food Stores, Tulsa; Thomas D. Goodner, Goodner’s Supermarket, Duncan; Donald M. Wigley, Valu-Foods, Inc., Oklahoma City.
Oregon: Ross Dwinell, United Grocers of Oregon, Portland.
South Dakota: John Clarke, County Fair Food Store, Mitchell.
Utah: G. Steven Allen, Allen’s Super Save Markets, Orem; Keith S. Barrett, Barrett’s FoodTown, Inc., Salina; Richard A. Parkinson, Associated Food Stores, Salt Lake City.
Virginia: Vincent N. Egan, Gene’s Super Market, Richmond; Eugene Walters, Farm Fresh, Inc., Norfolk; Steven C. Smith, K-VA-T Food Stores, Inc., Abingdon.
Wisconsin: Jerome Barynbruhn, Downtown Supermarket, Spring Green; Dean M. Erick, Erickson’s Diversified Co., Hudson; Richard L. Lambrecht, Mega Foods, Eau Claire; Chip Courtney, Medford Co-Op, Medford; Robert D. Runes, Roundy’s, Inc., Milwaukee; Fred H. Langer, Langer’s Sentsy Foods, Madison.
West Virginia: David G. Milne, Morgan’s Clover Farm Mkt., Inc., Kingwood.
RHODE ISLAND’S HOPE DAY
Mr. PELL. Mr. President, on May 29 the State of Rhode Island and Providence Plantations observed not only Memorial Day but also Hope Day, commemorating the 205th anniversary of the State’s ratification of the U.S. Constitution.
It was at 5:20 in the afternoon of May 29, 1790, we are told, that the final vote was taken at a convention of delegates from all parts of the State, giving Rhode Island’s belated and somewhat grudging approval to the new Federal Constitution. The vote was 34 to 32, making it one of the thirteen Original Colonies to join the union of States which had come into being the previous year.
The word “Hope,” which the State took as its motto in 1875, in recent years has become associated with the anniversary of the State’s Rhode Island’s ratification, signifying the high expectations of that occasion.
This year, the Hope Day commemoration, under the chairmanship of G. Brian Sullivan of Newport, included an invitation to all churches in the State and all vessels in Narragansett Bay to sound their bells and horns at 5:20 p.m. in a reenactment of the “Great
CELEBRATING THE 1965 ALUMNI CLASS OF CHARLES SUMNER HIGH SCHOOL 30-YEAR CLASS REUNION

MAYOR OF THE CITY OF NEWPORT—PROCLAMATION

Whereas, in May of 1776, Rhode Island became the first of the thirteen original colonies to rebel against the tyranny of King George III, by declaring its independence from the Crown on May 4, 1776; and

Whereas, the Revolutionary War won, it was not until fourteen years later, on May 29, 1790 that Rhode Island signed the Constitution, making it the official document of law in the land; and

Whereas, in recognition of the Ratification of the Constitution, church bells rang out through the State of Rhode Island and Providence Plantations; and

Whereas, in recognition of that day, the fourteenth annual commemoration of Hope Day and in celebration of USA Day in Newport, is hereby declared.

Resolved, That I, David F. Roderick, Jr., Mayor of the City of Newport in the State of Rhode Island and Providence Plantations, do hereby proclaim May 29, 1995, during the Memorial Day observance, to be Hope Day & U.S.A. Day in the City of Newport, and invite all cities and towns in the State of Rhode Island and Providence Plantations to join with us in celebrating the 209th birthday of the Constitution of the United States.

KID'S APPRECIATION DAY

Mr. PRYOR. Mr. President, I rise today to speak on the importance of establishing a Kid's Appreciation Day to pay tribute to the children of this Nation. The question that is on the lips of many today is "If there is a Mother's Day and a Father's Day, why isn't there a Kid's Day?" This is met with the standard response "Because every day is Kid's Day." Well, Mr. President, nothing could be further from the truth. The children today deal with problems that were unfathomable when we were growing up. When I was young, one of my biggest worries was making it home to dinner on time. In many places today, kids worry more about dodging bullets, drug dealers, and whether they will live to see adulthood. Some children rarely see their parents who must hold two jobs in order to put food on the table.

There is nothing as valuable on this Earth than our children. We are handing these children the impossible task of dealing with problems that we have failed to solve. I know that having a Kid's Day won't solve these problems. But it would show our children that we appreciate them. I know the children of Arkansas want to be appreciated. A young lady named Vivian Rose has taken it upon herself to lead the children of my State toward this goal. She has presented this idea to Gov. Jim Guy Tucker who gives it his full support. I praise both of them for their efforts and commend them on their leadership in Kid's Appreciation Day.

Children are our most valuable asset and deserve to be valued on a special day. A Kid's Day would not only show our appreciation and gratitude but would instill in them a sense of comfort that they would hold dear. It would make children feel important and wanted instead of neglected. This holiday would give kids a chance to spend time with their parents. Time that they don't normally have. There could be free admission for museums and amusement parks. Local parks and swimming pools could be open to the public. It would be a day for parents to let their kids know that they care about them and this would help our children overcome the obstacles that they face to become the future leaders of our nation.

Mr. President, nations around the globe have Kid's Days. In fact, I'm told that the Kiwanis Club also sponsors a Kid's Day. They have parades, games, races, and give awards to celebrate children. I strongly recommend that we follow the lead of the Kiwanis Club, Governor Tucker, and Vivian Rose by making Kid's Day a reality nationwide. Children that feel wanted and appreciated are a strong defense against the violence these kids encounter in their neighborhoods. It is our responsibility as adults and role models to guide them toward the correct path of purpose. This holiday would place a smile on the faces of our kids and would put comfort in our hearts knowing that they are facing this world with added strength and resilience. Mr. President, Kid's Appreciation Day is a noble cause and I urge you to join me and my State in its support.

Mr. LOTT. Mr. President, I do have several comments and requests, but I would withhold if the distinguished Senator from Nebraska has some comments he would like to make. Mr. KERREY. I thank the Senator from Mississippi.

Mr. President, I rise but will withhold most of my comments. The Senator from South Dakota and I will have an opportunity to go round and round again on the DOJ rule amendment tomorrow. I would point out for those few who are still remaining and listening to this, that this amendment illustrates why colleagues should be paying attention to this piece of legislation.

I, myself, support this particular section, as it is a preempt of State laws. It is a significant preemption of State Government. But it is a significant preemption of State Government. Any time we see language that says, "We hereby preempt State and local laws" around here, you only get 90 votes against it.

Lately, the mood is shifting, and I think quite correctly so. The Supreme Court is shifting right along with it to an argument that cedes more and more power to the State government, whether it is welfare reform, health care, or whatever.

We are block granting after block granting after block granting more authority back to the State law. As I said, the Supreme Court is increasingly challenging our authority to intervene at all at the local level, the State level. Intervening with State laws at all gets to be a difficult business.

This piece of legislation preempts not just State laws but preempts local laws. I think quite repeatedly so. If we want a competitive environment, these are the laws, these cases, these lines, do not stop at a border.

It is, it seems to me, an interstate commerce issue. Nonetheless, it will
feel very much local when we are dealing with local cable or local telephone. The citizens are not likely to think of it as an interstate issue as much as we are, who are trying to create some uniformity. I think the Senator from South Dakota is quite right. This does get to the heart of the bill. It is an effort to preempt and create uniformity in the country and create certainty in the country so investment can be made and all the things that need to occur, if we are going to see this legislation produce the desired effect and benefits, for example, reduced prices for consumers, for cable.

My belief is that in short order, people are going to be buying video, dial tone, text, in a package form, but if they get a reduced price for that and they get improvement in quality and service, we have to take this action and come in and preempt the way the States can regulate.

This legislation, by this section here, not only removes the barrier, but it sets up the title section which moves to pricing flexibility, not just allowing States to require the States to end a rate-based rate of return system of regulation.

In this legislation, we are accelerating the number of States that have adopted alternative regulatory regimes. We are saying that we will not wait for State legislatures to take action on rate or public service commissions to take action. We will preempt their authority and say why they will end rate-based pricing and go to a price cap system and try to give these companies that are selling telecommunications service more flexibility. I think that has merit, frankly. This idea of preemption, I think, is a very important idea as part of this legislation, but I believe that it illustrates why colleagues need to be alert to the reaction that this will produce after this legislation is enacted. With the title section, that the distinguished Senator from Mississippi just did, this bill is coming to a vote relatively soon.

Unless I have this thing figured out wrong, it is likely there will be a majority of Senators voting for it. I hope my colleagues understand this is not likely to be the last situation but the first situation of many, many, where we need to understand where it is we are going in order to be able to answer a citizen who may say, "Wait a minute. This is big change." Yes, it is, American citizen. This legislation represents significant change in the way that we regulate and the way the Federal Government establishes its presence at the local level and at the State level.

I see ways to interpret the amendment that the Senators from California and Idaho have presented, striking this particular language. Part of this language does appear to be a bit vague to me, as well. No matter how we do it, if they want to strike the section, we are still left with significant preemption in the overall title.

Today, Mr. HATFIELD. Mr. President, the legislation now before the Senate attempts to bring the 1934 Communications Act up to date with our Nation's current telecommunications needs. Telecommunications has been the subject of a great deal of debate in previous years and it is widely acknowledged that reform is necessary. However, as with any measure addressing such a broad segment of our national economy, there are many differing opinions regarding how best to proceed.

The telecommunications industry has expanded rapidly in recent years due to significant advances in technology and increasing consumer demands. A large portion of the evolution in the industry can be attributed to increased competition. Daily, millions of Americans at work, in school, and at home rely on telecommunications networks for communication, information, and entertainment. There is an enormous interest in the final outcome of this debate because enactment of a revised telecommunications law will affect virtually every American. The underlying goal of telecommunications reform must be to do what is best for consumers. There may come a time in the future when the Federal Government can remove itself from any involvement in this industry, but we have not reached that point. I believe it is necessary for government to continue to play a role in telecommunications oversight to protect the American consumer.

The Telecommunications Competition and Deregulation Act of 1995 attempts to deregulate this industry and largely allow market forces to structure the industry. I support the free market ideals of this legislation. However, we must recognize that deregulation is not always synonymous with fair competition. Due to the fact that a small group of companies control most of our nation's telecommunications networks, there are many concerns about the potential abuse of this advantage. In order to ensure the American people are the ultimate beneficiary of these services, we must provide adequate safeguards to accompany these deregulatory efforts.

There are presently a number of government entities with responsibility for the operation of the telecommunications industry. Not only are many of these roles duplicative, but they are also extremely cumbersome for consumers and the companies providing the services.

One historical example of these overlapping functions is the break-up of the AT&T telephone monopoly. The Department of Justice initiated this action by determining that AT&T was in violation of Federal anti-trust laws. The courts followed by establishing the seven Regional Bell Operating Companies. Currently, the Federal Communications Commission, the Department of Justice, State and local governments, and the courts each oversee segments of the long distance and local telephone services in this country. The break-up of AT&T was a necessary development, but the final results continue to confuse and alienate consumers to this day.

The legislation we are debating today addresses almost every aspect of the telecommunications industry in some capacity. Additionally, it allows Congress to re-establish its responsibility for setting policy in this area. For the past 6 years the Congress has attempted to address this issue. Though these efforts have largely been unsuccessful, we all recognize this area needs reform and that action is past due. The House and Senate have each crafted bills to revise current telecommunications laws this year and the congressional leadership has also made their strong commitment to passing a telecommunications reform bill very clear. This will not be an easy endeavor, but I remain hopeful that Congress will move forward on this important matter in this Congress.

During this important debate, we have heard a great deal about how this legislation will impact the telecommunications industry. However, Mr. President, it is also the Federal Government's rightful role to help our citizens receive access to advanced technologies and not just reserve this privilege to those who can afford it. The provision included in this bill by Senators SNOWE and ROCKEFELLER will allow rural health care facilities, public schools, and libraries to receive telecommunications services at a discounted rate. The Snowe-Rockefeller language, which I support, will provide telecommunications access to numerous libraries and institutions throughout our country. For example, the Portals Project in Oregon, which electronically links several learning institutions, will be a beneficiary of this amendment.

Mr. President the reform of this industry is a huge effort and I commend the chairman of the Senate Commerce Committee, Senator PRESSLER, and the panel's ranking minority member, Senator HOLLINGS, for their leadership on this important matter. They have both worked long and hard on this contentious issue to establish a foundation for the future of our telecommunications needs.

I continue to have several concerns with the Pressler-Hollings bill, which I hope will be addressed through the amendment process. However, I also believe they have crafted a bill that takes a comprehensive step toward addressing the needs of the American consumer and the telecommunications industry as we move further into the Information Age of the twenty-first century.
Mr. LOTT. Mr. President, I ask unanimous consent that when the Senate completes its business today it stand in recess until the hour of 9:45 a.m., with Senators to speak for up to 5 minutes each; further that at the house of 9:45, the Senate resume consideration of S. 652, the telecommunications bill.

The PRESIDING OFFICER. Without objection, it is so ordered.

PROGRAM

Mr. LOTT. Under a previous order debate will be equally divided from 11:30 a.m. to 12:30 p.m. on the pending Thurmond second-degree amendment to the Dorgan amendment, with a vote to begin on the motion to table the Dorgan amendment at 12:30 p.m. I now ask unanimous consent that at the conclusion of vote the Senate stand in recess until the hour of 4:15 p.m. on Tuesday for the weekly policy luncheons to meet; and further that Members have until 1 p.m. to file first-degree amendments to S. 652, under the provisions of rule XXII.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. LOTT. For the information of all Senators there will be a rollover vote on the Department of Justice amendment at 12:30 tomorrow. Additional votes are expected on the telecommunications bill following that vote, but not prior to 4 p.m., in order to accommodate Members attending the memorial service for former Secretary of State Colhn. Also Members should be on notice that a cloture motion was filed on the telecommunications bill tonight, but it is the hope of the managers that passage of the bill would occur prior to the vote on the cloture motion. Senators should be reminded that under the provisions of rule XXII, any Senator intending to offer an amendment to the bill must file any first-degree amendment with the desk by 1 p.m. on Tuesday.

ORDER FOR RECESS

Mr. LOTT. Mr. President, I understand that the distinguished Senator from South Dakota wishes to make one final statement. I would like to go ahead and conclude now by saying that if there is no further business to come before the Senate after the statement by Senator PRESSLER, that we stand in recess under the previous order.

The PRESIDING OFFICER. Without objection, it is so ordered.

THE TELECOMMUNICATIONS COMPETITION AND Deregulation ACT

The Senate continued with the consideration of the bill.

Mr. PRESSLER. Mr. President, I would like to summarize where we are with the Thurmond amendment to the bill and that referred to the Department in the past precludes timely resolution, because the Department does not take timely action.

Now, the Department is filled with very brilliant lawyers and they have a reputation of moving very slowly on these waiver applications. I will show a couple of charts that illustrate how slow the Department has been.

In the original 1982 MFJ, it was suggested that the Department complete its work on each waiver request within 30 days. And, although the decree itself contemplates that waiver requests will be filed directly with the court, in July 1984 the court announced that it would consider application for waivers of the line of business restrictions only after review by the Department of Justice. This procedure was imposed after only 7 months’ experience with the waiver process and was not expected substantially to delay the processing of waiver requests. To the contrary, in establishing this procedure, the court noted the length of time that previously filed waiver requests have been pending and accordingly directed the Department to endeavor to return those requests to the court with its views within 30 days.

I am going to repeat that because I think it is very important. The court noted how slow the Justice Department is in the processing of these waivers and told them the length of time requests had been pending and accordingly directed the Department to endeavor to return these requests to the court with its views within 30 days. So the framework for what I am saying is that the Justice Department was asked to do this within 30 days; not 90 days, as my friends have put into their bill. But what actually happened? Let us look at the facts. Let us go to the videotape, so to speak.

Contrary to the court’s expectations, delays in administrative processing of waiver requests soon began to grow. In 1984 the Department disposed of 23 waivers. The average age of waivers pending before it was a little under 2 months. By 1988 the average age of pending waivers topped 1 year. Then, in 1993, when the Department disposed of only seven waivers, the average age of pending waivers at year end had increased to approximately 6 months. Last year, in 1994, the Department disposed of only 10 waivers. This left over 30 waivers with an average of 2½ years still pending.

The Department now takes almost as long on the average to consider a single waiver request as the total time intended to elapse before comprehensive triennial reviews—which the Department has refused to conduct. This has occurred notwithstanding significant decreases in the number of waiver requests. While requests have decreased substantially since 1986, the Department had not even made a dent in the backlog. To the contrary, because the Department disposed of fewer and fewer waiver requests each year, the number of pending requests continues to grow.

No matter how few waiver requests the Department simply cannot keep up. In light of the multiyear delays in processing waiver requests, it is remarkable the court originally directed Department review within weeks, not months or years.

So the court directed the Department of Justice to act within a few weeks. And it has taken it years to act. So the point is, if we adopt the Dorgan-Thurmond amendment, we would probably 2 or 3 years to this so-called deregulatory process, because that is what has happened in the past.

More significantly, the court ordered virtually immediate Department action because of prior delays that now seem comparatively minor. The eight waivers at issue since July of 1984 had been pending just an average of 5 months, with none more than 6 months old. Today, a waiver request rarely makes it through the Department in less than a year, and 2½ years is the mean.

Think about that; it takes 2½ years for the Department of Justice to approve or disapprove a waiver request that originally the district court thought could be done in 30 days. What is going on? Why is it prolonged?

As AT&T argued in 1986, and the court noted in 1988, the Department is clearly overwhelmed by its decree responsibilities. Aware of this, the Bell operating companies several years ago attempted to reform waiver procedures within the limits of the court’s order to eliminate the mounting backlog of pending requests. Following consultation with the Department, during 1991 the Bell operating companies agreed to consolodate the large number of pending requests into a handful of generic requests and to limit their filings of new individual waiver requests. In exchange, the Department committed to acting promptly on generic waiver motions.

Once again the Department has not kept its part of the bargain. Four generic waiver requests have been filed. The first covered international communications. It was filed with the Department in December 1993 but did not receive departmental approval for 7 months, even though AT&T indicated within 3 months of the waiver request that it had no objection. Thus, we have a circumstance where the company, AT&T—a party to the consent decree—
said, after 3 months, we have no objection. It still took them 7 months to issue it. And the amendment proposes to add this bureaucracy to the present FCC review. That would lead to costs and delays. It has in the past.

As we have seen, the court suggested 30 days and it has taken an average of 2½ years. In the example I just cited there was no controversy. After 3 months, AT&T said it had no objection. It still took the Department of Justice 7 months to issue that. It is tortuously slow. When AT&T was getting these lawyers waiting for the paperwork to be processed, they sit there with that investment ready to go, there is no objection, and they wait and wait. This huge bureaucracy with all these brilliant lawyers cannot produce the paper.

The second generic request, which consolidated 23 then-pending waivers, covered interLATA wire services such as cellular phones, two-way paging, and vehicle locators. It, too, was filed in December 1991. It then languished before the Department for 3 years before finally being submitted to this court. Now, 4 years after it was originally filed, the waiver is still pending; 4 years, a simple waiver in that Department of Justice. The same department that everybody that the Assistant Attorney General for Antitrust is asking this body to give an additional review—that would simply hold things up. I think that would be a very great mistake.

The time, comment and investigation spent in connection with the generic wireless waiver request alone is more than three times as long as the period allowed by the court for public comment and review of the entire decree in 1982.

It is also eight times longer than it took for AT&T to get a factually and theoretically correct request processed. When AT&T sought relief in connection with the cellular properties in McCown Communications, it was able to file its requests directly with the court and obtain a decision in just 7 months. During those 7 months, however, the BOC's motion for generic wireless relief continued to languish before the Department, just as it had for the 3 years before. This is 3 years waiting for one simple piece of paper.

Surely the referral procedures were not intended to bring about such disparate treatment of the BOC and AT&T when the latter seeks requests. The remaining BOC generic requests have followed the same path of delay upon delay.

The third request covering delivery of information services across LATA boundaries was submitted in June 1993 and, now, 20 months later, still awaits Department action.

So I will go on to a fourth. The fourth, covering interexchange services provided outside of SBC's region, was filed in August of 1992. It was fully briefed before the Department by September 27, 1994. The blame for these delays simply cannot be laid at the BOC's feet. The number of requests filed with the Department held steady at roughly 20 to 30 per year from 1987 through 1991 and dropped sharply thereafter. More important, none of these requests have been frivolous and virtually every one of them has been granted.

So I have the view that the regulator compliance, the requirement that the Federal Communications Commission make an affirmative public interest finding, the requirement that Bell companies comply with separate subsidiary requirements, the requirement for separate regulatory agency, Congress thought it was an unprecedented decisionmaking role. Whatever the excuses one may offer as to why delay has taken place, the facts are undeniable. Referral to the Department of Justice precludes timely resolution because the Department does not take timely action, even if ordered to do so.

Now my friends who are offering this amendment tomorrow, which will be voted on, and I think it is one of the key votes of this session, glibly say we have very little requirement that everything has to be offered and dealt with within 90 days. Well, the district court had a requirement that they be dealt with within 30 days. This is notwithstanding all the efforts to speed them up. I think what I have said so far Nebraska has eloquently explained that Congress has passed many deregulation measures—for airlines, trucking, railroads, buses, natural gas, banking and finance. None of those measures, according to Senator Exon, give an executive branch department coequal status as regulators. What Justice is seeking here is essentially a front-line role with ad hoc veto power. Justice would be converting from a law enforcement agency to a regulatory agency. It would end up focusing chiefly on just this sector of the economy.

Why does Justice want to do this? They have their Assistant Attorney General for Antitrust lobbying, so I am told, calling Senators, and urging that this be so.

Why do they wish this? It is very unusual, because the Justice Department has the Sherman and the Clayton Acts oversight. They have the Hart-Scott-Rodino preapproval on antitrust. They have plenty to do. In fact, I have the statistics that they are way behind on all of their other work. The Justice Department is not supposed to be a regulatory agency. It is supposed to be a law enforcement, antitrust enforcement agency. But they have gotten into this habit because of the district court action in 1982. They have a bunch of lawyers and staff over there, who are regulators. That is what the FCC is for.

So I think Senator Exon's amendment is the equivalent of a whole new regulatory agency just for telecommunications. It is just not needed. The sort of extraordinary power is just not needed here.

Let us look. There are nearly two dozen existing safeguards that are already contemplated and required by this bill. There is a comprehensive, competitive checklist of 14 separate compliance points—unbundling, porting, the FCC allowing time for comment and participation, including full participation by the antitrust division in all its various proceedings, the requirement that Bell companies comply with all the existing FCC rules and regulations that are already on the books, including an annual attestation, very rigorous audits, elaborate cost accounting manuals and procedures, computer assisted reporting and analysis systems such as the FCC's new automated regulatory and management information systems, and all the existing tariff and pricing rules, full application of the Sherman Antitrust and Clayton act, and full application of the Hart-Scott-Rodino Premerger Notification Act requiring Justice clearance in major acquisitions.

I think our present Attorney General, and the Assistant Attorney General for Antitrust, have done a good job in many of the Hart-Scott-Rodino cases. But that is what the Justice Department is supposed to do, and not worry about creating a bureaucracy and keeping several hundred lawyers employed over there. There is also the full application of the Hobbs Civil Appeals Act, Section 402(a) of the Communications Act which makes the Antitrust Division automatically an independent party in every FCC common carrier and rulemaking appeal. It is a consensus approach in this bill has been hammered out in the most bipartisan way possible. It has strong support on both sides of the aisle.

We are all aware that several States have moved in the direction of deregulating telecommunications. I know that Nebraska, Illinois, Tennessee, North Carolina, Florida, New Jersey, Pennsylvania, California, Wisconsin, Michigan—none of those States has gone as far as Tommen's general the kind of extraordinary new powers which this Dorgan-Thurmond amendment would create here at the Federal level for the U.S. Department of Justice.

There are plenty of safeguards in this bill and existing law already. If any competitive challenges arise because the Antitrust Division is not allowed to convert itself into a telecommunications regulatory agency, Congress thought it was an unprecedented decisionmaking role. And we believe that the American public rejected last
Participating in dozens of Federal Communications Commission proceedings over the years, and it will remain an active participant. Under section 402(a) of the 1994 Communications Act, moreover, the Antitrust Division has special status in every FCC common carrier and rulemaking appeal. They are what is called a statutory respondent, which means they have the independent party in all of those appeals in court actions.

So what are we really talking about here is whether to give the Antitrust Division a role in enforcement of the antitrust laws should remain a law enforcement agency, not a regulator dedicated to allowing a great line of business restriction on them. This will let everybody into everybody else's business.

The historic role of the Antitrust Division of the U.S. Department of Justice has been to operate as a law enforcement agency, not a regulator deciding which company can or cannot do things. That kind of market entry decisionmaking has not been one of the Justice's roles until very recently—indeed, not until they drafted the AT&T antitrust consent decree.

What has happened since the 1994 Communications Act is an economic apartheid has sprung up and companies have done very well with this company, broadly speaking, holding long distance service, area doing cable TV, this area doing broadcasting, and utilities prohibited from participating in all of this. This is a massive bill that brings everybody into competition. It is procompetitive, deregulation.

What is happening, however, is that each day and each month that this bill has moved forward, a lot of companies have said, wait a minute, when we said deregulation we meant deregulation of for me, not the other guy. When we presented them a fair playing field, they said, wait a minute, we want a fair playing field with just a slight advantage. And virtually every lobbyist in America has been working on this bill in one form or another, trying to game the process rather than deregulate.

We have held off granting certain special deals to certain groups in this Senate bill. For example, the newspaper publishers group sought special treatment for their electronic subsidiaries and in the Senate, everybody has to compete. Now, they have obtained that special treatment in the House bill.

Who knows, I may well be outvoted on that. But that is an example of how we have tried to hold the line on competition. We have tried to make it a procompetitive bill.

Now, in our history, in terms of telecommunications, this bill will take us into the wireless age, which I think is about 10 or 15 years away. Some people think it is only 5 years away. But that will be an age when wires may be obsolete, and we are a ways away from that. But we need this bill as a road map to get everybody into everybody else's business.

Right now, regional Bells have to invest abroad if they want to manufacture because they are restricted from doing so here at home. Other companies have this line of business or that line of business restriction on them. This will let everybody into everybody else's business. It will allow a great deal of competition.

Now, some will say, that will just result in a group of monopolies. It will not, because we have the antitrust laws. But also let us look back to that day in 1982 when the Justice Department made two decisions on the same day. The Justice Department decided to allow IBM and the computer industry to go into the marketplace and to let there be winners and losers. It decided to place the MFJ ruling under Judge Greene on the telecommunications companies and break up into regional Bells under heavy government regulation.
have new technology and product cycle every 18 months. The turnover is so great. There are not Government standards. There have been winners and losers, some big winners and some big losers, some have gone out of business, and others, I have seen them become the Bill Gates of the world. It has been truly amazing to compare the two tracks: one a highly regulated area and the other deregulated. And we will have that sort of an industrial argument.

Now we have come to a point in our history where we need another industrial restructuring, and this one should be done by Congress. Congress should assert its responsibility for a change. The reason the courts acted regarding the telecommunications area was because Congress could not, because it is so politically sensitive. It is going to be tough to get through conference. It is going to be tough to get it through the House. It is going to be tough to get it signed because we have some indications of the President might not be willing to sign it. I hope he is because I think it is the best bipartisan bill that we will be able to get.

So I am going to step back to my charts once more and explain exactly what all of this final time is.

The Telecommunications Competition and Deregulation Act of 1995 is designed to get everybody into everybody else’s business in telecommunications. It is a massive bill. What does it do? First of all, in order to get into other businesses in telecommunications, they would first comply with State market opening requirements.

Second, they would go to the FCC where there are two tests. The first one is the standard of public interest, convenience and necessity test that has been going on for years and years.

Third of all is the FCC would certify compliance with the 14-point checklist. That is the checklist that I will explain here in just a minute.

The regional Bell telephone companies would have to comply with the separate subsidiary requirement, the nondiscrimination requirement, and cross-subsidization ban.

The fifth step would be the Federal Communications Commission would allow the DOJ full participation in all its proceedings.

Now, the Bells must comply with existing FCC rules in rigorous annual audits, accounting, computer-assisted reporting, and special pricing rules. So there are a lot of requirements here that will force the Bell operating companies to open up their businesses, to unbundle, and to interconnect so that people can form a local telephone service and be successful with it.

Meanwhile, the full application of the Sherman Antitrust Act would continue with the Justice Department, and the Antitrust Division and the Hart-Scott-Rodino Act. The Hobbs Civil Appeals Act involving DOJ as an independent party and all FCC appeals would continue, so the Justice Department is already involved. What we would create through the Dorgan-Thurmond amendment is just another layer of bureaucracy.

The competitive checklist has been distributed to all Senators. This checklist has as its compromise to the VIII(c) test to determine when companies should be deemed eligible to enter the market, when they have opened up their local markets.

The problem with competition in telecommunications is that you have to use somebody else’s wires to get where you are going. There have to be some ground rules. So we came up with this checklist that the FCC would use, in addition to the public interest standard.

The first one is access to network functions and services. That is an interconnection. I went over to visit the Bell Atlantic facility here, and I’ve seen what interconnection and unbundling actually is.

Next is capability to exchange telecommunications between Bell customers and competitors’ customers.

Next, access to poles, ducts, conduits, and rights of way.

Next, local loop transmission unbundled from switching. There are three points on unbundling the system so other people can get into it and market things through the Bell company’s system and wires.

Next, local transport from trunk side unbundled from switching.

Next, local switching unbundled. Next is access to 911 and enhanced 911—which for emergency you might push one button—directory assistance and operator call completion services.

Next, white pages directory listing available at a reasonable price.

Next, access to telephone number assignment.

Next, access to databases and network signaling.

Next, interexchange number portability.

Next, local dialing parity.

Next, reciprocal compensation.

And last, resale of local service to competitors.

So there we have the measures to assure the breakup of local Bell monopolies. Now the big question is, will the regional Bell companies let competition in? Well, if they do not, under Section 652 they will pay immense financial penalties.

This checklist was agreed to. We had night after night of meetings in January and February. We first wrestled with the VIII(c) test. Other Senators wanted a LeMans start. We came up with this checklist on a bipartisan basis, and I think it is the thing that will move us towards competition.

I have already talked a little bit about the problem with the amendment tomorrow. I wanted to just point out again the average length of time with these waivers requiring 2 years. This first chart shows the number of days from zero to 1,200. Starting in 1984, how the length of time has expanded for the average age of waivers pending before the Department of Justice at year end.

What has happened is the Department of Justice has gotten slower and slower. As the court has told it to go faster and faster, it has just arrogantly gone slower and slower. What is going on? Can someone give me an explanation?

How can it be in 1993 it averaged nearly 1,200 days to get an answer, a piece of paper, out of the Department of Justice?

What the Dorgan-Thurmond amendment is suggesting is that we finish all the checklist, all the public interest requirements, all the other requirements and all the other safeguards, then we go to the Justice Department. My friends say, “That will only take 90 days,” but look at the record, look at the videotape, as they say in reporting sports.

On this chart it illustrates the number of requests with the Department of Justice and how frustrated industry has become. They start out about at 86, shortly after that they were hopeful, up to 80. It dropped way down in 1992 and 1993. It is not because there are too many requests filed. The requests are just giving up. There is a lot of business not being done. That is what we mean by drying up enterprise, discouraging competition. Imagine how it is when a business faces 3 years of delays and 3 years of hiring lawyers and 3 years of having nothing but uncertainty to offer investors. Imagine asking your investment people to wait 3 years just for a decision. You do not get competition that way, and that is what the anticompetitive forces are looking to.

They want to use Government to keep other people out of their business. They want to use Government regulation to stop competition.

I say let us deregulate, let us be pro-competitive and not go on with practices such as waiting 1,200 days for a piece of paper that the district court thought could be issued in 30 days.

Mr. President, we have before us a procompetitive deregulatory bill. Everybody says they want to deregulate. Al Gore has a commission for privatizing and deregulating and cutting Government. This bill before us will reduce the size of Government, it will protect those people who are applying, but it will not allow this sort of cost, 1,200 days of uncertainty. Imagine asking your investment people to wait 3 years just for a decision. You do not get competition that way, and that is what the anticompetitive forces are looking to.

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This bill will also provide, for the first time, a number of market openings: Utilities will be able to get into telecommunications with safeguards, the subsidiary safeguard; the cable companies in this country will move towards deregulation and will be deregulated when 15 percent of their market has direct broadcast satellite or video dial competition. With the Doles, with the Dorgan-Thurmond amendments there is further deregulation for small cable; the newspaper publishers will be in the electronics subdivision though there is a difference in the
House and Senate versions; the broadcasters will get further deregulation because they are facing more competition, radio with satellites, so forth. The giant regional Bell companies will be forced to open up their markets to competition. They will be allowed to manufacture in this country. A long distance company will be able to get into the local markets.

So this is a vast, vast bill. If we do not pass this bill this year, it will be 1997 before we can try it again. We tried it last year. Senator Hollings did a terrific job, so did other Senators, Republicans and Democrats. But as I said, this sort of bill can be checkmated even at the last minute by any one of the interest groups.

I compare passing a telecommunications bill and some of the problems like being in a room with a giant buffet table stacked high with food and people gathering about it ready to eat, but no one starts to eat because they want to be given a chance to get body else is going to be getting an extra carrot. The fact is, there is plenty for all.

I have never seen companies and groups so nervous, so anxious to get one first light advantage. This affects the burglar alarm business because they have to go on to using other companies’ wires. Tomorrow there is going to be an amendment offered to give the burglar alarm companies 6 years protection. They are trying to prevent something from happening. It will cause an explosion of new jobs, the kind of jobs we want in this country.

Now, Mr. President, I have cited frequently our regional Bell companies, and others, frequently are investing overseas. For example, England has deregulated its telecommunications. Many years ago, when I was a student there, they were a socialist economy. Now the government privatized, deregulated, de-nationalized. England is, at last, coming out of its long recession as it deregulates. They have deregulated their telecommunications area, and our people can go there and build cable systems, as NYNEX and U.S. West, I believe, are doing. Our investors can go over there and participate. If they keep deregulating, they are going to have a booming economy. You can mark my word on that. They are on the way back. They figured it out that socialism was not the way to go.

A country that deregulates is not going to happen next year.

Mr. President, I yield the floor. I may have some more remarks to make later.

Mr. Kerrey. Mr. President, I do not know how long I am going to respond, but we will have time tomorrow to discuss this.

In my judgment, the Senator from South Dakota just misdescribed both our amendment and what the Department of Justice is doing and why the people of the United States of America should want this amendment adopted.

He repeatedly comes to the floor and says that this is “another layer of bureaucracy” and describes himself as being beleaguered with opponents who are trying to prevent something from happening, that we are deregulating, and we ought not interfere with this process.

I say again for emphasis, Mr. President, that nobody in my campaign in 1994 came to me and said, gee, I hope you deregulate the telephone companies. I am an advocate of this. But the Senator from South Dakota says, gee, this was not written by industry. It may not have been written specifically by industry, although I daresay you would have to struggle long and hard to find a Member of this Congress that could come up with that 14-point checklist. That is a technical checklist that does not look like it is in the language that at least I hear us using as we describe telecommunications. It may not have been written by industry, but American industry is asking for this legislation. It allows them to do things they are currently prohibited from doing. I am an advocate of allowing them doing some things they are prohibited from doing. I favor deregulation. I am tired of hearing the straw man set up time after time that somehow you are either for deregulation or against it. That is not the case and I am against this amendment.
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The questions for consumers, for citizens to ask is, what is this thing all about? What do you mean, Senator Kerrey, that these companies want to do something they cannot currently do? The local distance companies want to come in and sell us local telephone service. The very people that filed the applications saying we want to provide long distance service. We want to enter the long distance service market. By the way, I heard the Senator from South Dakota talking about the Humphrey-Hawkins Act and full employment. The companies that are arguing the loudest and strongest for this legislation have reduced their employment. They have reduced their employment in the decade of the 1980’s, since divestiture occurred. Do we have more jobs in competitors now? $350,000 fewer? Do we have more jobs in local telephone companies? No, smaller employment. Do we have more jobs at AT&T long distance? No, smaller employment.

I would be, as a Member of this body, real careful not to promise that somehow when I deregulate and say to a company, you can start pricing at cost, that that is going to result in an increase in employment. I will bet you this results in additional downsizing of businesses. This promise of jobs is going to taste real bitter to the families who get laid off. You can say, well, Senator, but there are going to be jobs created in other sectors. I think that is likely to be the case. It is likely to be the case.

The Senator from South Dakota asks why we did I want the Department of Justice role, and says, look at the lousy job they have done. Those charts misrepresent what the Department of Justice has done. They are the competition agency, not the Congress. This Congress has given the guts to stand up to the AT&T monopoly in 1982. It did not have the guts to stand up to them. Who filed the consent decree? Who sued the AT&T monopoly? Who led to competitive environment in long distance? Was it the people in Congress, out of concern for the citizens and the rates they were paying? No, sire, it was not. It was the Justice Department suing on our behalf.

Because we did not have the guts to take them on. That is what happened.

So how do I say, why do I want the Justice Department to be involved? The answer, plain and simple, is when it comes time to go after a monopoly who is preventing competition, they are the ones that have done it. They are the ones that have done it.

So whether they want them involved, I would argue, is they are the ones, for a relatively small amount of money, that are likely to make the tough calls.

I am not going to get into a great discussion about this here this evening, but there was a newspaper article this morning in the New York Times. It talked about whether or not the Federal Communications Commission, the agency that is responsible here, is doing a very good job.

I have not up until now, and indeed even now I will not say as the Senator from South Dakota just said, “I suspect that the reason Senator Kerrey and I are not a few lawyers that want to keep their job.” What baloney. Leave that argument off the floor. That is baloney. That is not what is going on.

Go back to the airline deregulation. When we passed deregulation for the airline industry, we said precisely what we are saying in this bill. We said we are not going to give the Department any role beyond consultation. Guess what happened when TWA proposed to acquire Ozark? When North-West Airlines proposed to acquire Republic? What happened? The Department opposed it, objected to it, offered strenuous objections, but they had no ability to say no. They had no legal authority. We are trying to correct, based upon lessons of the past, mistakes of the past. That is what we are trying to do, on behalf of consumers. If we do not get a competitive environment, they will not get any advantages.

I bet, of the seven regional Bell operating companies, there is at least $1.5 billion cash flow average from these corporations. These are big corporations. They are hungry to expand their business, and I want to allow them to expand their business.

Unless we get competition at the local level, we will end up having what we had with airline deregulation, when the Department, with only a consultative role, only could object to the mergers in question. And look what happened to St. Louis when TWA was allowed to own Charles Field? Then at Ozark.

Look what happened in Minneapolis when Northwest proceeded without any obstacle being offered to the acquisition of Republic Airlines.

Mr. President, all the Dorgan-Thurmond amendment says is, do the citizens want the Department of Justice to be able to say yes or no? Do you want the Department to be able to say yes or no? All the presentations about the waiver applications that have been slowing up; the very people that filed the applications very often cause the cases to go slow because they make an overly broad application for waiver of the problems that the Department can say, yes, we object. Or no, we can’t do it. Or no. Or we can sit with a company and try to work through this application that they know is too broad, that goes at the core of the restrictions under the modified final judgment. I ask under oath that the article that appeared in this morning’s New York Times be printed in the Record.

There being no objection, the material was ordered to be printed in the Record, as follows:

[From the New York Times]

HAS THE F.C.C. BECOME OBSOLETE?

(By Edmund L. Andrews)

WASHINGTON, June 11—David Margolese is no fan of the Federal Communications Commission, which he calls the "Lamest Agency in Washington," and he hardly earns a footnote in the $700 billion telecommunications industry. But his experience over the last five years provides a textbook example of why the Federal Communications Commission is under attack as never before.

Mr. Margolese, head of a tiny company called CD-Radio Inc., has gambled $15 million over the last three years to develop service that beams 30 channels of music to radios nationwide. He thinks it would fill a big gap, reaching rural hamlets and lonely stretches of interstate highway that ordinary radio stations do not reach.

There is a problem, though: the F.C.C. will not let him do it. Traditional radio broadcasters have adamantly fought satellite radio, fearing it as a competitor. Agency officials are torn. Having repeatedly indeed fought both and back, the agency plans to inch forward again as early as Monday by proposing rules about what kind of service a satellite radio company will be allowed to provide.

Mr. Margolese is fuming. “All we want to do is give people a choice that they don’t have now,” he said. “That’s all we want. To give consumers the opportunity to choose whether our idea is a better idea.”

Anti-government fever is a given in Newt Gingrich’s Washington, and agencies ranging from the Food and Drug Administration to the Commerce Department are under sustained attack. But bureaucrats for bureau- crats, few agencies wield as much influence in industry and control the F.C.C. Created during the Depression, when AM radio was king and government regulation was considered essential by many people, the F.C.C. was chartered as the guardian of the public airwaves, charged with insuring that radio and television, radio, satellites and phone services were used wisely.

"Do you or do you not want a consumer protection function in this arena?" asked Reed E. Hundt, the commission’s chairman. “If you don’t, where else would literally tens of thousands of complaints reach?”

Today, the agency has an immense impact on almost every communications medium. It has opened the air-waves to cellular phones and the Internet, and it’s the agency that decides who gets access to billions of dollars worth of broadcast licenses, defining the terms of competition for television, radio, satellites and phone services.

But the word into which it was born has gone the way of Norman Rockwell, and critics abound. Conservatives argue that the commission does more harm than good, hinder ing competition and delaying valuable new services. Consumer advocates say it is often a captive of the industries it regulates. Little mentioned is that the F.C.C.’s most-criticized restrictions have been initiated at the behest of business groups.

Mr. Gingrich has said he would like to abolish it entirely. Republicans on the House Commerce Committee, vowing to cut back its authority, held a series of closed-door meetings with industry executives and agency officials last week to explore ideas intended to curb the agency’s powers.

Examples of gridlock are abundant. Nearly three years ago, the F.C.C. moved to promote competition in cable television by adopting rules to let telephone companies offer voice service on a nationwide basis. But telephone companies saw their applications to offer the service languish as agency...
officials insisted on changes in many plans. Today, only a handful of tiny experiments exist, and many telephone companies have decided to ask cities for traditional cable TV franchises.

If the agency and its video dial tone rules had never existed, economists say, telephone companies might have offered cable service two decades ago and created local and long-distance franchises instead.

In the meantime, the F.C.C.'s efforts to regulate cable prices have been plagued by policy anthills and the complexity of its pricing rules. The first set of such rules, intended to carry out a law passed in 1992, in-advertently sent rates up rather than down for many customers.

A second effort early in 1994 pushed cable rates down 17 percent. But after incurring a storm from the industry and from conservatives in Congress, the agency has in recent months adopted still another series of rules that give breaks to small cable systems and to companies that add programming.

Today, some critics of the cable industry say the price regulations are more trouble than they are worth. "The system is a brain-iceberg. CD Radio, Inc, that says, with a bunch of lobbyists trying to influence me saying, "Why don't you abolish the Antitrust Division of the Department?"

Mr. President, the story in the New York Times this morning is, "Has the FCC Become Obsolete?"] I understand the Senator from South Dakota is basically saying let the FCC do it all, with only a nominal Department of Justice role. We will run this whole thing through the Federal Communications Commission. We do not want duplication of the bureaucracy. We know how the bureaucrats get. They tie things up.

Let me read these things in this article. This touches the tip of the proverbial iceberg. CD Radio, Inc, that says, with $15 million since 1990 to develop a satellite service that beams 30 channels of music to radios, they think they fill a big need. FCC will not let them do it. Why? Because traditional radio broadcasters have adamantly fought satellite radio, fearing it as a competitor. The FCC is blocking competition in this area, not allowing it, nervous about it. Why? Because it is the most vulnerable to political pressure, frankly. Mr. President, a lot more vulnerable than the Department of Justice.

That has been the competitive agency, the one that has promoted the most competition between the FCC and the Department of Justice. I get a lot more citizens questioning the existence of the FCC than I get citizens coming to me saying, "Why don't you abolish the Antitrust Division of the Department?"

I do not get people saying, "I think the Antitrust Division overstepped its bounds. Why not get rid of them?" But I do get requests from people who question decisions of the Federal Communications Commission.

This agency, as I indicated, is an interesting agency. We will hear business complaints about it a awful lot. "They are slowing me down," and all the arguments that the Senator from South Dakota makes, "Poor old businesses. They are making it difficult for
me to get the approval, my waiver, granted," and all that.

It says for all the complaints by busi-
nesses and their congressional cham-
pions, it is business groups that typi-
cally have sought to have the agency
implement the business, on the FED.

FCC has never been tried as a new con-
testant. Local telephone companies lobby
fiercely to preserve universal service
and to delay rules exposing them to
new competition. Cable companies
have filed more than 20,000 pages of
briefs to block phone companies from
providing TV programs.

Mr. President, I do not believe that the
FCC intentionally is creating bot-
tle-necks so as to employ themselves. I
do not give it to the FCC, saying
I know why they are doing this.

There is nothing devious going on.
The fact of the matter is our problem
is we have a tough time making politi-
cical decisions. I have a business come and say, "I want to compete," and the
next day someone says, "I don't want
to compete." It is tough to say you
have to compete. That is what this leg-
islation purportedly attempts to do.

The Department needs a role, Mr. Pres-
sident, if we look at the other half of the
people, say, not that you have a 14-point checklist. You could have the
14-point checklist and a consumer
not have any choice. How do I
know I have a choice with a 14-point
checklist? I would rather abolish the
checklist and have the DOJ with a role
in this deal, if that is what the Senator
from South Dakota wants to do, wants
to get rid of some of the things the
FCC does under this legislation, I am
willing to do it.

I am willing to deregulate the com-
paines, so you have less regulation for
them. I am not an advocate of the sta-
tus quo, of maintaining the status quo.
But I want the agency that has had, I
think, the best success, being able to
say to the monopoly we are not going
to allow you to prevent competition. I
want that agency on behalf of consum-
ers to make sure I do have competi-
tion. I do not want a bunch of mumbo-
jumbo rules and regulations that ev-
erybody has to go through all these
year, and hire lawyers to try to figure out how to
come out on the winning side. That, it
seems to me, is what happens if you set
up all these little rules and regulations
and hoops you have to jump through,
down at the FCC. I would sooner have
the Department of Justice sitting there
saying: We want competition at the
local level. If we see competition at the
local level we are going to allow you to
go into long distance. I would much
sooner see the Department of Justice be
that arbiter—not regulator, but an
arbiter of the question: Do we have
competition? Yes or no? Is it competi-
tive down there at the local level? Do
we have the kind of competition that
allows us, now, to run the risk—and it
is a risk—of allowing the telephone
companies to get into long distance?
I hope this amendment is accepted. I
hope the Thurmond amendment is ac-
cepted, because I believe it is one of
the few constructive aspects of this leg-
islation. I think consumers will benefit
enormously the quicker we get to com-
petition, where true competition exists
at the local level and across the range
of telecommunications industries.

This bill does not get us there immedi-
ately. It sets in place to move from a monopoly to a competitive
environment. That is what it does.
No one denies that. The idea that
somehow we are deregulating these
companies automatically—it is not
true. We allow them to keep their
monopoly in place. We phase it out. We
set templates in place. We have tests
they have to meet and all that sort of
thing. They are allowed to stay in a
monopoly situation. The sooner you
get to a competitive environment the
faster the consumers are deciding what
they want and what is best for them
sooner we are going to get rapid de-
creases in prices and rapid increases in
quality.

I believe the Senator from South Dak-
ota is well-intended with this legisla-
tion, as I have indicated before. I sup-
port large portions of this. I do not
come down here and say this bill is
anticompetitive or anti-consumer. But I
do believe strongly that if we want the
consumer to benefit from competition
then we have to make sure the Depart-
ment of Justice has a role in telling us
when competition exists.

The PRESIDING OFFICER (Mr.
Brown). The Senator from South Da-
kaota is recognized.

Mr. PRESSLER. Mr. President, I
would like to say that, first of all, in
the drafting of this bill, it was done by
Senators and staff. But Republican and
Democratic staff sat down together.
I do not know if that has ever been done
before with a bill. This bill was not
drafted in a vacuum. It was drafted by
Senators and staff here in the Senate.
They negotiated and worked, and met
with Senators with the product of their
work, and invited the input from other
Senators, and came up with the com-
petitive checklist, which was not pro-
posed by industry. It was proposed by
the staff as a compromise between the "ac-
tual and demonstrable" and VIII(c)
tests that had been used last year and
the concept of a date certain standard
which was utilized by my initial chair-
man's draft—to find a way in this com-
plex telecommunications arena to have
a test of when markets are open.

This has not been easy. For instance,
let us say you are in the spaghetti
business and you have to have some-
body cook your spaghetti for you.
Can you imagine what shape it is
going to be in when it is delivered? Es-
specially when the person delivering it
is your competitor.

But in this telecommunications area
it is so complicated to get competition
in because you have to depend fre-
quently on your competitors' wires to
get to where you are going. That is
why we still need some level of regula-
tion. That is why we still need an FCC
department. The sooner in the very
near future we can see the FCC re-
duced a great deal and ultimately
whither away.

This bill was drafted with the public
in mind. That is why it tries to have
universal service, which will as-
sure that those high cost areas and re-
gions of the country will have tele-
communications. Our antitrust laws
continue under this bill. In fact, the
Justice Department has a major role.

But assigning a decisionmaking role,
as the Dorgan-Thurmond amendment
does, to the Justice Department, is un-
precedented. The Department is always
required to initiate a lawsuit in the
event it concludes the antitrust laws
were violated. It has no power to dis-
approve transactions or issue orders on
its own, generally speaking.

Indeed, Judge Greene's court kept
the power to make the decisions
throughout these years. The people
who work at the Department work for
him, or for his court. This would be the
first time we are giving the Justice Depar-
tment this kind of regulatory power—a
decisionmaking role.

But history, the law, regu-
lation and history of railroads closely
mirrors that of telephony. The Tele-
communications Act of 1934 was model-
ed on the Interstate Commerce Act of
1887. The Federal Communications
Commission was modeled on the Inter-
state Commerce Commission. Both in-
dustries involved common carriage,
and the establishment of networks.
Both industries have been required
to provide essential service to rural areas.
Both industries have been regarded as
public utilities. They have been related
to captive customers, competitive ac-
cess, the desire to enter related lines of
business, and the loss of traffic to an-
teractive carriers.

Congress has delegated exclusive
Federal authority to the Interstate
Commerce Commission to decide
whether a railroad should be permitted
to enter into new lines of business. The
Department of Justice may file com-
ments in the proceeding but is given
no specific regulatory role. Even in pro-
ceedings involving mergers, acquisi-
tions and other transactions between
two class I railroads, Justice has no
specific statutory role. Although the
Department can and usually does sub-
mits views at the executive level of
effects of a proposed transaction, the ICC
can approve a merger over the objec-
tions of Justice.

Indeed, the potential adverse effect
of competition is only one of five fac-
tors that a commission must deter-
mination whether to permit a proposed
merger or acquisition between the Na-
tion's largest railroads. Congress has
given the ICC a broader mandate than
simply competition. As the agency of expertise, Congress has directed it to balance transportation and employee interests, among others, with competitive concerns and to accord substantial weight—not to recommendations of justiciability—concerns of the Secretary of Transportation. Justice is not even mentioned in the statutory mechanism.

I could go on through various other areas. But the point is, it is the intent of our structure that this be done by the FCC. What we in Congress want the FCC to do, if it is universal service or whatever it is, or if it is compensation or whatever is decided, the idea is that the representatives of the people are supposed to decide, not the courts. And if it is good or bad, Congress should be thrown out of office or held accountable for it.

Presently we have no one here who is accountable for what is happening in telecommunications because the courts have said that that is the area that is not part of this bill, to put Congress back in charge of telecommunications and information policymaking and to let the people make judgments on us as they do in elections. That is the basis of democracy. That is what democracy is about.

So, the Federal Communications Commission regulates the communications industry. It should. The Department of Justice should enforce the antitrust laws. Or we can change the antitrust laws if we want. But to create a group of regulators over at the Department of Justice is not wise. Legislation pending before Congress supersedes the provisions of the modification of final judgment that governed the Department of Justice role in telecommunications and information policymaking and to let the people make judgments on us as they do in elections. That is the basis of democracy. That is what democracy is about.

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does not give the Department of J ustice a regulatory role. It gives them a responsibility to make a determination as to whether or not there is competition. That is what it does. It does not carve out some new area of the Department of J ustice's underlying legislation. The legislation itself is as a consequence of our recognizing that there is too much confusion in current law; that there are too many bottlenecks in current law. That is what we are attempting to do by asking the Congress whether RBOC entry into interLATA services would substantially lessen competition or tend to create a monop- oly. This is a judicial test that I just appeal to the consumers out there trying to figure out which side to come down on. Look at that 14-point test. It all looks fine to me. They say, "Well, this was put together by staff or it was put together for us here in Con- gress." It took me a long time to figure out what all 14 mean, and I am still am not sure what each one means. I do not know if they will produce competition. I can imagine a scenario under which you get no competition with those 14 items. Competition again means the consumers have real choices. The Senator from South Dakota talks about the cellular industry being restricted. It was restricted by the monopoly of AT&T and the way the Government kept the technology from coming online. It was not Congress. Congress did not say in the 1970's we have this great new technology, cellular. So what we are going to do is take on the monopoly, and we do not care what AT&T says. We are going to disregard this influence on Congress and we will come down here and pass legislation that will break them up. That did not happen, I say to consumers now who have benefited from the removal of restrictions to competition and increased quality in long distance. The increase in quality and deployment of fiber occurred as a consequence of this competition. That benefit did not come as a result of Con- gress having the courage to take on the monopoly. It came as a consequence of the Department of J ustice suing on behalf of the American consumer.

So this amendment is simply some- thing that says to consumers you are going to have to hold up the regulation. Indeed the 14 items that were brought you competition in the long-distance arena, which objected to mergers that were allowed to go for- ward in airline deregulation which re- duced competitive choice and increased prices, we are going to give this agency not a consultative role but the opportu- nity to say that there is or there is not competition. If there is competition, have at it. It may be a lot faster. Judging from the evidence at hand, it is likely they come at least as quick to the conclusion as to whether or not there is competition as the FCC looking at this 14-part test.

So we have to make a vote on this tomorrow at 12:30. We will have an opportunity to debate it a little bit in the morning. I look forward to it, and I hope it will be that the amendment passes because I believe on behalf of American consumers it is going to en- sure competition and only by ensuring competition are we going to get the benefits that both the Senator from South Dakota and I wish to see happen in the United States.

I yield the floor.

Mr. Pressler. Mr. President, I would disagree with my colleague on cellular. I do not think it was AT&T. It was Government regulation. Maybe AT&T went to the Government. Maybe AT&T used Government regulations. The cellular phone service was put up by the Government regulation, by all ac- counts. But that is the point. A lot of companies use Government regulation to hold up competition and to hold up deregulation. I would be in disagreement with my friend that the computer industry has lost 150,000 jobs. Maybe they have lost 150,000 but overall they have gained. One measure of the relative market growth is the number of em- ployees. In 1980, there were a little more than 300,000 Americans employed in the computer industry while more than 1 million were engaged in the pro- vision of telephone products. And our statistics show there has been a steady increase of interest in their field that has lost but overall there has been a sub- stantial gain, and I shall put that into the RECORD.

By 1993, computer products and serv- ices accounted for more than 1.2 mil- lion jobs, a fourfold increase. At the same time, the number of telephone employees had dropped to less than 900,000. So unless those numbers are in- correct, I think we have to say that the computer industry has been an expan- sion while the phone industry has had Government restrictions and regulation where there has been fierce, free mar- ket competition.

Indeed, I also serve on the Senate Fi- nance Committee, and every 18 months the computer industry wants to get de- preciation; that is, they want their schedule to be 2 or 3 years or less be- cause product cycles change so quickly because there is rigorous competition. This chart tells us what we are trying to do to make the computer industry Competitions Competition and Deregulation Act of 1995. This is the most com- prehensive deregulation of the tele- communications industry in history and it will promote international compe- tiveness, job growth, productivity, and a better quality of life. It provides open access to full competition. Inter- connection and unbundling will put new competitors including cable and long distance on the same footing with four or five monopolies if we use the same phone number and dial the same number of digits no matter what local telecommunications companies they choose, and the competitive checklist for compliance with open ac- cess will assure certainty and simulta- neity.

Let me also say that universal ser- vice is preserved. All providers contrib- ute. We make subsidies explicit. There have been some people who have said, well, this is like a new tax. In fact, it has been reduced from $10 to $7 billion. But all on a bipartisan basis felt strongly that universal service should be preserved.

Reducing restrictions to competition in all markets. Telephone and cable firms are free to compete in each other's markets. For the first time we end this economic apartheid. We let them go into each other's markets and compete and some of them do not like it. But they will do so. This is the transition to the wireless age, but we have to make them compete.

Utility companies free to enter tele- communications markets. And there are some safeguards here, but we need to keep it the way it is. In our utility companies we will go into the other markets with a burst of energy and will create new jobs, new products, new service of- ferings.

The removal of long distance and manufacturing restrictions for Bell companies. Presently, the Bell compa- nies cannot manufacture in this coun- try, so they go abroad to do it. This will unleash new investments in this country, create jobs in this country, invest in our customers so they will have more money overseas. And they will be able to get into the long distance business if they wish.

Let me say that some people are wor- ried that the Bell companies are going to become monopolies. We still have Hart-Scott-Rodino. We can change the antitrust laws.

That is something I should say here. Everybody has been saying what the Justice Department should and should not do. If our utility company-business laws, we should change the antitrust laws. We should not create a group of bureaucrats over here who are regu- lators. Let us change the antitrust laws if we wish to. And I would say that regarding the airlines if neces- sary.

Market pricing, not Federal price controls for cable. And I predict that the same thing will happen to tele- vision in cable rates as happened in natural gas. We will have video dial tone from regional Bell or some other telephone companies. We will have other cable and video providers coming into the market, plus we will have
Because we cannot allow States and local barriers to market entry repealed. I hope we can hold on to that one tomorrow. We have another crucial vote tomorrow afternoon on preemption of local barriers to entry. Because we cannot allow States and cities to just grant monopoly franchises if we are going to have real competition.

Now, also we are working on investment and growth in the global markets. We open U.S. telecommunications markets for more investment on a fair and reciprocal basis. A reciprocal basis. This is international law at its best. We will allow other countries to invest here on the same basis that they permit U.S. invest there.

U.S. comparative advantage in products, services, and software with no domestic content provision. That is a very significant change from last year. Let me explain that. Some of our large unions want to have a domestic content provision but that is anti-competitive. Through GATT and these other international trade agreements we want international competition. We want deregulation and competition. And we did not put the domestic content provision in this year's bill. And that is what Mickey Kantor and members of the administration say they want—members of the administration should be supporting this bill. These are all things that, as I understood it, Al Gore and the administration are for. Mickey Kantor came up last fall and told us in the Commerce Committee that he did not like the bill last year because it had domestic content in it, and we took domestic content out this year. This is deregulatory. We are making some progress toward being an international competitor, and we cannot go on demanding domestic product content and say that we are for international trade.

Next we have sunset for regulation. Biennial review of all remaining Federal, State, and local rules, regulations and restrictions. It is time we reduce the Federal bureaucracy. We are going to have systematic regulatory review and reform through S. 652. This means every 2 years after reviewing every regulation, we will do away with as many as we can. Inside the beltway, these agencies grow and grow, and they do not want to give up their turf. That is what we have, a turf battle. The Justice Department wants to do the same thing the FCC is doing, and some big companies say, "That is good, because that will slow down competition." They are running full-page ads supporting that concept.

Next we have regulatory forbearance authority ordered, then deregulatory parity for telecommunications providers offering similar services, so that we can get them all competing.

So there it is. That is what we are trying to do. That is what is in this bill. It is not a perfect bill, but it passed the Commerce Committee 17 to 2. We had two Republicans who had some concerns. They wanted it to be more deregulatory, and I sympathize with them. Every Democrat on the committee voted for it. Now the White House says it has concerns. I took this draft over to Al Gore in January, I gave it to him and asked for his help.

We need the administration's help when we get into conference on this bill. It really delivers on all the reform ideas we hear them talk about all the time. This is what the President says he is for. This is what the Vice President says he is for. Let us pass it.

Tomorrow we have two crucial votes. We have to defeat the Dorgan amendment, which would add another level of bureaucracy. We also have to beat back the effort to erect new State and local barriers when we are tearing down Federal barriers.

So, Mr. President, I will conclude by thanking the Members of the Senate for the debate today. I have tried to accelerate the pace of this bill.

I do not see any other Senators who wish to speak.

RECESS UNTIL TOMORROW AT 9:15 A.M.

Mr. PRESSLER. Mr. President, I ask unanimous consent that the Senate stand in recess under the previous order.

There being no objection, the Senate, at 9:32 p.m., recessed until Tuesday, June 13, 1995, at 9:15 a.m.
EXTENSIONS OF REMARKS

SENATE COMMITTEE MEETINGS
Title IV of Senate Resolution 4, agreed to by the Senate on February 4, 1977, calls for establishment of a system for a computerized schedule of all meetings and hearings of Senate committees, subcommittees, joint committees, and committees of conference. This title requires all such committees to notify the Office of the Senate Daily Digest—designated by the Rules Committee—of the time, place, and purpose of the meetings, when scheduled, and any cancellations or changes in the meetings as they occur.

As an additional procedure along with the computerization of this information, the Office of the Senate Daily Digest will prepare this information for printing in the Extensions of Remarks section of the CONGRESSIONAL RECORD on Monday and Wednesday of each week.

Meetings scheduled for Tuesday, June 13, 1995, may be found in the Daily Digest of today's RECORD.

MEETINGS SCHEDULED
JUNE 14
9:00 a.m.
Agriculture, Nutrition, and Forestry
Business meeting, to mark up S. 904, to provide flexibility to States to administer, and control the cost of, the food stamp and child nutrition programs.

JUDICIARY
Immigration Subcommittee
Business meeting, to resume markup of S. 269, to increase control over immigration to the United States by increasing border patrol and investigator personnel, improving the verification system for employer sanctions, increasing penalties for alien smuggling and for document fraud, reforming asylum, exclusion, and deportation law and procedures, instituting a land border user fee, and to reduce the use of welfare by aliens.

Labor and Human Resources
Business meeting, to consider the nominations of Edmundo A. Gonzales, of Colorado, to be Chief Financial Officer, Department of Labor, John D. Kemp, of the District of Columbia, to be a member of the National Council on Disability, and Clifford Gregory Stewart, of New Jersey, to be General Counsel of the Equal Employment Opportunity Commission, and to mark up S. 143, to consolidate Federal employment training programs and create a new process and structure for funding the programs, and proposed legislation relating to health centers consolidation, and child abuse prevention and treatment.

9:30 a.m.
Energy and Natural Resources
Business meeting, to consider pending calendar business.

10:00 a.m.
Armed Services
To hold hearings on the situation in Bosnia.

Banking, Housing, and Urban Affairs
To hold hearings on S. 648, to clarify treatment of certain claims and defenses against an insured depository institution under receivership by the Federal Deposit Insurance Corporation.

Foreign Relations
Western Hemisphere and Peace Corps Affairs Subcommittee
To resume hearings on S. 381, to strengthen international sanctions against the Castro government in Cuba to develop a plan to support a transition government leading to a democratically elected government in Cuba.

2:00 p.m.
Foreign Relations
Western Hemisphere and Peace Corps Affairs Subcommittee
To continue hearings on S. 381, to strengthen international sanctions against the Castro government in Cuba to develop a plan to support a transition government leading to a democratically elected government in Cuba.

Select on Intelligence
To hold hearings on the nomination of George J. Tenet, of Maryland, to be Deputy Director of Central Intelligence.

JUNE 15
9:00 a.m.
Agriculture, Nutrition, and Forestry
Production and Price Competitiveness Subcommittee
To hold hearings on proposed legislation to strengthen and improve United States agricultural programs, focusing on commodity policy.

9:30 a.m.
Banking, Housing, and Urban Affairs
Housing Opportunity and Community Development Subcommittee
To hold hearings on the Administration's proposal to restore Section 8 rents to market rates on multifamily properties insured by the Federal Housing Administration.

Energy and Natural Resources
To hold hearings on S. 871, to provide for the management and disposal of the Hanford Reservation, and to provide for environmental management activities at the Reservation.

Judiciary
Terrorism, Technology, and Government Information Subcommittee
To hold hearings to examine the militia movement in the United States.

Energy and Natural Resources
To hold hearings on proposed legislation authorizing funds for programs of the Federal Election Commission.

10:00 a.m.
Armed Services
To hold hearings on the current situation and U.S. policy options in Bosnia.

2:00 p.m.
Labor and Human Resources
To hold hearings to examine affirmative action in employment, focusing on Federal contractor requirements.

JUNE 16
9:30 a.m.
Energy and Natural Resources
To hold oversight hearings to review existing oil production at Prudhoe Bay, Alaska, and opportunities for new production on the coastal plain of Arctic Alaska.

Labor and Human Resources
To hold oversight hearings on the Secretary of Energy's strategic alignment and downsizing proposal and other alternatives to the existing structure of the Department of Energy.

JUNE 17
9:30 a.m.
Energy and Natural Resources
To hold hearings on S. 852, to provide for uniform management of livestock grazing on Federal land.

Labor and Human Resources
To continue oversight hearings on the Occupational Safety and Health Administration (OSHA).

JUNE 18
9:30 a.m.
Energy and Natural Resources
Forests and Public Land Management Subcommittee
To hold hearings on S. 852, to provide for uniform management of livestock grazing on Federal land.

Labor and Human Resources
To continue oversight hearings on the Occupational Safety and Health Administration (OSHA).

Indian Affairs
To hold joint hearings with the House Committee on Resources Subcommittee on Native American and Insular Affairs on S. 487, to amend the Indian Gaming Regulatory Act.

10:00 a.m.
Armed Services
To hold hearings on the current situation and U.S. policy options in Bosnia.

SH-216
Rules and Administration
To hold hearings on proposed legislation authorizing funds for programs of the Federal Election Commission.

10:00 p.m.
Labor and Human Resources
To hold hearings to examine affirmative action in employment, focusing on Federal contractor requirements.

This "bullet" symbol identifies statements or insertions which are not spoken by a Member of the Senate on the floor.

Matter set in this typeface indicates words inserted or appended, rather than spoken, by a Member of the House on the floor.

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JUNE 23
9:30 a.m.
Labor and Human Resources
To hold hearings to examine issues relating to the Legal Services Corporation.
SD-430

JUNE 27
9:30 a.m.
Appropriations
Defense Subcommittee
To hold hearings on proposed budget estimates for fiscal year 1996 for the Department of Defense, focusing on ballistic missiles.
SD-192

JUNE 28
9:30 a.m.
Labor and Human Resources
Business meeting, to consider pending calendar business.
SD-430

Indian Affairs
To hold hearings on S. 814, to provide for the reorganization of the Bureau of Indian Affairs.
SR-485

JUNE 29
9:30 a.m.
Small Business
To hold hearings to examine the future of the Small Business Investment Company program.
Room to be announced

2:00 p.m.
Energy and Natural Resources
Parks, Historic Preservation and Recreation Subcommittee
To hold hearings on S. 594, to provide for the administration of certain Presidio properties at minimal cost to the Federal taxpayer.
SD-366

JUNE 28

JUNE 29

SR-485

JULY 13
9:30 a.m.
Indian Affairs
To hold hearings on S. 479, to provide for administrative procedures to extend Federal recognition to certain Indian groups.
SR-485
Chamber Action:

Routine Proceedings, pages S8127-S8198

Measures Introduced: Three bills were introduced, as follows: S. 914-916.

Measures Reported: Reports were made as follows:

   Reported on Friday, June 9, 1995, pursuant to the order of Thursday, June 8, 1995:
   H.R. 4, to restore the American family, reduce illegitimacy, control welfare spending and reduce welfare dependence, with an amendment in the nature of a substitute. (S. Rept. No. 104-96)

   Telecommunications Competition/Deregulation Act: Senate continued consideration of S. 652, to provide for a pro-competitive, de-regulatory national policy framework designed to accelerate rapidly private sector deployment of advanced telecommunications and information technologies and services to all Americans by opening all telecommunications markets to competition, taking action on amendments proposed thereon, as follows:

   Adopted:
   By a unanimous vote of 91 yeas with one Senator voting present (Vote No. 249), Feinstein/Lott Amendment No. 1269, to provide for the full scrambling on multichannel video services of sexually explicit adult programming.

   Pending:
   (1) Dorgan Modified Amendment No. 1264, to require Department of Justice approval for Regional Bell Operating Company entry into long distance services, based on the VIII(c) standard.
   (2) Thurmond Modified Amendment No. 1265 (to Amendment No. 1264), to provide for the review by the Attorney General of the United States of the entry of the Bell operating companies into interexchange telecommunications and manufacturing markets.

   Subsequently, the amendment was modified further.

   (3) Feinstein/Kempthorne Amendment No. 1270, to strike the authority of the Federal Communications Commission to preempt State or local regulations that establish barriers to entry for interstate or intrastate telecommunications services.

   A unanimous-consent time agreement was reached providing for further consideration of the pending Dorgan Modified Amendment No. 1264 and the Thurmond Modified Amendment No. 1265 (to Amendment No. 1264) (both listed above), with a vote to occur on a motion to table the Dorgan Modified Amendment No. 1264 on Tuesday, June 13 at 12:30 p.m.

   A motion was entered to close further debate on the bill, and in accordance with the provisions of Rule XXII of the Standing Rules of the Senate, a vote on the cloture motion will occur on Wednesday, June 14.

   Senate will resume consideration of the bill on Tuesday, June 13.

Removal of Injunction of Secrecy: The injunction of secrecy was removed from the following treaties:

Extradition Treaty with Belgium (Treaty Doc. No. 104-7);
Supplementary Extradition Treaty with Belgium to Promote the Repression of Terrorism (Treaty Doc. No. 104-8); and
Extradition Treaty with Switzerland (Treaty Doc. No. 104-9);

The treaties were transmitted to the Senate today, considered as having been read for the first time, and referred, with accompanying papers, to the Committee on Foreign Relations and ordered to be printed.

Communications:

Statements on Introduced Bills:

Additional Cosponsors:

Amendments Submitted:

Additional Statements:
Record Votes: One record vote was taken today. (Total—249)

Recess: Senate convened at 12 noon, and recessed at 9:32 p.m., until 9:15 a.m., on Tuesday, June 13, 1995. (For Senate's program, see the remarks of the Acting Majority Leader in today's Record on page S8188.)

Committee Meetings
No committee meetings were held.

House of Representatives

Chamber Action
The House was not in session today. It will meet next at 10:30 a.m. on Tuesday, June 13.

Committee Meetings

COMPREHENSIVE ANTITERRORISM ACT
Committee on the Judiciary: Held a hearing on H.R. 1710, Comprehensive Antiterrorism Act of 1995. Testimony was heard from Representatives Bereuter and Skaggs; James S. Gorelick, Deputy Attorney General, Department of Justice; William P. Barr, former Attorney General, Department of Justice; Abraham Sofaer, former Legal Counsel, Department of State; and public witnesses.
Hearings continue tomorrow.

21ST CENTURY ECONOMY

Committee Meetings for Tuesday, June 13, 1995
(Committee meetings are open unless otherwise indicated)

Senate
No committee meetings are scheduled.

House
Committee on Agriculture: Subcommittee on General Farm Commodities, hearing on 1995 Farm Bill—Agricultural Trade Title, 9:30 a.m., 1300 Longworth.
Committee on Appropriations, to consider the following: Section 602(b) Allocations for fiscal year 1996; and Military Construction appropriations for fiscal year 1996, 4 p.m., 2360 Rayburn.
Subcommittee on Energy and Water Development, to mark up Energy and Water Development appropriations for fiscal year 1996, 9:30 a.m., 2128 Rayburn.
Committee on Banking and Financial Services, Subcommittee on Housing and Community Opportunity, hearing on “Resolving the FHA Multifamily Portfolio: HUD’s ‘Market-to-Market’ Proposal,” 10 a.m., 2128 Rayburn.
Subcommittee on Telecommunications and Finance, to mark up H.R. 1062, Financial Services Competitiveness Act of 1995, 9:30 a.m., 2123 Rayburn.
Committee on Economic and Educational Opportunities, Subcommittee on Early Childhood, Youth and Families, hearing on the Older Americans Act, 9:30 a.m., 2175 Rayburn.
Committee on Government Reform and Oversight, Subcommittee on Government Management, Information, and Technology, hearing on Streamlining Federal Field Structures, Part 1, 9 a.m., 2154 Rayburn.
Committee on the Judiciary, to continue hearings on H.R. 1710, Comprehensive Antiterrorism Act of 1995, 9:30 a.m., 2141 Rayburn.

Committee on Resources, Private Property Rights Task Force, oversight hearing on Private Property Rights, 9:30 a.m., 1324 Longworth.

Committee on Rules, hearing on H. Res. 161, amending clause 4 of rule XIII of the Rules of the House to abolish the Consent Calendar and to establish in its place a Corrections Calendar, 3:30 p.m., H-313 Capitol.

Committee on Standards of Official Conduct, executive, to consider pending business, 3 p.m., HT-2M Capitol.

Committee on Transportation and Infrastructure, Subcommittee on Water Resources and Environment, hearing on the reauthorization and Reform of the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (Superfund), 10 a.m., 2167 Rayburn.

Committee on Ways and Means, to mark up H.R. 1812, Expatriation Tax Act of 1995, 12 p.m., 1100 Longworth.

Subcommittee on Human Resources, hearing on Child Support Enforcement and Supplemental Security Income, 2 p.m., B-318 Rayburn.
Next Meeting of the SENATE
9:15 a.m., Tuesday, June 13

Senate Chamber

Program for Tuesday: After the transaction of any morning business (not to extend beyond 9:45 a.m.), Senate will continue consideration of S. 652, Telecommunications Competition/De-regulation Act, with a vote on a motion to table the Dorgan Modified Amendment No. 1264 to occur at 12:30 p.m.; following which, Senate will recess until 2:15 p.m. for their respective party conferences.

Next Meeting of the HOUSE OF REPRESENTATIVES
10:30 a.m., Tuesday, June 13

House Chamber

Program for Tuesday and the balance of the week: Consideration of H.R. 1530, National Defense Authorization Act (structured rule, two hours of general debate); and H.R. _____, Military Construction Appropriations Act for fiscal year 1996 (subject to a rule being granted).