

106TH CONGRESS
1ST SESSION

S. 1125

To restrict the authority of the Federal Communications Commission to review mergers and to impose conditions on licenses and other authorizations assigned or transferred in the course of mergers or other transactions subject to review by the Department of Justice or the Federal Trade Commission.

IN THE SENATE OF THE UNITED STATES

MAY 26, 1999

Mr. MCCAIN (for himself, Mr. ASHCROFT, Mr. HATCH, and Mr. MACK) introduced the following bill; which was read twice and referred to the Committee on Commerce, Science, and Transportation

A BILL

To restrict the authority of the Federal Communications Commission to review mergers and to impose conditions on licenses and other authorizations assigned or transferred in the course of mergers or other transactions subject to review by the Department of Justice or the Federal Trade Commission.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Telecommunications
5 Merger Review Act of 1999”.

1 **SEC. 2. FINDINGS.**

2 The Congress finds the following:

3 (1) A stated intent of the Congress in enacting
4 the Telecommunications Act of 1996 was to reduce
5 regulation.

6 (2) Under existing law, the Department of Jus-
7 tice and the Federal Trade Commission exercise pri-
8 mary authority to review all mergers, including tele-
9 communications industry mergers. The Federal
10 Communications Commission has only limited au-
11 thority under the Clayton Act to review tele-
12 communications industry mergers.

13 (3) The Department of Justice and the Federal
14 Trade Commission have extensive expertise in ana-
15 lyzing issues of industry concentration and its ef-
16 fects on competition. The Federal Communications
17 Commission has only limited expertise in analyzing
18 such issues.

19 (4) Notwithstanding the limitations on its Clay-
20 ton Act jurisdiction and on its substantive expertise,
21 the Federal Communications Commission exercises
22 broad authority over telecommunications industry
23 mergers pursuant to the nonspecific public interest
24 standard and other provisions in the Communica-
25 tions Act of 1934 that allow it to impose terms and

1 conditions on the assignment and transfer of licenses
2 and other authorizations.

3 (5) The Federal Communications Commission's
4 exercise of broad authority over telecommunications
5 industry mergers overreaches its intended statutory
6 authority and its substantive expertise and produces
7 delay and inconsistency in its decisions.

8 (6) Under existing law, parties to a proposed
9 telecommunications industry merger are unable to
10 proceed without the prior approval of the Federal
11 Communications Commission, even if the Depart-
12 ment of Justice or the Federal Trade Commission
13 have already approved the merger.

14 (7) The Federal Communications Commission's
15 existing rulemaking and enforcement prerogatives
16 constitute normal and effective means of assuring
17 that all licensees, including parties to a tele-
18 communications industry merger, operate in the
19 public interest.

20 (8) The primary jurisdiction and preeminent ex-
21 pertise of the Department of Justice and the Fed-
22 eral Trade Commission on all matters involving in-
23 dustry concentration and its effects on competition,
24 combined with the Federal Communications Com-
25 mission's existing rulemaking and enforcement pre-

1 rogatives, make the exercise of separate tele-
2 communications industry merger approval authority
3 by the Federal Communications Commission unnec-
4 essary.

5 (9) Because the duplication of effort, inconsis-
6 tency, and delay resulting from the Federal Commu-
7 nications Commission’s review of telecommunications
8 industry mergers is unnecessary, it imposes unwar-
9 ranted costs on the industry, on the Commission,
10 and on the public, and it fails to serve the public in-
11 terest.

12 **SEC. 3. REPEAL OF MERGER APPROVAL AUTHORITY.**

13 Section 11(a) of the Clayton Act (15 U.S.C. 21(a))
14 is amended by striking “in the Federal Communications
15 Commission where applicable to common carriers engaged
16 in wire or radio communication or radio transmission of
17 energy;”.

18 **SEC. 4. REPEAL OF AUTHORITY TO CONDITION LICENSES,**

19 **ETC.**

20 (a) **BASIC ADMINISTRATIVE AUTHORITY.**—Section
21 4(i) of the Communications Act of 1934 (15 U.S.C.
22 154(i)) is amended by adding at the end thereof the fol-
23 lowing: “The authority of the Commission to impose terms
24 or conditions on the transfer or assignment of any license
25 or other authorization assigned or transferred in a merger

1 or other transaction subject to review by the Department
2 of Justice or the Federal Trade Commission is subject to
3 section 314.”.

4 (b) PUBLIC CONVENIENCE AND NECESSITY.—Sec-
5 tion 214(c) of the Communications Act of 1934 (47
6 U.S.C. 214(c)) is amended by inserting after “require.”
7 the following: “The authority of the Commission to impose
8 terms or conditions on the transfer or assignment of any
9 such certificate assigned or transferred in a merger or
10 other transaction subject to review by the Department of
11 Justice or the Federal Trade Commission is subject to sec-
12 tion 314.”.

13 (c) RESTRICTIONS AND CONDITIONS NECESSARY TO
14 CARRY OUT 1934 ACT; TREATIES; INTERNATIONAL CON-
15 VENTIONS.—Section 303(r) of the Communications Act of
16 1934 (47 U.S.C. 303(r)) is amended by adding at the end
17 thereof the following: “The authority of the Commission
18 under this paragraph to impose terms or conditions on the
19 transfer or assignment of any license or other authority
20 assigned or transferred in a merger or other transaction
21 subject to review by the Department of Justice or the Fed-
22 eral Trade Commission is subject to section 314.”.

23 (d) ALIEN-OPERATED AMATEUR RADIO STATIONS.—
24 Section 310(d) of the Communications Act of 1934 (47
25 U.S.C. 310(d)) is amended by adding at the end thereof

1 the following: “The authority of the Commission to impose
2 terms or conditions on the transfer or assignment of any
3 authorization issued under this section that is assigned or
4 transferred in a merger or other transaction subject to re-
5 view by the Department of Justice or the Federal Trade
6 Commission is subject to section 314.”.

7 (e) PRESERVATION OF COMPETITION IN COM-
8 MERCE.—Section 314 of the Communications Act of 1934
9 (47 U.S.C. 314) is amended to read as follows:

10 **“SEC. 314. PRESERVATION OF COMPETITION IN COM-**
11 **MERCE.**

12 “(a) IN GENERAL.—Notwithstanding any other pro-
13 vision of law, the Commission has no authority to review
14 a merger or other transaction, or to impose any term or
15 condition on the assignment or transfer of any license or
16 other authorization issued under this Act that is proposed
17 to be assigned or transferred in the course of a merger
18 or other transaction, while that merger or other trans-
19 action is subject to review by either the Department of
20 Justice or the Federal Trade Commission.

21 “(b) COMMUNICATIONS MERGERS PRIMARILY RE-
22 VIEWABLE BY DOJ AND FTC.—The Department of Jus-
23 tice, or the Federal Trade Commission, has primary au-
24 thority under existing law to review mergers and other
25 transactions involving the proposed assignment or transfer

1 of any license or other authorization issued under this Act.
2 The Commission may file comments in any proceeding be-
3 fore the Department of Justice or the Federal Trade Com-
4 mission to review a merger or other transaction involving
5 the proposed assignment or transfer of any license or
6 other authorization issued under this Act if those com-
7 ments reflect the views of a majority of the Commission.

8 “(c) COMMISSION SHALL IMPLEMENT DOJ OR FTC
9 DECISION WITHOUT ADDITIONAL TERMS OR CONDI-
10 TIONS.—If—

11 “(1) the Department of Justice or the Federal
12 Trade Commission reviews a merger or other trans-
13 action involving the proposed assignment or transfer
14 of any license or other authorization issued under
15 this Act; and

16 “(2) it issues a written decision of absolute or
17 conditional approval of, or issues a written state-
18 ment of nonintervention in, the proposed merger or
19 other transaction,

20 then the Commission shall authorize the assignment or
21 transfer of any license or other authorization involved in
22 the merger or transaction in accordance with the decision,
23 if any, or as proposed, if a written statement of non-
24 intervention is issued. The Commission may not impose
25 any other term or condition on the assignment or transfer

1 of the license or other authorization so assigned or trans-
2 ferred, or impose any other obligation on any party to that
3 merger or transaction.

4 “(d) COMMISSION REVIEW OF MERGERS ABSENT
5 DOJ OR FTC PRONOUNCEMENT.—

6 “(1) IN GENERAL.—The Commission may not
7 review any application for assignment or transfer of
8 a license or other authorization issued under this
9 Act in connection with a merger or other transaction
10 unless neither the Department of Justice nor the
11 Federal Trade Commission issues a decision or
12 statement described in subsection (c)(2) in connec-
13 tion with that merger or other transaction.

14 “(2) 60-DAY TURNAROUND.—The Commission
15 shall conclude any review of a merger or other trans-
16 action it may conduct under paragraph (1) within
17 60 days after the date on which the Department of
18 Justice and the Federal Trade Commission, which-
19 ever is appropriate, issues such a decision or state-
20 ment.

21 “(3) PRESUMPTION; DEFAULT APPROVAL.—In
22 reviewing an application under paragraph (1), the
23 Commission shall apply a presumption in favor of
24 unconditional approval of the application. If the
25 Commission fails to issue a final decision within the

1 60-day period described in paragraph (2), the appli-
2 cation shall be deemed to have been granted uncon-
3 ditionally by the Commission.”.

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