

# Calendar No. 192

106TH CONGRESS  
1ST SESSION

# S. 467

To restate and improve section 7A of the Clayton Act, and for other purposes.

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## IN THE SENATE OF THE UNITED STATES

FEBRUARY 25, 1999

Mr. DEWINE (for himself and Mr. KOHL) introduced the following bill; which was read twice and referred to the Committee on the Judiciary

JULY 1, 1999

Reported by Mr. HATCH, with an amendment and an amendment to the title  
[Strike out all after the enacting clause and insert the part printed in *italic*]

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## A BILL

To restate and improve section 7A of the Clayton Act, and for other purposes.

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

3       **SECTION 1. SHORT TITLE.**

4       This Act may be cited as the “~~Antitrust Merger Re-~~  
5       view Act”.

1 **SEC. 2. RESTATEMENT AND IMPROVEMENT OF SECTION 7A**  
2 **OF THE CLAYTON ACT.**

3 (a) ~~IN GENERAL.~~—Section 7A of the Clayton Act (15  
4 U.S.C. 18a) is amended to read as follows:

5 “~~SEC. 7A. (a) Except as exempted pursuant to sub-~~  
6 ~~section (c), no person shall acquire, directly or indirectly,~~  
7 ~~any voting securities or assets of any other person, unless~~  
8 ~~both persons (or in the case of a tender offer, the acquir-~~  
9 ~~ing person) file notification pursuant to rules under sub-~~  
10 ~~section (d)(1) and the waiting period described in sub-~~  
11 ~~section (b)(1) has expired, if—~~

12 “~~(1) the acquiring person, or the person whose~~  
13 ~~voting securities or assets are being acquired, is en-~~  
14 ~~gaged in commerce or in any activity affecting com-~~  
15 ~~mmerce;~~

16 “~~(2)(A) any voting securities or assets of a per-~~  
17 ~~son engaged in manufacturing which has annual net~~  
18 ~~sales or total assets of \$10,000,000 or more are~~  
19 ~~being acquired by any person which has total assets~~  
20 ~~or annual net sales of \$100,000,000 or more;~~

21 “~~(B) any voting securities or assets of a person~~  
22 ~~not engaged in manufacturing which has total assets~~  
23 ~~of \$10,000,000 or more are being acquired by any~~  
24 ~~person which has total assets or annual net sales of~~  
25 ~~\$100,000,000 or more; or~~

1           ~~“(C) any voting securities or assets of a person~~  
2           ~~with annual net sales or total assets of~~  
3           ~~\$100,000,000 or more are being acquired by any~~  
4           ~~person with total assets or annual net sales of~~  
5           ~~\$10,000,000 or more; and~~

6           ~~“(3) as a result of such acquisition, the acquir-~~  
7           ~~ing person would hold—~~

8                     ~~“(A) 15 per centum or more of the voting~~  
9                     ~~securities or assets of the acquired person, or~~

10                    ~~“(B) an aggregate total amount of the vot-~~  
11                    ~~ing securities and assets of the acquired person~~  
12                    ~~in excess of \$15,000,000.~~

13 In the case of a tender offer, the person whose voting secu-  
14 rities are sought to be acquired by a person required to  
15 file notification under this subsection shall file notification  
16 pursuant to rules under subsection (d).

17           ~~“(b)(1) The waiting period required under subsection~~  
18           ~~(a) shall—~~

19                     ~~“(A) begin on the date of the receipt by the~~  
20                     ~~Federal Trade Commission and the Assistant Attor-~~  
21                     ~~ney General in charge of the Antitrust Division of~~  
22                     ~~the Department of Justice (hereinafter referred to in~~  
23                     ~~this section as the ‘Assistant Attorney General’)~~  
24                     ~~of—~~

1           “(i) the completed notification required  
2           under subsection (a), or

3           “(ii) if such notification is not completed,  
4           the notification to the extent completed and a  
5           statement of the reasons for such noncompli-  
6           ance,

7           from both persons, or, in the case of a tender offer,  
8           the acquiring person; and

9           “(B) end on the thirtieth day after the date of  
10          such receipt (or in the case of a cash tender offer,  
11          the fifteenth day), or on such later date as may be  
12          set under subsection (e)(2) or (g)(2).

13          “(2) The Federal Trade Commission and the Assist-  
14          ant Attorney General may, in individual cases, terminate  
15          the waiting period specified in paragraph (1) and allow  
16          any person to proceed with any acquisition subject to this  
17          section, and promptly shall cause to be published in the  
18          Federal Register a notice that neither intends to take any  
19          action within such period with respect to such acquisition.

20          “(3) As used in this section—

21                 “(A) The term ‘voting securities’ means any se-  
22                 curities which at present or upon conversion entitle  
23                 the owner or holder thereof to vote for the election  
24                 of directors of the issuer or, with respect to unincor-  
25                 porated issuers, persons exercising similar functions.

1           ~~“(B) The amount or percentage of voting secu-~~  
2           ~~rities or assets of a person which are acquired or~~  
3           ~~held by another person shall be determined by ag-~~  
4           ~~gregating the amount or percentage of such voting~~  
5           ~~securities or assets held or acquired by such other~~  
6           ~~person and each affiliate thereof.~~

7           ~~“(c) The following classes of transactions are exempt~~  
8           ~~from the requirements of this section—~~

9           ~~“(1) acquisitions of goods or realty transferred~~  
10          ~~in the ordinary course of business;~~

11          ~~“(2) acquisitions of bonds, mortgages, deeds of~~  
12          ~~trust, or other obligations which are not voting secu-~~  
13          ~~rities;~~

14          ~~“(3) acquisitions of voting securities of an~~  
15          ~~issuer at least 50 per centum of the voting securities~~  
16          ~~of which are owned by the acquiring person prior to~~  
17          ~~such acquisition;~~

18          ~~“(4) transfers to or from a Federal agency or~~  
19          ~~a State or political subdivision thereof;~~

20          ~~“(5) transactions specifically exempted from the~~  
21          ~~antitrust laws by Federal statute;~~

22          ~~“(6) transactions specifically exempted from the~~  
23          ~~antitrust laws by Federal statute if approved by a~~  
24          ~~Federal agency, if copies of all information and doc-~~  
25          ~~umentary material filed with such agency are con-~~

1 temporarily filed with the Federal Trade Com-  
2 mission and the Assistant Attorney General;

3 “(7) transactions which require agency approval  
4 under section 10(e) of the Home Owners’ Loan Act  
5 (12 U.S.C. 1467a), section 18(e) of the Federal De-  
6 posit Insurance Act (12 U.S.C. 1828(e)), or section  
7 3 of the Bank Holding Company Act of 1956 (12  
8 U.S.C. 1842);

9 “(8) transactions which require agency approval  
10 under section 4 of the Bank Holding Company Act  
11 of 1956 (12 U.S.C. 1843) or section 5 of the Home  
12 Owners’ Loan Act (12 U.S.C. 1464), if copies of all  
13 information and documentary material filed with any  
14 such agency are contemporaneously filed with the  
15 Federal Trade Commission and the Assistant Attor-  
16 ney General at least 30 days prior to consummation  
17 of the proposed transaction;

18 “(9) acquisitions, solely for the purpose of in-  
19 vestment, of voting securities, if, as a result of such  
20 acquisition, the securities acquired or held do not ex-  
21 ceed 10 per centum of the outstanding voting securi-  
22 ties of the issuer;

23 “(10) acquisitions of voting securities, if, as a  
24 result of such acquisition, the voting securities ac-  
25 quired do not increase, directly or indirectly, the ac-

1       quiring person's per centum share of outstanding  
2       voting securities of the issuer;

3           ~~“(11) acquisitions, solely for the purpose of in-~~  
4       ~~vestment, by any bank, banking association, trust~~  
5       ~~company, investment company, or insurance com-~~  
6       ~~pany, of (A) voting securities pursuant to a plan of~~  
7       ~~reorganization or dissolution; or (B) assets in the or-~~  
8       ~~inary course of its business; and~~

9           ~~“(12) such other acquisitions, transfers, or~~  
10       ~~transactions, as may be exempted under subsection~~  
11       ~~(d)(2)(B).~~

12       ~~“(d) The Federal Trade Commission, with the con-~~  
13       ~~currence of the Assistant Attorney General and by rule~~  
14       ~~in accordance with section 553 of title 5, United States~~  
15       ~~Code, consistent with the purposes of this section—~~

16           ~~“(1) shall require that the notification required~~  
17       ~~under subsection (a) be in such form and contain~~  
18       ~~such documentary material and information relevant~~  
19       ~~to a proposed acquisition as is necessary and appro-~~  
20       ~~priate to enable the Federal Trade Commission and~~  
21       ~~the Assistant Attorney General to determine whether~~  
22       ~~such acquisition may, if consummated, violate the~~  
23       ~~antitrust laws; and~~

24           ~~“(2) may—~~

25           ~~“(A) define the terms used in this section;~~

1           ~~“(B) exempt, from the requirements of this~~  
2           ~~section, classes of persons, acquisitions, trans-~~  
3           ~~fers, or transactions which are not likely to vio-~~  
4           ~~late the antitrust laws; and~~

5           ~~“(C) prescribe such other rules as may be~~  
6           ~~necessary and appropriate to carry out the pur-~~  
7           ~~poses of this section.~~

8           ~~“(e)(1) The Federal Trade Commission or the Assist-~~  
9           ~~ant Attorney General may, prior to the expiration of the~~  
10          ~~30-day waiting period (or in the case of a cash tender~~  
11          ~~offer, the 15-day waiting period) specified in subsection~~  
12          ~~(b)(1), require the submission of additional information or~~  
13          ~~documentary material relevant to the proposed acquisition,~~  
14          ~~from a person required to file notification with respect to~~  
15          ~~such acquisition under subsection (a) prior to the expira-~~  
16          ~~tion of the waiting period specified in subsection (b)(1),~~  
17          ~~or from any officer, director, partner, agent, or employee~~  
18          ~~of such person.~~

19          ~~“(2) The Federal Trade Commission or the Assistant~~  
20          ~~Attorney General, in its or his discretion, may extend the~~  
21          ~~30-day waiting period (or in the case of a cash tender~~  
22          ~~offer, the 15-day waiting period) specified in subsection~~  
23          ~~(b)(1) for an additional period of not more than 20 days~~  
24          ~~(or in the case of a cash tender offer, 10 days) after the~~  
25          ~~date on which the Federal Trade Commission or the As-~~

1 sistant Attorney General, as the case may be, receives  
2 from any person to whom a request is made under para-  
3 graph (1), or in the case of tender offers, the acquiring  
4 person; (A) all the information and documentary material  
5 required to be submitted pursuant to such a request, or  
6 (B) if such request is not fully complied with, the informa-  
7 tion and documentary material submitted and a statement  
8 of the reasons for such noncompliance. Such additional pe-  
9 riod may be further extended only by the United States  
10 district court, upon an application by the Federal Trade  
11 Commission or the Assistant Attorney General pursuant  
12 to subsection (g)(2).

13       “(f) If a proceeding is instituted or an action is filed  
14 by the Federal Trade Commission, alleging that a pro-  
15 posed acquisition violates section 7 of this Act or section  
16 5 of the Federal Trade Commission Act, or an action is  
17 filed by the United States, alleging that a proposed acqui-  
18 sition violates such section 7 or section 1 or 2 of the Sher-  
19 man Act, and the Federal Trade Commission or the As-  
20 sistant Attorney General (1) files a motion for a prelimi-  
21 nary injunction against consummation of such acquisition  
22 pendente lite, and (2) certifies the United States district  
23 court for the judicial district within which the respondent  
24 resides or carries on business, or in which the action is  
25 brought, that it or he believes that the public interest re-

1 quires relief pendente lite pursuant to this subsection;  
2 then upon the filing of such motion and certification, the  
3 chief judge of such district court shall immediately notify  
4 the chief judge of the United States court of appeals for  
5 the circuit in which such district court is located, who shall  
6 designate a United States district judge to whom such ac-  
7 tion shall be assigned for all purposes.

8       “(g)(1) Any person, or any officer, director, or part-  
9 ner thereof, who fails to comply with any provision of this  
10 section shall be liable to the United States for a civil pen-  
11 alty of not more than \$10,000 for each day during which  
12 such person is in violation of this section. Such penalty  
13 may be recovered in a civil action brought by the United  
14 States.

15       “(2) If any person, or any officer, director, partner,  
16 agent, or employee thereof, fails substantially to comply  
17 with the notification requirement under subsection (a) or  
18 any request for the submission of additional information  
19 or documentary material under subsection (e)(1) within  
20 the waiting period specified in subsection (b)(1) and as  
21 may be extended under subsection (e)(2), the United  
22 States district court—

23               “(A) may order compliance;

24               “(B) shall extend the waiting period specified in  
25 subsection (b)(1) and as may have been extended

1 under subsection (e)(2) until there has been sub-  
2 stantial compliance, except that, in the case of a ten-  
3 der offer, the court may not extend such waiting pe-  
4 riod on the basis of a failure, by the person whose  
5 stock is sought to be acquired, to comply substan-  
6 tially with such notification requirement or any such  
7 request; and

8 “(C) may grant such other equitable relief as  
9 the court in its discretion determines necessary or  
10 appropriate;

11 upon application of the Federal Trade Commission or the  
12 Assistant Attorney General.

13 “(h) Any information or documentary material filed  
14 with the Assistant Attorney General or the Federal Trade  
15 Commission pursuant to this section shall be exempt from  
16 disclosure under section 552 of title 5, United States  
17 Code, and no such information or documentary material  
18 may be made public, except as may be relevant to any  
19 administrative or judicial action or proceeding. Nothing in  
20 this section is intended to prevent disclosure to either body  
21 of Congress or to any duly authorized committee or sub-  
22 committee of Congress.

23 “(i)(1) Any action taken by the Federal Trade Com-  
24 mission or the Assistant Attorney General or any failure  
25 of the Federal Trade Commission or the Assistant Attor-

1 ney General to take any action under this section shall  
2 not bar any proceeding or any action with respect to such  
3 acquisition at any time under any other section of this  
4 Act or any other provision of law.

5       “(2) Nothing contained in this section shall limit the  
6 authority of the Assistant Attorney General or the Federal  
7 Trade Commission to secure at any time from any person  
8 documentary material, oral testimony, or other informa-  
9 tion under the Antitrust Civil Process Act, the Federal  
10 Trade Commission Act, or any other provision of law.

11       “(j) Beginning not later than January 1, 1978, the  
12 Federal Trade Commission, with the concurrence of the  
13 Assistant Attorney General, shall annually report to Con-  
14 gress on the operation of this section. Such report shall  
15 include an assessment of the effects of this section, of the  
16 effects, purpose, and need for any rules promulgated pur-  
17 suant thereto, and any recommendations for revisions of  
18 this section.

19       “(k)(1) The consideration by the Federal Commu-  
20 nications Commission of any application for a transfer of  
21 license, or the acquisition and operation of lines, that is  
22 associated with an acquisition subject to this section shall  
23 be governed by the procedures set forth in this subsection.

24       “(2)(A) Upon receipt of an application referred to in  
25 paragraph (1), the Federal Communications Commission

1 may submit to the party or parties covered by the applica-  
2 tion a request for any documents and information nec-  
3 essary for consideration of the transfer of license, or ac-  
4 quisition and operation of lines, addressed in the applica-  
5 tion.

6 “(B) The Federal Communications Commission shall  
7 submit a request under subparagraph (A), if at all, not  
8 later than 30 days after receipt of the application in ques-  
9 tion.

10 “(3)(A) A party subject to a request from the Federal  
11 Communications Commission under paragraph (2) shall  
12 submit to the Federal Communications Commission the  
13 documents and information identified in the request.

14 “(B) At the completion of the submission to the Fed-  
15 eral Communications Commission of documents and infor-  
16 mation pursuant to a request under subparagraph (A), the  
17 party submitting such documents and information shall  
18 certify to the Federal Communications Commission wheth-  
19 er or not such party has complied substantially with the  
20 request.

21 “(4) Whenever consideration of an application re-  
22 ferred to in paragraph (1) includes one or more requests  
23 for documents and information under paragraph (2), the  
24 Federal Communications Commission shall complete the  
25 consideration of the application not later than 180 days

1 after the date on which all parties covered by such re-  
2 quests have certified to the Federal Communications Com-  
3 mission under paragraph ~~(3)~~(B) that such parties have  
4 complied substantially with such requests.

5       ~~“(5)(A)~~ In any case in which the Federal Commu-  
6 nications Commission does not request under paragraph  
7 ~~(2)~~ any documents and information for the consideration  
8 of an application referred to in paragraph (1), the Federal  
9 Communications Commission shall approve or deny the  
10 transfer of license, or the acquisition and operation of  
11 lines, covered by the application not later than 30 days  
12 after the date of the submittal of the application to the  
13 Federal Communications Commission.

14       ~~“(B)~~ In any case in which the Federal Communica-  
15 tions Commission requests under paragraph ~~(2)~~ docu-  
16 ments and information for the consideration of an applica-  
17 tion referred to in paragraph (1), the Federal Communica-  
18 tions Commission shall approve or deny the transfer of  
19 license, or the acquisition and operation of lines, covered  
20 by the application on the date of the completion of consid-  
21 eration of the application under paragraph ~~(4)~~.

22       ~~“(C)~~ If the Federal Communications Commission  
23 does not approve or deny an application for a transfer of  
24 license, or for the acquisition and operation of lines, by  
25 the date set forth in subparagraph (A) or (B), whichever

1 applies, the application shall be deemed approved by the  
2 Federal Communications Commission as of such date. Ap-  
3 proval under this subparagraph shall be without condi-  
4 tions.

5       “(6)(A) Any party seeking to challenge the reason-  
6 ableness of a request of the Federal Communications  
7 Commission under paragraph (2) shall bring an action in  
8 the United States District Court of the District of Colum-  
9 bia seeking a declaratory judgment or injunctive relief  
10 with respect to that challenge.

11       “(B) In seeking to challenge the compliance under  
12 paragraph (3) of a party with a request under paragraph  
13 (2), the Federal Communications Commission shall bring  
14 an action in the United States District Court of the Dis-  
15 trict of Columbia seeking a declaratory judgment or in-  
16 junctive relief with respect to that challenge.

17       “(C) The period of an action under this paragraph  
18 may not be taken into account in determining the passage  
19 of time under a deadline under this subsection.

20       “(7) No provision of this subsection may be construed  
21 to limit or modify—

22               “(A) the standards utilized by the Federal  
23 Communications Commission under the Communica-  
24 tions Act of 1934 (47 U.S.C. 151 et seq.) in consid-  
25 ering or approving transfers of licenses, or the ac-

1 acquisition and operation of lines, covered by an appli-  
2 cation referred to in paragraph (1); or

3 ~~“(2) the authority of the Federal Communica-~~  
4 ~~tions Commission under that Act to impose condi-~~  
5 ~~tions upon the transfer of licenses, or the acquisition~~  
6 ~~and operation of lines, pursuant to such consider-~~  
7 ~~ation or approval.~~

8 ~~“(8) Subsection (g)(1) shall not apply with respect~~  
9 ~~to the activities of a party under this subsection.”.~~

10 (b) ~~EFFECTIVE DATE.—(1) Except as provided in~~  
11 ~~paragraph (2), the amendment made by subsection (a)~~  
12 ~~shall take effect on the date of the enactment of this Act.~~

13 ~~(2) Subsection (k) of section 7A of the Clayton Act,~~  
14 ~~as amended by subsection (a) of this section, shall take~~  
15 ~~effect 30 days after the date of the enactment of this Act,~~  
16 ~~and shall apply with respect to applications referred to in~~  
17 ~~such subsection (k) that are submitted to the Federal~~  
18 ~~Communications Commission on or after that date.~~

19 **SECTION 1. SHORT TITLE.**

20 *This Act may be cited as the “Expeditious Action on*  
21 *Telecommunications Merger Act”.*

1 **SEC. 2. SCHEDULE FOR CONSIDERATION BY FEDERAL COM-**  
2 **MUNICATIONS COMMISSION OF CERTAIN AP-**  
3 **PLICATIONS FOR TRANSFERS OF LICENSES**  
4 **OR LINES.**

5 (a) *IN GENERAL.*—*The consideration by the Federal*  
6 *Communications Commission of any application for a*  
7 *transfer of license, or for the acquisition and operation of*  
8 *lines, that is associated with an acquisition, whether direct*  
9 *or indirect, of voting securities or assets shall be governed*  
10 *by the schedule set forth in this section.*

11 (b) *DEADLINE FOR CONSIDERATION.*—

12 (1) *CERTAIN APPLICATIONS.*—

13 (A) *IN GENERAL.*—*In the case of an appli-*  
14 *cation described in subparagraph (B), the Com-*  
15 *mission shall complete the consideration of the*  
16 *application not later than 180 days after the*  
17 *date of the receipt of the application by the Com-*  
18 *mission unless the Commission, by majority vote*  
19 *of the members of the Commission, extends the*  
20 *period of consideration of the application by not*  
21 *more than 60 additional days.*

22 (B) *COVERED APPLICATIONS.*—*An applica-*  
23 *tion described in this subparagraph is an appli-*  
24 *cation referred to in subsection (a) as a result of*  
25 *which the acquiring person would hold—*

1                   (i) 15 percent or more of the voting se-  
2                   curities or assets of the acquired person; or  
3                   (ii) an aggregate total amount of the  
4                   voting securities and assets of the acquired  
5                   person in excess of \$15,000,000.

6                   (2) *OTHER APPLICATIONS.*—*In the case of any*  
7                   *application referred to in subsection (a) other than an*  
8                   *application covered by paragraph (1), the Commis-*  
9                   *sion shall complete the consideration of the applica-*  
10                  *tion not later than 90 days after the date of the re-*  
11                  *ceipt of the application by the Commission unless the*  
12                  *Commission, by majority vote of the members of the*  
13                  *Commission, extends the period of consideration of the*  
14                  *application by not more than 30 additional days.*

15                  (c) *FAILURE TO ACT.*—*If the Commission does not ap-*  
16                  *prove, approve with modifications, or deny an application*  
17                  *for a transfer of license, or for the acquisition and operation*  
18                  *of lines, by the date provided for the consideration of the*  
19                  *application under paragraph (1) or (2) of subsection (b),*  
20                  *whichever applies, the application shall be deemed approved*  
21                  *by the Commission as of such date. Approval under this*  
22                  *subsection shall be without modifications.*

23                  (d) *CONSTRUCTION.*—*No provision of this section may*  
24                  *be construed to enhance, limit, or modify in any way—*

1           (1) *the standards utilized by the Commission*  
2 *under the Communications Act of 1934 (47 U.S.C.*  
3 *151 et seq.) in considering or approving transfers of*  
4 *licenses, or the acquisition and operation of lines, cov-*  
5 *ered by an application referred to in subsection (a);*  
6 *or*

7           (2) *the authority of the Commission under that*  
8 *Act to impose conditions upon the transfer of licenses,*  
9 *or the acquisition and operation of lines, pursuant to*  
10 *such consideration or approval.*

11 *(e) APPLICABILITY.—*

12           (1) *IN GENERAL.—Except as provided in para-*  
13 *graph (2), this section shall take effect 30 days after*  
14 *the date of the enactment of this Act, and shall apply*  
15 *with respect to applications referred to in such sub-*  
16 *section (a) that are submitted to the Commission on*  
17 *or after that date.*

18           (2) *PENDING APPLICATIONS.—If an application*  
19 *described by subsection (a) is pending before the Com-*  
20 *mission as of the date of the enactment of this Act,*  
21 *subsections (c) and (d) shall apply with respect to the*  
22 *application as if the application had been submitted*  
23 *to the Commission on the date of the enactment of*  
24 *this Act.*

Amend the title so as to read: “A bill to establish  
a schedule for the review by the Federal Communications

Commission of certain applications for transfers of licenses, or for the acquisition and operation of lines, and for other purposes.”.



**Calendar No. 192**

106<sup>TH</sup> CONGRESS  
1<sup>ST</sup> Session

**S. 467**

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**A BILL**

To restate and improve section 7A of the Clayton Act, and for other purposes.

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JULY 1, 1999

Reported with an amendment and an amendment to the title