

A resolution (S. Res. 130), providing for notification to the President of the United States of the election of Secretary of the Senate.

The PRESIDING OFFICER. Is there objection to the immediate consideration of the resolution?

There being no objection, the resolution is considered and agreed to.

The resolution (S. Res. 130) was agreed to, as follows:

Resolved, That the President of the United States be notified of the election of the Honorable Kelly D. Johnston, of Oklahoma, as Secretary of the Senate.

PROVIDING FOR NOTIFICATION TO THE HOUSE OF REPRESENTATIVES OF THE ELECTION OF SECRETARY OF THE SENATE

Mr. NICKLES. Mr. President, I send a resolution to the desk notifying the House of Representatives of the election of Kelly Johnston as Secretary of the Senate and ask for its immediate consideration.

The PRESIDING OFFICER. The resolution will be stated by title.

The legislative clerk read as follows:

A resolution (S. Res. 131), providing for notification to the House of Representatives of the election of Secretary of the Senate.

The PRESIDING OFFICER. Is there objection to the immediate consideration of the resolution?

There being no objection, the resolution is considered and agreed to.

The resolution (S. Res. 131) was agreed to, as follows:

Resolved, That the House of Representatives be notified of the election of the Honorable Kelly D. Johnston, of Oklahoma, as Secretary of the Senate.

Mr. NICKLES. I again thank my colleagues. I thank Senator DOLE for an outstanding selection. I know Senator INHOFE, Senator DOLE, myself, Senator LOTT, and Senator THURMOND are all very proud to have Kelly Johnston be the next Secretary of the Senate.

Mr. THURMOND addressed the Chair.

The PRESIDING OFFICER. The Senator from South Carolina.

Mr. THURMOND. Mr. President, I just want to take this opportunity to commend Sheila Burke for the great job she has done and the service she has rendered to this Senate and to this country. She is a lady of ability, integrity, and dedication. We have been very fortunate to have her to serve as she has done so faithfully.

I also would like to congratulate Kelly Johnston for assuming the secretaryship of this Senate. This is a very important position. It involves many activities that concern all of us, and I am sure, since he is going to run the service, it will be efficient, capable, and helpful to this country.

The PRESIDING OFFICER. The Senator from Mississippi.

Mr. LOTT. Mr. President, I would like to join the others this morning in congratulating Kelly Johnston upon his selection to be the Secretary of the Senate. I, too, have known Kelly for several years. I have known him to be

always very efficient and very effective in whatever he has done. His work with the Republican Party in the past, but particularly his work at the policy committee, has been exceptional.

The papers, the studies, the analyses, the statistics that we receive from the policy committee—under the chairmanship of DON NICKLES, but under the stewardship, also, of Kelly Johnston as executive director of the policy committee—has been outstanding. I always look forward to receiving those documents. In fact, I have one of their very good pieces right here before me this morning on the telecommunications bill.

He has done outstanding work. I think his ability to get along with people and his knowledge of the Senate will serve us all very well. I congratulate him and his family for the fine work he has done and look forward to working with him in the future.

I yield the floor.

The PRESIDING OFFICER. The Senator from South Carolina.

Mr. HOLLINGS. Mr. President, let me also join in the welcoming of Kelly Johnston as our new Secretary of the Senate. He has done outstanding work for the Senator from Oklahoma, and we are pleased at his appointment.

I particularly wanted to emphasize the admiration that we have all had for the job done by Sheila Burke. I had the utmost confidence in the former Secretary, Joe Stewart. He had been around this body 40-some years. I will never forget, recently, as we talked, he was commenting on the outstanding job being done by Sheila Burke. He said she was the most efficient Secretary that we had ever had in there. I am sorry to see her not continue, but I understand that Kelly Johnston will be well able, after a short time, to perform equally well.

So I both welcome Mr. Johnston and I lament the loss of Sheila Burke, but she will be continuing to work with us, I am sure.

I yield the floor.

Mr. PRESSLER. Mr. President, may I just say a word about Sheila Burke and Kelly Johnston? I would like to join in praise. Sheila Burke has been absolutely amazing. She is somebody we can go to and get something done right away. She will always have the answer. I join in the congratulations to Kelly Johnston and I look forward to working with him.

TRIBUTE TO GEN. GORDON R. SULLIVAN, CHIEF OF STAFF, U.S. ARMY

Mr. THURMOND. Mr. President, I rise today to recognize one of our country's finest soldiers, Gen. Gordon R. Sullivan, the Chief of Staff of the Army, who is retiring after a distinguished 36-year career.

General Sullivan began his service in 1959 when he was commissioned a second lieutenant of armor upon graduation from Norwich University. He com-

manded troops at every level from platoon to division, including the 1st Infantry Division, and served two tours of duty in Vietnam. He also spent an extensive amount of time overseas, serving four tours in Europe and one in Korea.

General Sullivan held a number of increasingly important duty positions at the corps, NATO, and Department of the Army levels. He influenced a generation of leaders at the Command and General Staff College, where he served as the Deputy Commandant. Throughout his career he exemplified selfless devotion to duty and totally committed leadership.

I believe history will show that General Sullivan led the Army through one of its most challenging periods with exceptional skill, courage, and wisdom. Most importantly, he preserved the Army and its high standards of excellence during the turbulent post-cold-war drawdown, and positioned the Army for the future. He is widely and rightly acknowledged as a visionary thinker, both within military and private industry circles. The Army of the 21st century will regard General Sullivan as the bold, courageous architect of a preeminent military force which is able to apply technology to maximum advantage.

Mr. President, our Nation owes General Sullivan its deepest appreciation for his truly distinguished service. I wish him and his wife, Gay, continued success and happiness in all future endeavors.

RESERVATION OF LEADER TIME

The PRESIDING OFFICER. Under the previous order, the leadership time is reserved.

THE TELECOMMUNICATIONS COMPETITION AND DEREGULATION ACT

The PRESIDING OFFICER. Under the previous order, the Senate will resume consideration of S. 652, which the clerk will report.

The assistant legislative clerk read as follows:

A 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.

Pending:

Dole amendment No. 1255, to provide additional deregulation of telecommunications services, including rural and small cable TV systems.

Pressler-Hollings amendment No. 1258, to make certain technical corrections.

The Senate resumed consideration of the bill.

The PRESIDING OFFICER. Who seeks time?

The Senator from South Dakota.

Mr. PRESSLER. Mr. President, we are resuming consideration of the telecommunications bill. We had opening

statements last night and we urged Senators to bring amendments to the floor. We eagerly are awaiting the many amendments because we only have a certain amount of time and we are urging all offices and all Senators who have amendments to bring them to the floor. We are ready to go, as we have emphasized in our opening speeches last night.

Let me just reiterate, I think the movement of this bill is very important to America. It will create an explosion of new jobs, of new devices, and of new activities. I know there are a variety of amendments. We have welcomed them. I am prepared to yield the floor to any other Senator who has statements at this time.

The PRESIDING OFFICER. Who seeks recognition?

The Senator from Nebraska.

Mr. KERREY. Mr. President, I restate at the beginning what I said last evening; that is, I believe the distinguished chairman, the Senator from South Dakota, and the distinguished ranking member, the Senator from South Carolina, have done an awful lot of work on this, a lot of good work. I appreciate the work they have done. They allowed me to be involved in many of these steps.

But I say for emphasis, I cannot support this bill. I do not believe it provides the kind of protection for consumers that needs to be provided. I believe many of the statements that have been made thus far overestimate the impact upon the economy and underestimate the disruption that will occur to households throughout this country.

No Member should doubt this. Any Member who doubts the impact of this legislation should go back and read clippings from 1984, when William Baxter and Judge Greene signed a consent decree, or when the U.S. Government and AT&T signed a consent decree in Judge Greene's court. Talk to consumers and talk to households and citizens in 1984 and 1985, and you will find an awful lot of those folks will say, "Why don't you put the phone company back together?"

I believe that action was good. That action was taken by the Antitrust Division of the Department of Justice. I say that for emphasis. Justice is given a consultative role in this legislation. But they were the prime mover in breaking up the monopoly that many people cite as the reason for wanting to go even further today.

Second, you will hear people come to the floor and say and act as if somehow the regulations are really tying up American business. I intend to come to the floor and bring profit and loss statements and to bring economic analysis.

Where do you go in this world to find better phone service? Where do you go in this world to find better cable? Where do you go in this world to find businesses doing better than American businesses in telecommunications? It may be in fact it is true that our regu-

lations need to be changed. But please let us not come down here and act as if we have these corporations all handcuffed as if they are not making any money, sort of hamstringed and cannot move and cannot reach the customers they want to reach to generate the revenue they are trying to generate.

This piece of legislation will touch roughly half of the U.S. companies in America and every single American household. Citizens who wonder how it is going to affect them need to pay careful attention to the 146 pages of legislation that is before this body today. The law matters. The law determines how people behave. This law governs the behavior of American corporations in nine basic communications industries. If you are a household or a citizen who is affected by the broadcast industry, this legislation affects you because this legislation affects the broadcast industry. If you are a home or a citizen who has cable coming into your household, this affects you. This legislation affects the regulations governing the cable industries of America and the telephone coming into your household.

This 146 pages in S. 652 affects you because this deregulates the telephone industries in America in a very dramatic and I believe generally constructive fashion. If you are a person who goes to the movies, or you are a person who buys CD-ROM's or buys records of any kind, this affects you because it affects Hollywood, and it affects the music recording business. It is written into this law.

If you have a newspaper coming into your household, or you subscribe to magazines or electronic publishing of any kind, it affects you because this legislation affects American publishers as well. If you buy a computer or use a computer in the workplace, it affects you again. If you purchase consumer electronics or are a consumer of wireless services or satellite services, all the nine basic communications industries, all growing relatively rapidly, all affect each and every single American citizen in their homes and in their workplace.

Let no Member of this Senate underestimate the impact of this legislation. We had a great debate over the budget resolution. I know from my own personal experience with that legislation that there was a great deal of concern. Gosh, what if you vote for it, is it going to be a problem? Are people going to get angry with you? There are changes in Medicare, and cuts in programs. Are people going to get unhappy because we finally are asking them to pay the bills of the Government? The answer is probably yes. Probably they are going to get a little bit upset.

This piece of legislation is more dramatic than the budget resolution. This piece of legislation affects Americans far more intimately than that budget resolution. There is not an American citizen that will not be affected by this piece of legislation.

Last night on the floor of the Senate the distinguished Senator from South Dakota said:

The recent hearing process which informed the Commerce Committee and led to the development of S. 652 began in February 1994. In 1994 and 1995, the Commerce Committee held 14 days of hearings on telecommunications reform. The committee heard from 109 witnesses during this process. The overwhelming message we received was that Americans want urgent action to open up our Nation's telecommunications market.

Mr. President, I challenge that statement. I challenge the statement that we can conclude from the hearing process that "Americans want urgent action to open up our Nation's telecommunications market."

Tell me who it was that in a town hall meeting stood up and said, "Senator GREGG, would you go to Congress and make sure you get down there and change the laws to help our telecommunications market?" Where do we have polling data that shows what the people of South Dakota or Nebraska or South Dakota or New Hampshire or elsewhere say about this particular piece of legislation? Were they heard in the hearing procession?

If you look, in fact, at the hearings held on this bill, on January 9, 1995, the committee had their first hearing. They heard from the distinguished majority leader, the Senator from Kansas, Senator DOLE. They heard from the chairman of the House full Committee on Commerce, Congressman BLILEY. They heard from the chairman of the Subcommittee on Telecommunications, JACK FIELDS. That was panel No. 1.

Then on the 2d of March, the committee held another hearing. They heard from Anne Bingaman, who is the Chief of the Antitrust Division at the Department of Justice. They heard from Larry Irving, Assistant Secretary of the National Telecommunications Information Administration in the Department of Commerce, which is being proposed to be abolished, an interesting witness; Kenneth Gordon, representing NARUC, a State regulatory agency. That is panel No. 2 on the 2d of March.

Also, on the 2d of March another panel, Peter Huber, senior fellow from the Manhattan Institute; George Gilder, senior fellow from the Discovery Institute; Clay Whitehead with Clay Whitehead & Associates; Henry Geller from the Markle Foundation; John Mayo, professor at the University of Tennessee; Lee Selwyn, professor of economics and technology.

Then on the 21st of March the committee met again. This is the third hearing on this particular piece of legislation. On that day there were three panels.

Panel No. 1: Decker Anstrom with the National Cable Association; Richard Cutler, Satellite Cable Services; Gerald Hassell, Bank of New York; Roy Neel, U.S. Telephone Association; Bradley Stillman, Consumer Federation of America.

Then the second panel: U. Bertram Ellis, Ellis Communications, Inc.; Edward Fritts, National Association of Broadcasters; Preston Padden, Fox Network; Jim Waterbury of NBC Affiliates.

Panel No. 3: Scott Harris from the FCC, not on behalf of the FCC but his own personal testimony; and Eli Noam, Communications Institute for Teleinformation. That was the third set of hearings.

On the 23d of March, the full committee had their markup, and the bill was reported out 17 to 2.

I would like to put on my glasses and read the small print of some of the things that were said in these hearings. Just again, the idea here is I am respectfully challenging what I think is a very important statement, a very important statement that lots of others are going to make as well; that is, that the overwhelming message we received was that Americans "want urgent action to open up our Nation's telecommunications market." Keep that in mind.

What do the households in your State want? What do the citizens of your State want? What do the people who elected you and sent you here to the U.S. Congress want? What do they want?

Let us see what they wanted as we look at the hearings that were held. They said: First, there were the three Members of Congress.

Senator Dole advocated quick passage of telecommunications legislation. He noted that rural Americans are concerned about telecommunications legislation, as it offers tremendous opportunities for economic growth. He testified that legislation should underscore competition and deregulation, not reregulation.

Chairman Bliley stated that the goals of telecommunications legislation should be to: one, encourage a competitive marketplace; two, not grant special Government privileges; three, return telecommunications policy to Congress; four, create incentives for telecommunications infrastructure investment, including open competition for consumer hardware; and, five, remove regulatory barriers to competition.

Chairman Fields stated telecommunications reform is a key component of the legislative agenda of 104th Congress. He chastised those who speculated that Congress will be unable to pass telecommunications legislation this year. He asserted that the telecommunications industry is in a critical stage of development, and that Congress must provide guidance.

I did not hear any of those three witnesses come and say "Americans want urgent action to open up the telecommunications market." They are talking about American corporations. They are talking about American industry and advising them that they want to do things that they are currently unable to do because the regulations say they are prohibited from doing it. That is what this bill is about, businesses that want to do something that they are currently not allowed to do. That is what it is all about—change in the law. All of these various businesses do something that they cur-

rently cannot do. In many cases, I support it. But I am not getting calls from people at home saying, "Gee, Bob, I hope you are really getting there because we want to make sure that our Nation's telecommunications markets get opened, there is a very urgent need to do it."

Listen to panel No. 1, second hearing:

Anne Bingaman testified that the administration favors legislation that is comprehensive and national in scope, opens the BOC local monopoly, and provides for interconnection at all points.

She claims that local loop competition will bring consumers the same benefits that long distance competition brought consumers when the Justice Department broke up AT&T.

I believe that Anne Bingaman is right, but I caution my colleagues it took 7 or 8 years before the consumers gave you a round of applause. There was a long period of time after 1984 when people, at least in my State, were saying what in the Lord's name is going on here? All of a sudden I cannot get a phone into my house; I have to go to a different provider; I have competition; I have choice. What the heck is going on? What was wrong with what they had? they were saying to me. I said, well, stay with this thing. It is going to work. We are going to open up the long distance market. We are going to have competition. It is going to be good. Trust me. I trust it is going to be good.

And it has worked. It was not coming from home, Mr. President. It was not coming from households and citizens who said, Gee, Governor, would you write a letter to the Justice Department, old Bill Baxter back there, and see if he can get together with AT&T and file a document down in Judge Greene's court because we would really like to see the RBOC's spun off, and all that sort of thing.

It has worked. Anne Bingaman is correct that it worked. But it took years before we understood that citizens began to see the benefits.

Larry Irving agreed that opening telecommunications markets will promote competition, lower prices, and increase consumer choice. He stated that the government must maintain its commitment to universal service. He stated the administration's concern that private negotiations may not be the best way to open the local loop to competition. He also asserted that a date certain for elimination of the MFJ restrictions will hurt efforts to negotiate interconnection agreements with Bell operating companies.

Kenneth Gordon stated the State regulators, including those in Massachusetts, were once a barrier to competition, but are now at the forefront of promoting competition. He said that States must also retain control of universal service.

And he goes on to make some other additional comments.

But these three witnesses are beginning to talk about the consumers. They are beginning to talk about the impact upon the American people. They are beginning to express, particularly the last witness, Larry Irving, they are beginning to express concern

for what happens when deregulation and competition come in. But, again, no overwhelming testimony here. None of them comes in and says we have to do this because the American people are banging down our doors and urging us to do this; no statement that has the overwhelming support of the American people; merely saying that we think it is right to deregulate; we think it will be good to deregulate; we think this will be good for the people.

Now, how many of us understand the 1994 election? A lot of us here have heard people come down to the floor and say it was this, that, and the other thing. I agree with an awful lot of it. Most of us understand one of the things that was going on in 1994, people said we do not think you people in Congress understand. We do not have any power. We are disenfranchised. We do not feel a part of this process.

Mr. President, they have not been a part of this process, in my judgment. This is about power. Corporations should do things they currently cannot do. They are telling us it is going to be good for the American people. They are telling us it is going to be good for consumers. They are telling us it is going to be good for jobs. They are telling us it is going to be good for the people. It is not the people telling us it is going to be good for them, Mr. President.

Then on that same date, on the second panel, Peter Huber noted that a date certain for entry is necessary because the FCC and the Department of Justice are very slow to act. And this is a very important issue. We have to get the witnesses coming in and saying that the FCC is a terrible regulatory body and they are very slow. This is all language to give you the impression that somehow American communications businesses are burdened down by these nasty bureaucrats over at FCC. Peter Huber said he advocated swift enactment of legislation with a date certain for entry into restricted lines of business.

Then George Gilder, the greatest advocate of deregulation of all, also advocated swift congressional action, claiming that telecommunications deregulation could result in a \$2 trillion increase in the net worth of U.S. companies.

He said the U.S. needs an integrated broadband network with no distinction between long haul, short haul, and local service.

Clay Whitehead comes in and says:

Congress should not try to come in and chart the future of the telecommunications industry but should try to enable it. He also advocated a time certain for entry into restricted lines of business.

Then Henry Geller comes in. He agrees with the previous speakers that Congress should act soon.

He said that a time certain approach would work for the "letting in" process, allowing competition in the local loop, as well as the "letting out" process.

Geller advocated that the FCC should allow users of spectrum the flexibility to

provide any service, as long as it does not interfere with other licensees.

John Mayo testified that the spread of competition in other markets over the last decade supports the opening of the local loop. He said that the interLATA telecommunications competition has been a success and Congress should follow the same model for local exchange competition.

Lee Selwyn asserted that there will be no true competition in the local loop unless all participants are required to take similar risks. Selwyn also testified that premature entry by the Bell operating companies into long distance could delay the growth of competition for local service.

I frankly do not know who all these individuals are. I do not know whether they are consultants for one company or another. I suspect that all of them have a fairly defined sense of view, defined either by the companies or encouraged by the companies as a result of previously reached conclusions.

Again, I do not hear individuals coming in and saying, do you know what it is like out in the households today trying to get cable service, trying to keep phone service? Do you know what consumers are saying out there today? Do you know what individuals are saying when all of these entities have downsized over the last 4 or 5 years? Any expression of concern for what technology does to families on the underside of that two-edged sword? Any expression of concern from any of these highfalutin individuals that are paid a lot of money to provide us with their advice about what is going on out there in America?

No, just swift action, by God. Let us get the laws out of the way, get rid of the regulations. Let these companies do whatever they see fit, whatever they decide is best for the bottom line. Whatever they decide is best for the shareowners will in the end be better for their customers.

Then on March 21, Mr. President, three panels come before the committee. This is getting a little lengthy. I do not think I will read every single one of these.

Decker Anstrom, from the cable industry, they support telecommunications legislation because the cable industry is ready to compete.

Roy Neel agreed with Anstrom. He is with the U.S. Telephone Association. He agrees that cable regulation repeal would allow for investments incentive.

Richard Cutler testified that the 1992 Cable Act had a devastating effect on small cable operators.

Bradley Stillman said that the 1992 Cable Act resulted in lower programming and equipment prices for consumers.

Weighing in that in fact the Cable Act of 1992 did work.

Gerald Hassell stated that true competition will only develop if both cable and telephone survive and flourish.

I happen to agree with that. I think if we are to have competition at the local loop, we have got to make sure we have two lines coming in.

One of my problems with this legislation is it allows acquisition of cable in the area by the telephone company.

You folks out there right now in your households, you have a cable line coming in; you have a phone line coming in. You may not have both for long. You may have one line and only one opportunity to choose. That is not my idea of competition.

Panel No. 2.

Bertram Ellis testified that the local ownership restrictions no longer serve the public interest. He said that allowing local multiple ownership will permit new stations to get on the air that would not otherwise be able to survive. He also stated that local marketing agreements—joint venture between broadcasters—

Et cetera, et cetera. Open it all up. Let us get rid of the restrictions. I do not care if they own 50 percent of the market, 100 percent of the market. I do not care who controls. Just let the flow of the cap determine the public interest.

There is no public interest here involved any longer. We do not care who controls the information, who controls the stakes, who controls the radio, the newspaper.

Mr. President, again, as I said at the start, this is about information. It is about communication. And it does matter who controls it. It does matter if we have one single individual controlling a significant portion of the local market, controlling our access to information. It does matter. There is a consumer interest.

I am an advocate of deregulating the telecommunications industry. I do not know that I am, but I may be the only Member of Congress who can stand here and say that I signed a bill in 1986 that deregulated the telecommunications industry in Nebraska, that removed the requirement of them to go to the local public service commission for rate increases because I thought, and believe still, it would free up capital and they were in fact just spending a lot of money on lawyers and not really serving the public's interest requiring the companies to come forward. So I am an advocate of deregulation. But I also believe there are times when we need to declare and protect the public interest. And I do not believe in many cases this piece of legislation does that. I have already heard people come to the floor and say the best regulator is competition.

That is not true, Mr. President. If you want to get goods and services delivered in the most efficient fashion, competition does that. That is true. If you are trying to get goods and services at the highest quality and lowest price, competition is the best way to get the job done.

However, competition is not the best regulator. The only time we should be regulating is when we say we have the public interest in doing this. There is no other way of getting it done. The market is not going to be able to accomplish it. We agree there is going to be cost on businesses to do it. We believe it is a reasonable cost. We measure the cost. We assess the cost. We do

not go blindly and say there is no cost to this deal. We understand the costs going in. But we say the public interest is so great that we believe it is necessary to do that. That is the purpose of regulation. Competition is not the best regulator. It is the best way to get goods and services delivered in a highly efficient fashion. But competition, unless you believe, unless you are prepared to come down to the floor and say American public corporations performing for their shareowners and American CEO's performing for their shareowners, worrying about what the analysts are going to say on Wall Street about the value of their stock, facing a decision of laying off 1,000 people that would improve the value of their stock—and make no mistake about it, analysts love cold blooded CEO's. You read it in the paper all the time.

Some CEO just takes over a company, reduces the force by 20 percent. What do the analysts say? "Buy the stock; this guy is doing the right thing." So they are rewarding the downsizing, they are rewarding the cutting of the employee base.

Does it improve the productivity of the company? Absolutely. Does it make the company more competitive? Absolutely. Make no mistake, it has a devastating impact upon those families, upon those individuals who work for the company.

We do not find, I think, any evidence that CEO's are heartless, but when they are out there trying to perform for their share owners, they are not trying to satisfy some public interest, they are trying to satisfy the interest of people who own shares in their stock.

On that same day, Preston Padden advocated deregulation; Jim Waterbury said retain some ownership rules; on panel three they had Scott Harris testifying on behalf of himself, not the FCC, and Eli Noam, an expert in telecommunications. The two individuals debated a section of our telecommunications law called 310(b), which is foreign ownership. That is enough. That should give people some sense of what went on.

There were three hearings—three hearings, Mr. President. Three hearings that were held, four if you include the statements made by the majority leader, the chairman of the House Commerce Committee, and the chairman of the Subcommittee on Telecommunications. There were three total hearings, and I do not believe that the sum and substance of those hearings justifies the conclusion that the American people overwhelmingly back this particular piece of legislation.

Mr. President, I was on a trip this past week, a trip with the Intelligence Committee on narcotics. We went to Colombia, Peru, and Bolivia. One of the places I went was down in the Amazon River Basin on the Ucayali River. I went to church on Sunday, to mass actually, more appropriately, a Catholic

church in Pucallpa, Peru. It just happened that Sunday was celebration of Pentecost. Being a good Christian man, I go to church regularly, but I must confess, I did not remember all the details of what Pentecost meant. I listened carefully. Just by coincidence, the service, the Pentecost is about communication. The prayer of Pentecost is that we appeal to the Holy Spirit to come and fill our hearts with his love. That is the appeal.

The priest that Sunday said to the congregation that the tongue is the most powerful organ in the human body, that it delivers the word and a word can unite us, it can divide us, it can cause us to love one another, it can cause us to hate one another. The word coming from God can change our life. The word coming from human beings can inform us, change us and can cause us to reach all kinds of conclusions.

That is what this debate is about, Mr. President. You can turn on the news tonight, you can pick up the newspaper in the morning, and you watch and read what is going on. These people have the control over what they are going to put on the air, what they are going to put in the newspaper, what they are going to have in the form of serving up information to you and me. It is about power, Mr. President, power to do what they want to do.

Again, I am not against deregulation, I am not against changing the 1934 Communications Act, but this piece of legislation is being driven by a desire of corporations to do things that they currently are not allowed to do.

I also brought down here this morning some additional things. I do not know if the managers want to speak. I will be glad to yield or keep going and read some things that the press has said about this whole process.

I am not an apologist of the press. Sometimes they get it right, sometimes they get it wrong. Form your own impression. This is people observing this whole process, and this is what they say about it. Let us see if you hear anything about the American people coming here in airplanes and buses and demonstrating out front with placards, "Deregulate the telecommunications industry."

Here is one from Ken Auletta, "Pay Per Views," in the New Yorker, June 5, 1995. Mr. Auletta says:

The hubris was visible at the House Commerce Committee briefings, on January 19th and 20th. Held in the Cannon Office Building, they were closed to the press and to the Democrats. At dinner the first night, Gingrich was the featured speaker, and he took the occasion to attack the media as too negative and too biased, and even unethical. After the speech, Time-Warner's CEO, Gerald Levin, rose and gently rebuked Gingrich for being too general in his remarks. Surely Gingrich did not mean to tar all journalists with the same brush—to lump, say, Time in with the more sensationalist tabloid press? "I hope you don't mean all of us," Levin concluded. "Yes, I do," Gingrich is reported to have replied. "Time is killing us." And, according to several accounts, he went on to say that he had been particularly incensed

by Time's account of his mother's interview with Connie Chung, of CBS . . .

[O]thers found it chilling that the Speaker would press the CEO's to have their journalistic troops hold their fire. "We're at greater risk now of that kind of pressure having an impact."

The interviewee went on to say:

"Traditionally, there has been a separation between news and corporate functions. Given the consolidation, you may have more instances where the top business executives, who have many corporate policy objectives, may find it tempting to impose control over their news divisions to advance corporate objectives." . . .

Another observation is from "The Mass-Media Gold Rush," Christian Science Monitor, Jerry Landay, reporting June 2, 1995:

The players are limited to the cash-rich: The regional phone companies, networks and cable companies, and conglomerates such as Time-Warner. Smaller ownership groups, such as local television stations, are distressed. They expect the balance of power to swing to the cash-rich networks, which will gobble up many of them . . .

It goes on to say:

To influence the House legislation, legions of lobbyists swept across Capitol hill, with bags of campaign cash. Over the past 2 years the communications industry has handed out some \$13 million. Republican lawmakers literally invited industry executives to tell them what they wanted. They're getting most of it.

The next one is from Congressional Quarterly Weekly. The headline is: "GOP Dealing Wins the Votes for Deregulatory Bill."

After doling out legislative plums to broadcasters, phone companies and carriers, top Republicans on the House Commerce Committee won bipartisan backing for a bill to promote competition and deregulation in the telecommunications industry. The committee's leaders—Chairman Thomas J. Bliley, Jr., R-VA, and Telecommunications and Finance Subcommittee Chairman Jack Fields, R-Texas—engaged in a lengthy give-and-take with committee members and telephone company lobbyists over the bill's rules for competition in local and long-distance phone markets. . . .

The intra-industry horse trading left consumer advocates feeling frustrated and ignored on the sidelines. . . . The biggest winners at the markup were broadcast networks, media conglomerates and cable companies.

The next one is from the New York Times, Edmund L. Andrews. Headline: "House Panel Acts to Loosen Limits on Media Industry." Dateline, May 26, 1995:

Rolling over the protests of several Democrats, the House Commerce Committee voted today to kill most cable television price regulation and lift scores of restrictions on the number of television, radio and other media properties a single company may own. . . .

ABC, NBC and CBS and other large broadcasters like the Westinghouse Electric Company, the Tribune Company and Ronald O. Perelman's New World Communications Group all lobbied for sharply increasing the number of television and radio stations a company could own nationwide. . . .

But industry lobbyists have seldom met more receptive lawmakers. Committee Republicans have held numerous meetings with industry executives since January, some be-

hind closed doors, at which they implored companies to offer as many suggestions as possible about the ways Congress could help them.

Next, an article that appeared in the Washington Post, a longer article that I will take pieces from, written by Mr. Mike Mills on the 23d of April, 1995:

The Bells—the folks who bring you local phone service—like to play political hardball, and they have been remarkably successful at it. This year, the Bells stand a very good chance of winning most of the prize they've sought for the last decade: Freedom from U.S. District Judge Harold H. Greene. . . . If they get what they want, the Bells can claim a place among history's most powerful Capitol Hill lobbyists, ranking them with the oil industries of the 1970's and the steel trusts of the turn of the century. . . .

All that lobbying costs money. According to the Federal Communications Commission, the Bells' individual phone companies spent \$64 million on State and Federal lobbying expenses in 1993 and \$41 million in 1992. Bell lobbyists themselves say their annual budget for influencing Congress has been \$20 million a year in recent years, but has dropped to half of that this year. . . .

It goes on and on:

"Right now, the doors to the candy stores are wide open," said Brian Moir, who heads a coalition of business telephone users fighting the Bells.

These are the customers, Mr. President, make no mistake about it. These business users are the customers. These are not the companies providing the service. These are people using the service. This man says, ". . . the doors to the candy store are wide open."

It continues:

The Bells figure, "Why focus on one thing? Just go in with a frontloader." They're covering the waterfront. And why not? Moir estimates that if States' regulatory powers are limited, the Pressler bill will raise the typical Bell residential telephone bill by \$3 to \$6 a month. For the companies, that would raise it at least \$24 billion over 4 years.

An editorial in the Baltimore Sun called "Communicating Again," April 3, 1995:

Still, there are hundreds of billions of dollars at stake, and the lobbying is as fierce as Washington has seen in many years. Though the rivals like to make their cases in terms of what's best for the consumer, the quarrel is really over who gets a head start in capturing market share.

No one can deny that that is true.

Edmund L. Andrews, "Big guns lobby for long-distance; insiders are trying to influence bill," Raleigh News & Observer, March 28, 1995:

With so much at stake, and so little to pin on labels of right and wrong, the various factions are seeking a personal edge by throwing into the fray as many people with friends in high places as possible. All of which made telecommunications as much of a bonanza for lobbyists this year as health care was last year. "Everybody in this town who has a pulse has been hired by the long-distance coalition or the Bell operating companies," said Michael Oxley, R-Ohio, a member of the Commerce Committee. "It's just amazing. . . ."

Michael Ross with the Pittsburgh Post-Gazette, January 20, 1995. Headline: "Gingrich Defends Book Deal;

GOP Beats Murdoch." I am sorry I brought in all this. This article is talking about this bill:

Besides Murdoch, there were 10 other executives at the Capitol session, including Thomas Murphy of Capital Cities/ABC; Robert Wright, NBC; Howard Stringer, CBS; Bill Korn of Group W; and John Curley of Gannett. Gingrich was to address a private dinner last night for the communications firm chiefs in the Cannon House Office Building. . . .

Gingrich said the meeting yesterday was closed because "we want their advice on how the United States can be the most competitive country in the world, and we would just as soon not have them give advice with the Japanese and Europeans listening."

I do not believe it is the Japanese and the Europeans they were trying to keep out.

GOP organizers sought to keep the meeting secret, excluding notice of the events from the official daily calendar. But word leaked out from the executives, prompting protests from consumer advocates and from the committee's former Democratic chairman, Rep. John Dingell of Michigan, now the ranking minority member.

The last one is a piece that appeared in the Washington Post, again Mike Mills:

Consumer advocates yesterday protested plans by House Republicans to hold 2 days of private meetings with top communications executives that will feature a dinner with House Speaker Newt Gingrich. . . .

Media will not be present so Members and chief executive officers of various companies. . . . have honest and informative discussions."

Boy, if that is not a keyword to telling you to hang on to your billfold I have not heard one.

"What policies can the Congress promote or repeal that would help your company to be more competitive and successful domestically?" the letter asked. "And, second, what obstacles does your company face when trying to do business abroad?"

I do not mind in general saying to any company in America, is there anything we are doing we should not be doing, anything we are doing with regulations or rules that do not make any sense at all? Lord knows, we have lots of things we do to small business and big business alike that add no value at all to the public interest, that you really cannot defend it all, have been around a long time, and you scratch your head trying to figure out why they are even there.

But that is not this invitation. This does not say after you established what the public interest is, is there anything here you would like to get out of the way that makes no sense at all; is there any nonsensical regulation? This did not add any qualifier in the public interest.

This merely says is there anything out there adding cost to your business that you would like to get rid of? It would be like me saying, "I would like to drive about 90 miles an hour, would that be OK? Can you get the law of Nebraska to let me drive my automobile 90 miles an hour? I find that a major inconvenience. I like to drive fast. Why

don't you have a meeting and ask people driving automobiles what they think about that? Maybe we can change the rules and regulations to accommodate them as well."

Mr. President, I will wrap this up by quoting from an article, I believe it was David Sanger of the New York Times. The article describes the conflict between the United States of America and the Japanese over automobiles. It was assessing the impact of, I think, the correct decision by the Trade Representative to say to the Japanese, "It is time to open up your market and let our parts, in particular, be sold and loosen the restrictions so we can begin to sell automobiles in Japan." It was trying to measure the impact. It interviewed a man who was the trade minister from Indonesia, I believe.

You know, we are worried about Japan and the United States. They are the big ones. They are the big elephants in this jungle. And they have a saying in Asia. They say that when the elephants fight, the grass gets trampled. But even worse, they said, is when the elephants make love. That is what we have here, Mr. President. We have a real lovefest going on.

Corporations have basically all signed off on this deal. They have had the opportunity to look at the language. They have had the opportunity to examine the details, and they are saying it looks pretty good to them. I say it is time for us to come to the floor to debate this. I hope we are, in fact, able to enact legislation. I intend and expect to support it. I cannot support it in its current form, but I want the American consumer to be heard on the floor of the Senate. I want the interests of American households to be considered and the interests of the average American citizen to be considered when this piece of legislation, which is important, is being debated.

I yield the floor.

Mr. DORGAN. What is the pending business?

The PRESIDING OFFICER. The pending measure is amendment No. 1258 offered by the managers of the bill.

Mr. DORGAN. This is the managers' amendment.

The PRESIDING OFFICER. Is there further debate on that amendment?

Mr. HOLLINGS. We can go right ahead with the Senator's amendment.

Mr. PRESSLER. If it has not been laid aside, and if it is proper at this point, we will lay that amendment aside so that the Senator from North Dakota can offer his amendment.

I ask unanimous consent that the managers' amendment be laid aside.

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

The Senator from North Dakota is recognized.

AMENDMENT NO. 1259

(Purpose: To require certain criteria upon the designation of an additional Essential Telecommunications Carrier)

Mr. DORGAN. Mr. President, I send an amendment to the desk and ask for its immediate consideration.

The PRESIDING OFFICER (Mr. KYL). The clerk will report.

The legislative clerk read as follows:

The Senator from North Dakota [Mr. DORGAN] proposes an amendment numbered 1259.

The amendment is as follows:

On line 24 of page 44, strike the word "may" and insert in lieu thereof "shall".

Mr. DORGAN. Mr. President, in the telecommunications bill there is a provision with respect to universal service that describes certain conditions in which the State designates additional essential telecommunications carriers that may impose certain requirements. I think it is sufficiently important to say the State shall impose those requirements. I would like to explain why this is important to me and why I think it is important to rural America.

Before I do, let me comment on a couple of broader points about this legislation. Clearly, there would never be a circumstance where legislation affecting the telecommunications industry would be moving through the Congress without their being an intense interest by the telecommunications industry. The fact is that without congressional involvement in trying to set some new rules for competition, the industry itself is out creating the rules.

That is why universal service legislation is necessary. We must establish some guidelines about where we move in the future and what is in the public interest as we do that.

I come from a rural State. I know there are a lot of people in this Chamber who worship at the altar of competition and the free market. That is wonderful. But, I have seen deregulation. I have seen the mania for deregulation that does preserve for some people in this country wonderful new opportunities of choice and lower prices: Example: Airline deregulation. There was a move in this country and in these Chambers for airline deregulation, saying this will be the nirvana. If we get airline deregulation, Americans are going to be better served with more choices, more flights, lower prices, better service.

Well, that is fine. That has happened for some Americans but not for all Americans. Deregulation in the airline industry has had an enormously important impact if you live in Chicago or Los Angeles. If you want to fly from Chicago to Los Angeles you check the official airline guide and find out what flights are offered. You have a broad range of choices, a vast array of carriers competing in a market that is densely populated, where they have an opportunity to make big money. In this market, there is intense competition for the consumers dollar in both choice and price.

But I bet if you go to the rural regions of Nebraska, and I know if you go

to the rural regions of North Dakota and ask consumers, what has airline deregulation done to their lives, they will not give you a similar story. They will not tell you that airline deregulation has been good, providing more choices and lower fares. That has not been the case.

In fact, airline deregulation has largely, in my judgment, hurt consumers in rural America. We have fewer choices at higher prices as a result of deregulation.

For that reason, when we talk about deregulation and setting the forces of competition loose in order to better serve consumers, we need to understand how it works. Competition works in some cases to an advantage of certain consumers. In other cases, it does not.

That is why when the telecommunications legislation was crafted I was very concerned about something called the universal service fund. For those who don't know, I want to explain what the universal service fund is.

It probably stands to reason that it is presumably less expensive to put telephone service into New York City when you spread the fixed costs of the telephone service over millions of telephone instruments; less expensive to do it there than to go into a small town of 300 people that is 50 to 100 miles from the nearest population center. How will you decide how to spread the fixed costs of telephone service over 300 people? The fact is, you have a higher cost of telephone service in rural areas of our country.

We have always understood, however, that a telephone in Grenora, ND, is just as important as a telephone in New York City, because if you don't have the telephone in Grenora, the person in New York City cannot call them, and vice versa.

The universal service nature of communications is critical. The presence of one telephone instrument makes the other telephone instrument, no matter where it is in this country, more valuable.

That is why we have, as a country, decided that an objective of universal service makes good sense. We have generally tried to move in that direction to see that we use a universal service fund to even out the costs and the price to the consumer.

Therefore, even in the higher cost areas, the lower populated, more rural areas, we are able to bring the cost down to the consumer with a universal service fund by moving money into those areas to try to help keep prices down for the consumer. Therefore, consumers will be able to afford this service and we will have a more universal nature of that service.

Well, in this legislation, Mr. President, we understood that there will be substantial competition in many areas of telecommunications. Take my home county of Hettinger County, ND, a very small county, several thousand people, about three towns, the largest of which

is 1,200 or 1,400 people, no one will be rushing in to provide local telephone service in Hettinger County.

This is not a case where you fire the gun and at the starting line you have eight contestants lined up to find out who can win the commercial battle to serve the telephone needs of that small rural county. You might, however, have someone decide to come in and serve one little town in that county, because maybe it would be worthwhile to serve that little town, but only that town.

If they bring telephone needs to that town and take the business away from the existing service carrier, the rest of the services would be far too expensive and the whole system collapses.

For that reason, in this legislation we described a condition in which, if someone comes in and decides to serve in one of those areas, one of the conditions is that they would have to serve the entire area. They would be required to serve the entire area as a condition of receiving these support payments from the universal service fund.

Then the bill also said that in designating an additional essential telecommunications carrier to come in and compete in a rural area, aside from requiring they have to serve the entire area, they cannot come in and cherry-pick and pick one little piece out.

Aside from that, the bill said that the States may require there be a designation; that the designation would be: First, in the public interest; second, encourage development of advanced telecommunications services, and third, protect public safety and welfare.

My universal service amendment very simply says that provision of law shall be changed from "may" to "shall." In other words, the States shall require that there be a demonstration of those three approaches.

I think it is very important that those who live in rural America, who are not going to bear the benefit of the fruits of competition, are given protection.

That is the purpose of my offering a universal service amendment. This amendment is supported by the National Telephone Cooperative Association, National Rural Telecom Association, the USTA, Organization for Protection and Advancement of Small Telephone Companies.

They understand, like I understand, that the chant of competition is not a chant that will be heard in the rural reaches of our country. We are simply not going to see company after company line up to compete for local service in many rural areas.

If that does not happen, and it will not, we need to make certain that the kind of telephone service that exists in rural counties will be the kind of telephone service that brings them the same opportunity as others in the country will be provided.

We should make sure that we have a buildout of the infrastructure, so this

information highway has on ramps and off ramps—yes, even in rural counties of our country.

If we, in the end of this process, finish the building out of an infrastructure in telecommunications by having a continued, incessant wave of mergers and consolidations into behemoth companies that are trying to fight to serve where the dollars are, big population centers, affluent neighborhoods, but decide to leave the rural areas of the country without the build-out of the infrastructure and without the opportunities that they should have, we will, in my judgment, have failed.

Mr. President, while I am on my feet I would like to comment on a couple of other points in this legislation. I supported the legislation coming out of the Commerce Committee and indicated then that I had some difficulties with several provisions in it.

One concern I have deals with the provision in the legislation on the subject of ownership restrictions.

It is interesting that we have in this bill the inertia to try to provide more competition, and then we, in this attempt to say to those who want to own more and more television stations, yes, we will lift the barrier here, we will change the rules so that you can come in and consolidate and buy and own more television stations.

That does not make sense to me. That is moving in the opposite direction. The telecommunications bill is about competition. I do not think we should say it is fine with us if one group or consortium decides to buy more and more television stations and we lift the ownership limit from 25 to 30 percent—some say to 50 percent—of the audience share. I think that flies exactly in the opposite direction of competition.

Consolidation is the opposite of competition. I intend to offer an amendment on this and hope we will preserve the opportunity to decide what is in the public interest with the Federal Communications Commission. Instead of having an artificial judgment in this bill that says let us lift the restrictions and allow people to come in and buy more and more television stations into some sort of ownership group. I do not think that comports at all with the notion of competition. I am going to offer an amendment on that at some point.

I would like to talk also about the issue of the role of the Justice Department. I know Senator STROM THURMOND and others are interested in this subject. I intend to offer an amendment on the subject of the role of the Justice Department in this bill. The question of when the regional Bell Companies are free to engage in competition for long distance relates to when there is competition in the local service area, in the local exchange. When will the Bell Service Companies open themselves to local competition? When they do, when there is true local competition, then they have a right

and ought to be able to compete in the long distance markets.

The problem is that in the telecommunications bill, the role of the Justice Department—which ought to be the location of where the judgments about whether or not there is competition in the local exchanges—is rendered a consultative role. The Justice Department is defanged here, and I do not think that ought to be the role of the Justice Department. Again, I think this flies in the face of all of the discussions I heard about the virtues of competition. If we are talking about competition being virtuous, then let us make sure competition exists before we release the Bell Companies to engage in competition with the long distance industry.

How do you best determine competition exists? With the mechanism we have always used to determine it. The antitrust judgments and evaluations by the Justice Department. It does no service, in my judgment, to the American people to decide to take out the traditional role of the Justice Department in preserving and protecting the interests of competition with respect to this issue when the Bell Companies will be set loose to engage in competition in the long distance business. So I also intend to offer an amendment on that issue. That is a critically important issue.

In conclusion, I think there is much in the telecommunications bill that is useful, valuable and will provide guidance to the direction of the telecommunications industry and its service to the American people, but this legislation is not perfect. This legislation has some problems. I pointed that out when I supported it out of the Commerce Committee.

I have a great friend on the floor, Senator HOLLINGS, the ranking member on the Commerce Committee, who I think is one of the best on telecommunications issues. I have been pleased to work with Senator PRESSLER, who I think has done a remarkable job in bringing this bill to the floor as well. But let us not say, "Now, gee, this bill came from high on stone tablets and cannot be changed. We cannot accept any changes here." I think universal service is one amendment we can accept, but there are going to be some big changes proposed, some of which will have merit.

You can say, "This bill is carefully balanced on the scale. We read the meter with expertise and just cannot make changes." It is like the argument of a loose thread on a \$20 suit. You pull the thread and the arms fall off. We have people coming here and saying if this amendment is agreed to, the coalition breaks apart, the balance of the bill somehow is skewed, and the bill will fail.

We must, in the intervening days as we debate this legislation, take a hard look at a whole range of issues. The Justice Department role, yes. I have not mentioned the foreign ownership

issue, but that is also of concern to me. The concentration of ownership in this country of television stations, as an example. Those are all issues I think are of great concern and we ought to weigh carefully.

I hope the Chair and the ranking member on this legislation will entertain constructive and useful proposals to strengthen and improve this legislation in the public interest of this country.

Mr. President, I have sent the amendment to the desk. I believe this amendment may be acceptable. In any event, at this point, I yield the floor.

The PRESIDING OFFICER. The Senator from South Carolina.

Mr. HOLLINGS. Right to the point, Mr. President, the distinguished Senator from North Dakota has a good amendment. I should make a couple of comments, though, with reference to his references and those of my friend, the distinguished Senator from Nebraska, who has been very participatory, and a cosponsor of the legislative reform in communications reform.

With respect to the general picture here on communications, the Senator from North Dakota is right. We do think this is balanced, that it cannot be balanced any more, that this bill did come down from on high and we are not going to accept any amendments.

That is out of the whole cloth. I learned long ago I could not pass a communications bill by itself, that the Democrats could not pass a communications bill by itself and the Republicans could not pass a communications bill by itself. We really have to work this out in a bipartisan fashion. Senator PRESSLER has given us the necessary leadership and I am committed to working with him in a bipartisan fashion. That maybe I have created an atmosphere where there will be no amendments and we know it, the opposite is the case. We are begging Senators to come, as we begged the Senator from North Dakota to hasten on and present that amendment.

A word should be said about the industry and the service that we have because comments have been made about all of these entities involved, and there are 30-some. People should understand. We have the long distance industry, the cable industry, the wireless cable, the regional Bell Operating Companies, the independent telephone companies, the rural telephone companies, newspaper industry, electronic publishing industry, the satellite industry, the disabled groups, the broadcast industry, electric utilities, computer industry, consumer groups, burglar alarm industry, telemassage industry, pay phone industry, directory publishing industry, software industry, manufacturers, retail manufacturers, direct broadcast satellite industry, cellular industry, PCS, States, public service committees, commissions, the cities, the Federal Communications Commission, the Clinton administration, the

Department of Justice, the Secretary of Education—all the public entities.

Communications is a very splendid thing. With respect to not wanting to open up all the markets, I had a good friend who took a poll with what you call a peer review group, testing thing, what do they call that thing when they get them all together?

Mr. DORGAN. A focus group.

Mr. HOLLINGS. A focus group. Thank you, Senator.

They had a focus group in Maryland last week and 90 percent of them have never heard of the Contract With America. That is all I heard about since January. In fact, it started in November, I think. But they still had not heard of the contract. You can bet your boots the Senator from Nebraska is right; people are not storming the doors for a communications bill. In fact, with all of these entities calling on the Senators and having to make up their minds, yes or no, the Senators from the South say let that communications bill go, let us not call it up now, let us delay it, we did last year because there are so many tough decisions to be made. But on the information superhighway, Congress and Government are squatting right in the middle of the road and the technology is rushing past it.

The information superhighway is there. We have been a hindrance, obstacle to it, and what we are trying in this balanced approach and bipartisan approach is to remove the obstacle of Government, with the view of the Senator from North Dakota that universal service continue. He is right on target. I have been very much concerned having experienced the airline deregulation. So we want to make certain that they can come in and render this service. In that light, our communications system has been the best in the world. Yes. The Bell Operating Companies, because these parties are so competitive—I have not necessarily been in love with either side because it is hard—they are really individually competitive. But after all, AT&T, long distance, has to file tariffs. They are controlled by the public, and operate in the interest of the public convenience and necessity. Every one of the Bell Companies have to respond, not just to the FCC but to the individual public service commissions. They operate on the basis of public convenience and necessity. They have a monopoly, yes, but their profits are controlled, and everything else.

If there is anything operating as a large corporate entity in the interest of the public, it has been the Bell Operating Companies. They have been most responsive. We have as a result the finest communications system in the world. Let us maintain it. On universal service, let us extend it. Let us not be in any way doubtful about it because the lead-in word that goes into this particular requirement about another universal service carrier is "shall."

The language reads, "If the commission with respect to interstate services designates more than one common carrier as an essential telecommunications carrier, such carrier shall meet"—"shall" meet. That is the law as we now propose it. But later on we say the State "may" check off these things that are highly important. The truth is they "shall." And I hope we can accept the amendment of the Senator from North Dakota and show that we did not think the bill came down from on high.

Let us hear from the chairman.

Mr. PRESSLER. Mr. President, we accept the amendment of the Senator from North Dakota on this side of the aisle. I want to commend him for his work on this subject. He is a friend of mine, and an outstanding leader in this area. Let me say that this subject of serving the smaller cities and rural areas is very important. I have spoken frequently on that in our committee.

We are prepared to accept this amendment. We urge other Senators with amendments to bring them to the floor. We are ready to go here on the floor.

Mr. STEVENS. Mr. President, will the Senator yield at that point?

Mr. PRESSLER. Yes.

The PRESIDING OFFICER. The Senator from Alaska.

Mr. STEVENS. Mr. President, I know that the Senator represents areas similar to mine, the author of the amendment. I know that he wants the States to have powers and to change the word "may" to "shall," as a mandate to the State. What worries me about the Senator's amendment is not that it is saying that the States shall require a finding by the authorized agency, but that States may require additional considerations to be met. The word "may" in this bill right now gives the State the authority to determine what findings shall be made by its designated agency. By turning this to "shall" I wonder if we are limiting the States' discretion in terms of the findings that shall be made by a designated agency before it permits an additional carrier.

Mr. President, I do not want to argue it now. I agree with the manager of the bill to take the amendment. But I do want the Senator to know, my good friend, Senator DORGAN, that I want to look at this in conference. I believe this section is going to have to be revised in conference anyway. It is in a different form than the House bill, as I understand it. But I do think that we should not mandate States as to what their findings must be before they can deal with additional carriers. I believe that smaller States in particular would prefer to have more flexibility.

I am just wondering out loud if the Senator's amendment is fixing this so that the State has no alternative once it makes those findings to permit the additional carrier, and what the impact of the Federal law will have on the State should the State legislature attempt to state that its agency must

make additional or alternative findings in this regard.

Again, I conferred with the managers of the bill. I think we understand where the Senator is coming from. We want the States to have authority. But I really think he is confining the authority by changing it to "shall." But I do believe the States might want to—any State—might want to have other standards other than those stated in this bill. I wonder if the Senator might have us look at that.

Mr. DORGAN. If I might respond, I too respect the point raised by the Senator from Alaska. My intention would not be to prohibit States from adding additional requirements. My intention is that this would represent a set of requirements at a minimum that we should expect to be met. But to the extent a State would wish to add additional requirements, I do not believe that would be prohibited with this language. This language establishes the minimum requirements that must be met. That is the purpose of the universal service amendment.

Mr. STEVENS. Mr. President, as I stated, I am not going to ask for a roll-call vote. I am not going to object to the change. But I do think that when we get to conference we are going to have to figure out how we give States greater flexibility. I do not think we ought to have a mandate that indicates that the States must find Federal requirements are met before it can designate an additional essential telecommunications carrier, in that it cannot add any additional State requirements, or it cannot reduce these designated findings and substitute others that might be more applicable to its situation with regard to size and competition and whatever else that might be involved.

It does seem to me that we ought to be very careful about delineating to a State what findings it must make with regard to the designation of common carriers as essential telecommunications carriers. We are basically talking about the findings that are necessary to deal with universal service. The concept of that was really borrowed from the essential air service approach, and the way it is done actually, as I pointed out to the Senator from Nebraska last night, reduces the costs of universal service about \$3 billion a year. Those services are provided by those who are users of this national system. This allows the States to designate additional carriers. I would not want the restrictions that are applied in this bill to lead to a lack of flexibility as far as the States are concerned to designate additional carriers in circumstances which might be unique.

I could go on at length about some of our unique situations. I do think we ought to have flexibility for the State to manage it, provided that we understand that the impact of the multiple essential carriers is going to be that there be a change in the concept of universal service.

The Senator's amendment deals with universal service concepts as modified in this bill, and I would like to see the States have as much flexibility as possible, keeping in mind that there is a built-in limitation in the Senator's amendment that will reduce the availability of universal service in rural States.

I hope that the Senator understands what I am trying to say. I agree to accept the amendment, but I do think we have to find some way as we go further to say that this does not prevent the State from modifying these findings in the event its legislature determines that other standards are more adaptable to its circumstances with regard to the providing of universal service within its boundaries.

Mr. DORGAN. If the Senator will yield for one additional point, Mr. President, I understand what the Senator is saying, and I do not want to prevent anything being done to respond to peculiar or unique circumstances or when a State determines that something else might be necessary with respect to these kinds of requirements. It is not my intention to interrupt or to prevent that.

I do think, however, when we are talking about the use of the universal service fund, the requirement that this result in the build-out of the telecommunications infrastructure even to rural areas, boy, I think that ought to be a national requirement.

Those of us who come from rural areas want to say if you are going to certify a new essential telecommunications area in an area that would be eligible for universal service funds, we want that certification to be based on a couple of themes that they think are important, one of which is this ought to result in the build-out of the infrastructure in rural areas. We know that build-out will occur in urban areas because that is where the money is, and we are just saying we want that same opportunity to exist in rural areas.

But I am not suggesting that these three tests be limited. I think that States may well find they have unique circumstances and want to add additional tests or additional requirements, and I do not in any way want to prevent that. So I will look forward to working with the Senator from Alaska as we go to conference on this legislation.

Mr. STEVENS addressed the Chair.

The PRESIDING OFFICER. The Senator from Alaska.

Mr. STEVENS. I tried to go into this a little bit last night, and I do not know whether this is the time now, but I just point out to my friend that the April issue of the bulletin known as Personal Communications contains an article that mentions Donald Cox, who is the former Bellcore wireless leader who is now at Stanford. He has calculated that digital-based station technologies will lower capital costs for wireless customers to \$14 compared to the current cellular cost of \$5,555.

What it really means is we have the possibility of moving into a new domain as far as digital radio is concerned that will deal with telecommunications competing with telephone companies. One of the things in this amendment is that we will now require that the State must find that there will not be a significant adverse impact on users of telecommunications services or on the provisions of universal service.

I question whether at the time of the transition into these new technologies a State should have to make findings that are based upon the use of the old technology. That is one of the problems. If you lock a State into findings, I think you may hamper the transition to less costly services and, of course, that is where I am coming from. That is why I support this bill. I think it will lower the cost ultimately of service to rural areas by bringing in additional providers of service. It should not be tied to the old wire services that we have relied upon in the past.

Mr. President, I do not have any opposition to the suggestion that we adopt the Senator's amendment, but I do want to serve notice that in conference, I may wish, because of the amendment, to modify the whole section.

Mr. KERREY addressed the Chair.

The PRESIDING OFFICER (Mrs. HUTCHISON). The Senator from Nebraska.

Mr. KERREY. Madam President, I have no objections to this amendment. I would like to point out, the distinguished Senator from North Dakota, as well as the chairman and ranking member and the distinguished Senator from Alaska and others, worked very hard to try to craft this particular title and this particular section of title I so as to make certain that areas that are not likely to benefit from competition will continue to be served with the same high quality service that they are currently receiving.

This particular provision is a recognition, and I think most do recognize, that competition all by itself will not work and that we do have to allow competition to determine many things. But this particular section I think has been very carefully put together, and it indicates how an essential carrier is designated. It describes the obligations of that particular carrier. It describes how we set up a multiple essential carrier. It describes resale enforcement and interchange of principles.

Madam President, earlier when I made a statement, my staff tells me that I made a mistake at the beginning. If I did, I apologize. I was pulling a quote from the chairman, and I do not know if I said Senator HOLLINGS or Senator PRESSLER, but it was the chairman's quote last night, and I do not again mean to be intentionally confrontational when I say that statement that says, "The overwhelming message we received was that Americans want urgent action to open up our

Nation's telecommunications markets," what we are doing, in fact, is what the distinguished Senator from North Dakota described and the Senator from South Carolina, Senator HOLLINGS, described as well. We are trying, with this law, to work our way into a competitive environment and create a structure that will enable competition to occur in a fashion that is minimally disruptive, but it will be disruptive.

Title I describes not just the transition to competition in the universal service, but it lays out all the various interconnection requirements. It describes separate subsidiary safeguard requirements. That is a structure that is offered as a protection. I believe the Senator from South Carolina in particular has been concerned about that. It describes foreign investment and ownership reform, and infrastructure sharing. Title I describes the removal of restrictions to competition, describes how that is going to occur, how we remove entry barriers.

There is limitation on local and State taxation of satellite services. I might point out that for those concerned about putting a mandate upon the State, indeed, we are intervening with the State regulatory mechanism. This legislation intervenes and says—and I know the Senator from Alaska understands that we are intervening, and we are saying you cannot do rate-based rate of return regulation; you are going to go to price caps. You have a range of motion under price caps.

But we all need to understand what price caps do. It essentially moves us in a direction where the market will determine what the price is going to be. It is a much different kind of regulatory scheme than we have right now. There are many States, I guess 10 or so, on a price cap system of regulation. This would take the other 40 along. I do not object to that. I think it is a fair and reasonable thing to do. But it is a relatively dramatic action to come to the State level and say that we are going to require you to regulate in this fashion, and we say there is a limitation on how you can tax your satellite services, and so forth.

Title I, as we remove the restrictions to competition, does lots of other things that I will look forward to describing at a later date.

Madam President, as I said, I do not object at all to the change asked for in this amendment.

Mr. PRESSLER. I urge adoption of the amendment, Madam President.

The PRESIDING OFFICER. Is there further debate on the amendment? If not, the question is on agreeing to the amendment.

So the amendment (No. 1259) was agreed to.

Mr. PRESSLER. Mr. President, I move to reconsider the vote.

Mr. HOLLINGS. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. DORGAN. Mr. President, today the Senate begins consideration of comprehensive telecommunications legislation, S. 652, the Telecommunications Competition and Deregulation Act of 1995. This legislation has been incubating in the Congress for a number of years and throughout the past few years, the Senate has appeared to be on the brink of passing this landmark legislation that would reform which is arguably the most dynamic and fast growing industry in our economy—telecommunications.

The underlying agenda of this legislation is to promote competition in all areas of telecommunications. We already have a competitive long distance industry and there is some competition in cellular service throughout the country. Clearly, telecommunications competition has had a positive impact. Since the AT&T breakup in 1982, competition in the long distance industry has led a reduction in long distance prices and it has spawned the deployment of four nationwide fiber optic networks—the backbone of the information superhighway.

This legislation attempts to promote competition in other areas of telecommunications, such as in the local exchange and in cable. As a general proposition, I support this notion of promoting competition. I think competition will lead to lower prices and greater availability of telecommunications services. However, Congress must proceed in caution as we break down barriers and ease regulation.

First, a one-size-fits-all approach to competition in the local exchange may have destructive implications. In large, high-volume urban markets, competition will certainly be positive. However, in smaller, rural markets, competition may result in high prices and other problems. The fact is that some markets; namely, high-cost rural areas, competition may not serve the public interest. If left to market forces alone, many small rural markets would be left without service.

That is why the protection of universal service is the most important provision in this legislation. S. 652 contains provisions that make it clear that universal service must be maintained and that citizens in rural areas deserve the same benefits and access to high quality telecommunications services as everyone else. This legislation also contains provisions that will ensure that competition in rural areas will be deployed carefully and thoughtfully, ensuring that competition benefits consumers rather than hurts them. Under this legislation, States will retain the authority to control the introduction of competition in rural areas and, with the FCC, retain the responsibility to ensure that competition is promoted in a manner that will advance the availability of high quality telecommunications services in rural areas.

My second concern is that in our drive to deregulate and eliminate barriers, that competition may be impeded. Currently, there are over 500 long-distance carriers that offer service nationwide. Virtually every American has a competitive choice as to what carrier they want to use for long distance services. Long distance rates have reduced by over 40 percent in the past 10 years because of competition. The same choice does not avail itself to consumers with respect to local exchange service.

The second danger we confront in passing this legislation is that we could impede competition where it currently exists. Under S. 652, the regional Bell operating companies [RBOC's] would be permitted to reenter the long distance market. In the early 1980's, the old Bell system was divested because the monopoly in the local exchange seriously impeded competition for long distance services. After nearly 14 years of separation from the long distance market, the RBOC local networks want to compete for long distance services. This legislation will permit that.

The question is not whether or not the RBOC's should be permitted into long distance. The question is under what conditions. Unfortunately, this bill is flawed in that it does not provide for an adequate role for the Justice Department to determine that RBOC entry into long distance services will not harm what is already a successfully competitive market.

I intend to offer an amendment to this legislation that will provide for a role for the Justice Department. It seems to me that given the history of the AT&T breakup and the threat that the local exchange monopolies could use their power to impede competition, the Justice Department must ensure that the appropriate conditions are present before the RBOC's can be permitted to offer long distance services.

In addition, I will offer an amendment that will improve the universal service provisions in the bill. Under the bill as reported by the Senate Commerce Committee, only "essential telecommunications carriers" [ETC's] would be eligible to receive universal service support. The reason is that ETC's would be required to take on the same universal service obligations as the incumbent carriers. I believe that this condition is imperative to ensure that universal service is maintained in rural areas.

However, the bill falls short in ensuring that when a State designates an additional ETC for qualification for universal service support, that the best interests of rural consumers are paramount. Under my amendment, States would be required to ensure that the designation of an additional ETC in a market, that such designation: (a) protects the public interest; (b) promotes the deployment of advanced telecommunications infrastructure; and (c) protects public safety and welfare.

Finally, I have two other amendments that I intend to offer. I intend to offer an amendment that will strike the bill's provisions dealing with the liberalization of broadcast ownership rules and require, instead, the FCC to review and modify broadcast ownership rules on a case-by-case basis. Under my amendment, the FCC would review and modify broadcast ownership rules in such a way as to ensure that broadcasters can compete fairly with other media sources while at the same time protecting localism and diversity of voices in each local market.

Under the bill in its present form, the national television ownership limits would be increased from the current 25 percent viewership cap to 35 percent with permission to increase beyond that amount later. It seems to me that encouraging further concentration in the national media is not a desirable goal and it is my hope that we can correct this provision in this legislation.

Mr. President, the goals of this legislation are laudable. However, I believe that certain changes are necessary and I intend to work with my colleagues to improve the bill and move this important legislation forward.

The PRESIDING OFFICER. The question occurs on the managers' amendment.

Mr. PRESSLER. I move to lay the managers' amendment aside so our friend from Arizona may offer his amendment.

The PRESIDING OFFICER. The Senator from Arizona is recognized.

Mr. McCAIN. Madam President, may I inquire as to the parliamentary situation? The pending business is the managers' package of amendments?

The PRESIDING OFFICER. The managers' amendment has just been laid aside.

Mr. McCAIN. I thank the Chair. Madam President, I will make some comments and remarks concerning this legislation, and then, if the parliamentary situation allows it, I will begin offering amendments.

I note the presence of my colleague from Alaska, who has agreed that we would take up one of my amendments as soon as possible, and I will be as brief as possible. But I am sure my friend from Alaska understands this is a very complex issue and one which probably, in my view, will have more impact on America than any other piece of legislation that we will consider not only this year but for several years.

Some estimates are that health care reform would have as little as one-third the impact financially on America as this legislation does.

There is no doubt that there are tens of billions of dollars at stake. I personally, Madam President, have never seen an issue in my now 9 years as a Member of this body have such intense and continued and high-priced lobbying. We have as head of one lobbying group a former majority leader of the Senate. We have names who are well known to

all of us in Washington. I doubt if there is a single lobbying group inside the beltway that has not had a contract at one time or another to lobby on this issue. All of that is not by accident. In fact, Madam President, it is because the stakes are enormously high here. One phrase, one comma, one or two words in the appropriate place has enormous and significant impact.

So I think this issue should be well debated. I think that there are opposing views as to what this legislation does, but let us not have any doubt about the impact of this legislation on the very future of our Nation. This is all about information and how Americans will acquire that information and how Americans will pay for it and who will be eligible for it and who will not and to what degree we will regulate this industry or deregulate this industry.

I wanted to start out by applauding the efforts of the chairman of the committee, Senator PRESSLER, who has worked on this issue not only as chairman of the committee but for many years. I have had the privilege and opportunity of working with him. He has done an outstanding job. I know of no other committee chairman who has spent as much time on this issue as Chairman PRESSLER has. I am very appreciative of the work he and his staff have done. There are many aspects of this legislation which I think are not only excellent measures but very important ones and will contribute to the deregulation of this industry.

I also would like to recognize the efforts of the distinguished ranking minority member of the committee, Senator HOLLINGS, who also has been involved in this issue for many years. I respect his indepth knowledge of the issue. He and I have had disagreements about the philosophy of regulation or deregulation, but there are no personal differences that we have. I not only respect but admire his advocacy of what he feels is the best type of legislation for us to pursue.

I understand the disappointment that the Senator from South Carolina felt last year when he had worked so very hard for this legislation and had it stymied at the very end of the session.

Before I go into details, Madam President, let me just state my fundamental philosophy and why these amendments that I will be proposing today flow from them. We need to have a deregulated industry. In the past, we have deregulated the airline industry, the trucking industry, the railroad industry in America, and there is very little doubt in my mind that world events, as well as national events, indicate very clearly and very strongly that the free enterprise system, unfettered by Government interference and regulation, not only prospers best but provides the best services for the citizens of any nation, including this one.

The people will come to this floor and argue that the airline industry is

in bad shape, that they have lost billions of dollars, and some of the great names in the airlines industry, like Eastern Airlines and Pan Am, have disappeared from the scene. But the fact is my constituents can fly from one place to another in this country more easily and at a lower cost than they could in 1974 when the airline industry was deregulated.

I will freely admit that I do not ride in the comfort that I used to. In fact, when the four CEO's testified before the Aviation Subcommittee the week before last, I wanted to relate that two mornings previously I had flown from Phoenix, AZ. The airline, which will remain unnamed, advertised a breakfast. And that breakfast turned out to be a banana and a bagel. I think that something has to be changed at least in their description of what breakfast is.

At the same time, I paid far less than I would have in 1974, 21 years ago, for that airline ticket. If I had chosen to, although I would not have, and paid a significant additional amount of money and rode in first class, I probably would have gotten more than a banana and a bagel. But we have deregulated those industries, and we have found that the less regulation and interference that exists in those industries, the better off we are.

Madam President, there are those that will argue this is a deregulatory bill. It is advertised as that. I do not deny that. And I think some aspects are deregulatory in nature. Let me just quote from the report itself, which indicates that there is a \$7 billion increase in revenues that will be required, and a \$1.5 million per-State additional cost will be required to implement this law. And perhaps as compelling as anything else, \$82 million will be required in additional funding for the Federal Communications Commission. "CBO estimates the telecommunications firms would have to pay an additional \$7 billion over the next 5 years to comply with universal service requirements of the bill and believes that these amounts should be included as revenues in the Federal budget." The managers have accounted for that with spectrum auction, is my understanding.

"CBO estimates that enacting S. 652 would increase the spending requirement for the FCC by about \$81 million over the 1996-2000 period."

Madam President, how can you have a bill that is deregulatory that is going to cost us an additional \$81 million over a 5-year period in order to deregulate the industry? I do not think so. In fact, Madam President, there are additional—at least according to this morning's Wall Street Journal, there are 80 new regulatory functions for the FCC, all designed, of course, to ensure fairness and competition. Eighty new regulatory functions for the FCC. And, of course, the most egregious of which, in my view, is the so-called public interest aspect of the bill, which, frankly, places an enormous amount of

power and authority in the hands of the FCC.

Let me make it clear for the RECORD that this legislation is a substantial improvement over S. 1822 from the 103d Congress. With all due respect, I have to say that any legislation that advertises itself as deregulatory and has a requirement for domestic content in it, which, according to the U.S. Trade Representative, was a direct violation of NAFTA and GATT, of course, it is an insult to one's intelligence to call it deregulatory. So at least we got rid of the so-called domestic content aspect of it. And we have made other substantial improvements in this bill.

Let me note that it is an improvement, but it does little in the way of fundamental deregulation. Why is it that every time I talk to someone in this industry—and there are many—they say, "I am in favor of total deregulation, but * * *" There is always a "but." And guess what? They have to have some kind of special dispensation for their industry to make sure that they have a level playing field. Apparently, the only way you get a level playing field is to have some kind of special deal for this or that segment of the industry.

As the Heritage Foundation noted in its report card on S. 652,

Unfortunately, while a modest improvement on current law misses the opportunity to benefit consumers by opening the industry to real competition, if this legislation becomes law, as structured today, consumers will not be able to look forward to serious telecommunications deregulation or competition in the short-term.

The Heritage Foundation graded S. 652, unfortunately, albeit accurately—the bill scored an overall grade of a C-minus. It is my understanding that the managers are offering amendments that will raise that grade somewhat. I applaud their efforts. Senator PACKWOOD and I are also offering amendments which will raise the grade of the bill and will result in substantially better, more deregulatory, more pro-consumer legislation.

As I said before, Madam President, we will have one opportunity this decade to substantially reform the telecommunications industry. I think we are all in agreement that if we do not pass this bill within a relatively short period of time the legislation will probably not be reconsidered until at least 2 years from now. And, of course, we do not want that to happen.

I urge my colleagues to remember that on November 8, the American people demanded a change—less Government and more freedom to innovate and compete. S. 652, like last year's bill, is based on the belief that all the woes of the communication industry could be solved by the glory of increased regulation. History tells us that regulation binds and restricts industry growth and innovation and transfers decisionmaking from entrepreneurs and thus customers to bureaucrats. These regulatory shackles do little to benefit the public.

Madam President, in free markets, less Government usually means more innovation, more entrepreneurial opportunities, more competition, and more benefits for consumers. This point was made exceedingly clear by the Wall Street Journal when it stated on April 8, 1994,

It is truly humorous for politicians to think they can somehow fine-tune or stage-manage the rapidly developing world of advanced technologies that includes emerging financial and corporate structure, entire armies of engineers and software wizards. The people who will actually bring this exciting future to life are put in lead shoes when the FCC and the Congress micromanages.

Madam President, one of the arguments that will be made today by my friend from Alaska is that this is a interim bill, that this is one step on the path toward total deregulation. My response to that is that I would have to be convinced as to where that is needed and why. I note that my friend from South Carolina is smiling at me. I understand that, since we have a fundamental philosophical disagreement. The Senator from South Carolina, I believe, did not support airline deregulation or trucking deregulation, and does not probably support the kind of deregulation that I am in favor of. We have a fundamental philosophical difference in the role of Government and whether the Government should regulate the market or let the free market play. I have heard many times my friend from South Carolina talk and how he laments that there is no longer the direct flights to Charleston, SC. I lament that, too. There is not nearly the comfort or the convenience there used to be. But the fact is—and I have provided the facts many times—that the people of South Carolina can get back and forth from Charleston, and most any other part of South Carolina less expensively and more conveniently than they ever had in the past, under Government deregulation. We used to have, under airline regulation, a special flight that went from here to a certain destination because there was a certain Senator who was a chairman of a committee. That flight used to be mostly empty, but that flight stayed in existence at least as long as that was the case.

It is important to note that without any regulations the television manufacturing industry has managed to achieve a very high penetration rate for televisions in this country, even higher than that of telephones. We must ask the fundamental question: Why do more American homes have TV sets than have telephones? Whatever the answer, the facts demonstrate that an industry can achieve virtual universal penetration without Government-imposed regulation.

Madam President, I want to highlight some of the problems I see with this legislation. First and foremost, it is not deregulatory. According to estimates published by the FCC itself, this bill will require it to take over 60 new regulatory or administrative actions.

This bill also expands the current telecommunications service subsidies scheme. As the Heritage Foundation notes,

Instead of attempting to reform or eliminate this destructive subsidy system, the Pressler bill actually expands its scope. For example, the bill maintains current price controls, continues inefficient rate averaging, and expands the telecommunications entitlements.

The Heritage Foundation continues:

The continuation of the failed subsidy policies of the past, combined with an expanding definition of universal service, mandated under the bill, places at risk almost everything else the bill hopes to accomplish. Once personal computers, online service, set top boxes, and other future technologies become part of a package of mandated benefits, to which every American must have access, it is likely these technologies will be regulated and thus made less competitive. Further, according to CBO, enacting S. 652 would increase spending requirements for the FCC by about \$81 million over the period from 1996 to the year 2000.

I wish the managers would explain to me, how do you deregulate and increase the cost to the enforcing agency of the enforcement of regulations? Is it to help them make a transition? Or is it, in reality, to enforce the additional 80 new regulations that are a part of this bill? I do not think any American would believe that a bill is truly deregulatory if it costs \$81 million, payable to the regulators, to enforce.

On this point, I want to again quote the Heritage Foundation.

The bill does not contain any serious discussion of the future of the Federal Communications Commission. Policymakers appear unconcerned with the role the agency plays in the deregulatory process, and apparently do not realize it was part of the problem they hope to correct.

I am going to—I hope, before we finish this bill—look at what the Federal Communications Commission has done when we have given them a broad charter, such as determining what is in the public interest. I will tell you what the record shows—that is, that they have never really been able to determine what is in the public interest, and if they have, their conclusion has been more regulation.

That is not a criticism of the FCC. That is the nature of bureaucracies, the nature of regulatory bodies when you set them up. How should we expect anything else? That is their business.

The Congress should follow the model established by the congressional Democrats in the Carter administration in the late 1970's when they led the battle to deregulate the airlines. From the start, the future of the Civil Aeronautics Board, which regulated the airline industry, was on the table. It was well understood by most in Congress that deregulating the airlines would mean eliminating the CAB. A few years later, the CAB was abolished.

Just the opposite occurs in this bill. The bill actually expands the ability and policymaking ability of the FCC. As noted by the CBO, as I said, it will cost an additional \$81 million over the next 5 years.

I want to enumerate some of the other problems in this bill. I mentioned it before, and I will mention it again, because it is really a very crucial item. The FCC administered public interest tests, which allowed the FCC to use subjective criteria in determining whether an RBOC can compete in other lines of business. The public interest test gives the FCC policymaking authority. The FCC's authority and power should be lessened, not enhanced. The public interest test allows the FCC to establish policy and control private companies and whole industries. Such ill-defined discretionary power would prevent full competition in the communications industry for years, if not decades. It should be eliminated, or at least amended so that compliance with the competitive checklist is deemed to be in compliance with the public interest test.

The Snowe-Rockefeller public users language in the bill should be stricken. The bill mandates at-cost telecommunication rates for schools, any medical facility, or libraries.

First, in my view, the Congress should not be establishing specific rates for specific groups. Such decisions should be made by the free market or, at a minimum, on the State level.

Second, many political causes that operate out of such entities, such as pro-abortion operations, would be given a federally mandated benefit that others in society would not be able to receive. The provision should be eliminated.

Mr. President, if we are interested in making sure that low-income individuals have access to a telephone, we have a proposal that simply is to provide vouchers for those who need it.

It seems to me that to provide vouchers to those who are low income, Americans who need a telephone service or anything else should be the recipients directly of the ability to purchase that service. When we go through other bureaucracies, other industries, what we do is increase the cost. Obviously, we distort the entire situation.

I intend to offer an amendment that would establish the voucher program in lieu of the urban rural subsidy scheme that currently exists. The current system and that envisioned under S. 652 seeks to ensure that Americans receive telecommunication services at similar rates, by giving the corporations that offer such services a subsidy. Instead of giving subsidies often to well-to-do people, we should be giving the funds directly to the needy consumer. I intend to discuss this issue more fully when I offer the amendment.

Last, we must closely examine the universal service fund mechanism in the bill. I have serious concerns about the potential of this legislation, as drafted, to create a new telecommunications entitlement program.

Furthermore, I am very concerned that the Budget Committee has not dealt sufficiently with the budgetary

impact of this legislation. CBO has stated that the bill contains a Government mandate that will force telecommunications firms to have to pay an additional \$7 billion over the next 5 years to comply with the universal service requirements of the bill. CBO believes that these accounts should be included as revenues in the Federal budget.

Mr. President, the budgetary ramifications of this bill cannot and should not be ignored. As CBO noted, the costs associated with S. 652 fall within the budget function 370. As such, they would increase direct budget authority in function 370 by \$7 billion.

Additionally, proponents claim that the new Federal tax contained in this bill should not be counted on the budget but, instead, be considered off budget, since it is budgetarily neutral. That simply is not correct.

CBO states that receipts generated by this bill would be on budget, and I believe they are correct. Regardless of how the money is used, it should be counted in the budget.

There are those who argue that this bill saves consumers money. I wish that could be proven, but it cannot. In fact, the opposite appears to be true.

First, some have estimated that the current telecommunications subsidy scheme totals \$10 billion, and since this bill streamlines and makes explicit some subsidies, that this bill results in \$3 billion in savings. That is not an accurate statement.

How much money totals in the subsidy scheme is not accurately known. Some state \$10 billion; others claim the number is much closer to \$20 billion.

The reality is that the bulk of all this money is currently controlled by the States and is inherent in the rate scheme. In this bill, we are effectively federalizing \$7 billion of the \$20 billion. Is money saved by such action? I do not know.

I do know that CBO claims that it will cost \$81 million to implement this bill on the Federal level and \$1.25 million per year per State to implement this measure. I do know that the Federal Government does not have an outstanding reputation for efficiency and cost savings.

I also know that it is impossible to estimate the future costs of this legislation. The evolving definition of universal service contained in the bill will allow the FCC to expand service. Any such expansion of service will cost money.

The State of Colorado, for example, by the end of this year, will finally implement a single-party dialing scheme throughout the State. Doing so is good for the people of Colorado. But I will want to note that doing so costs money. It is not done for free.

Additionally, I am very concerned about the future costs of the public user section of this bill. When we subsidize telephone service for all schools, libraries, and medical facilities, there are costs in doing so. Those costs must be borne by someone.

The bill allows the FCC and a Federal-State joint board to determine what services qualify as universal service. These services are what this new Federal telecommunications tax will pay for.

I want to emphasize after this bill passes, the FCC, not the Congress, will be determining how high this new telecommunications tax will rise. Let me repeat this: After this bill is signed into law, the FCC will be determining how much is paid into the universal service fund. That is wrong, and the impacts are staggering.

Additionally, CBO estimates that the cost of the bill to State and local governments will be substantial. The CBO report states:

Implementing the provisions of S. 652 would result in increased costs to most States. The bill would require States to promulgate regulations, direct various audits of Bell companies, and to participate in various joint Federal-State boards.

CBO states, based on information from the National Association of Regulatory Utility Commissioners' estimates, that States will incur costs approaching \$125 million over the next 5-year period.

Again, I ask the question: What kind of deregulatory bill costs the Federal Government extra to implement and the State governments extra money to implement? It does not make sense.

Mr. President, we are moving this bill forward without fully understanding its impact, in my view, on the industry and the economy as a whole, and most importantly, the consumer.

I have been assured, Mr. President, that we will fix many of the bill's problems in conference. I have seen too many things happen in conference behind closed doors. I think there is no time, when special interests have more impact in a conference behind closed doors. I have no confidence that this will be "fixed" in conference.

In closing, Mr. President, I hope we can improve the bill. Deregulation will result in winners and losers in the communications industry. That is the unfortunate reality. But consumers will be the biggest winners. They will have increased options and lower prices.

The bill we pass should result in that goal becoming a reality. If the bill cannot do that, then we should amend it. If that is not possible, we should start again.

Mr. President, this morning in the Wall Street Journal, there is an article called "Locals' Access," and it begins with a quote that says "It's an inside-the-beltway game, a wise guy's game," a quote from Larry Irving, of the Commerce Department.

Mr. President, the article goes on to say:

[From the Wall Street Journal, June 8, 1995]

LOCALS' ACCESS

It's a harsh verdict, but after watching the House Commerce Committee approve a misshapen telecommunications bill, we reluctantly have to agree with Mr. Irving's assessment. The once-grand enterprise of opening

the Information Highway has become a wise guy's game.

The recent committee markup was packed with lobbyists, many of whom paid \$1,000 for their seats by hiring a student to wait in line for three days to reserve a spot. The bill that emerged from this familiar Beltway bog was dripping with new restrictions on competition—all of course in the name of "deregulation." This is what happens when Republicans forget the November election and start behaving like the locals.

The GOP decline on this issue was put in stark relief with the release of a study on telecom deregulation last week by the Progress & Freedom Foundation. The report, prepared by a distinguished group of scholars and welcomed by Speaker Newt Gingrich, sets a truly radical agenda: Abolish the FCC and replace it with a smaller executive branch agency. Get rid of the current regulatory hodgepodge, leaving in place only the Justice Department's antitrust functions. Get the government out of the spectrum business by creating "property rights" on the I-Way. Shrink subsidies for the officially protected groups down to the smallest possible level.

This vision, which combines Republican principles with the realities of the 21st century marketplace, is what the GOP should be doing—but isn't. Oh sure, Congressman Jack Fields and Senator Larry Pressler—the chief architects of the Republican approach—have promised that abolishing the FCC will be the next item on their agenda. But after a bruising, months-long battle over this telecom bill, Congress is hardly likely to revisit the subject anytime soon.

The Fields and Pressler legislation comes to the Senate floor this week, and far from phasing out the FCC, it gives the agency some 80 new regulatory functions—all designed, of course, to ensure "competition" and "fairness." By taking this approach, Republicans have aligned themselves with the Clintonites' French Bureaucrat worldview and against the real entrepreneurs.

In fairness, it must be said that the Republicans' failure of political vision is matched and made possible by that of industry. Over and over, telecom CEOs have told us that all they want to do is compete without government interference. But when confronted with a wide-open legislative process, the temptation seems irresistible to seek provisions burdening competitors.

Mr. President, having been lobbied by representatives of the telecommunications industry, I can attest to that for a fact.

The problem here is a familiar one—the telecom companies lean too heavily on their "insider" Washington representatives, whose skill is chiseling arcane special provisions out of an arcane process. These people are part of the reason the public is cynical about Washington. The CEOs know what's right, but are given to believe it's never attainable. Consider "universal service."

Numerous telecom CEOs have told us how awful this entitlement is: It distorts market signals. It offers huge subsidies to recipients who aren't means-tested. It costs the economy billions. But every CEO hastily adds: Of course, we can't oppose universal service; remember the political realities.

In short, the imagination that builds such remarkable private networks and products stops at the Capitol steps. Nobody is making the case to the public against universal service. Where are the TV commercials pointing out that Harry & Louise would be forced to subsidize telephone service to their rich neighbor's summer home? Instead industry lobbyists and Republicans have quietly united behind a new universal service entitle-

ment, whose cost, by CBO estimates, would be \$7 billion.

It would be a tragedy if this approach becomes law—for all concerned. The telecom industry, which now represents one-seventh of the economy, wouldn't create the 2.1 million new jobs that real deregulation would bring by the year 2000. The Republican Party would see its mantle as the party of new ideas tarnished. And the American people would be delayed in receiving the benefits of full competition—everything from new cable channels to interactive television to services not yet imagined.

Newt Gingrich and Bob Dole have to get involved to prevent their political managers from blowing this chance to deregulate America's fastest growing industry. The leadership should declare: Enough compromises, already. Let's get back to first principles, with the Progress & Freedom Foundation report an excellent place to rediscover them.

I want to read a letter I received yesterday from the Citizens for a Sound Economy.

DEAR SENATOR MCCAIN: I am writing on behalf of Citizens for a Sound Economy (CSE) to express our support for the amendments you intend to offer during floor debate on S. 652, the Telecommunications Competition and Deregulation Act of 1995. We commend your efforts to improve the legislation by streamlining regulatory review processes and taking steps to rein in the current universal service system.

S. 652, as reported by the Commerce Committee, eliminates or reduces a number of regulatory hurdles to telecommunications competition, cable rate regulation, and broadcast ownership restrictions. It provides spectrum flexibility for broadcasters. It also eliminates some rate of return regulation, and provides transition mechanisms to competitive pricing, a periodic review of regulations, and authority for regulatory forbearance.

Given the outdated regulatory scheme currently used to regulate the telecommunications industry, this legislation is a step forward. While we strongly urge adoption of the amendments discussed below, which would strengthen the bill, CSE believes the Senate should pass S. 652 even if these amendments fail.

"Public interest" review. S. 652 would condition a Bell's entry into the long-distance market upon a showing that the company had undertaken specified steps (a "checklist") to open its local network to competition. Even after the Bell company complies with the checklist, however, the FCC would have to determine whether Bell entry is consistent with the public interest.

CSE supports your amendment to deem the public interest standard to be met when a Bell company has met the requirements specified in the checklist. The requirement of an FCC "public interest" determination in addition to the checklist requirements is unnecessary and will result only in delay in bringing additional long distance competition to consumers. Moreover, this "public interest" requirement is ill-defined and thus invites virtually endless litigation over whether Bell entry is in the public interest. Unlike the public interest test, the checklist is objective, and conditioning long-distance entry solely on meeting its requirements provides some certainty in the process. Objective criteria also reduce the temptation of existing providers to use regulatory processes to protect their market.

Universal service amendments. S. 652 takes some steps toward making universal service subsidies explicit, which CSE strongly supports. We also support your amendments to

prevent potential unchecked expansion of the current flawed system.

First, S. 652 mandates cost-based rates for schools, libraries, and medical facilities. This provision should be stricken, as your amendment proposes. The federal government should not favor particular entities to receive preferential rates. If local or state ratepayers wish to subsidize these entities, that determination can be made at the local or state level. Moreover, the community-user provision raises difficult questions. For example, is a parochial school entitled to the discounts? Should Americans who oppose abortion be required to subsidize the telecommunications services provided to an abortion clinic? Giving such benefits to certain institutions in society raises questions of fairness and touches upon constitutional issues. Therefore, GSE supports elimination of this provision.

Second, S. 652 defines universal services as an "evolving level" of services that includes, at a minimum, services subscribed to by a substantial majority of residential customers. Your amendment would narrow this definition to exclude entertainment services and telecommunications equipment. There is simply no justification to require consumers to subsidize access to interactive video games or the purchase of computers.

Finally, CSE supports your amendment to require congressional notification of the amount of universal service contributions and of any increases. This is essential to foster congressional oversight of a potentially fast-growing entitlement. It also will facilitate accountability to consumers who are paying for universal service support in their telephone bills.

In conclusion, CSE supports your amendments to further streamline the regulatory structure governing the telecommunications industry. In addition, while we recognize that S. 652 is not perfect, we urge the Senate to act on the bill.

Mr. President, the Heritage Foundation also wrote a memorandum to me and to Senator PACKWOOD, and I ask unanimous consent their letter be printed in the RECORD.

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

THE HERITAGE FOUNDATION,
Washington, DC, June 6, 1995.

Re Improving S. 652

Hon. JOHN MCCAIN,
Hon. BOB PACKWOOD

I am writing on behalf of the Heritage Foundation concerning S. 652, The Telecommunications Competition and Deregulation Act of 1995, which the Senate is scheduled to begin debate on as early as Wednesday morning. While the bill makes considerable strides toward the liberalization of the telecommunications market, the legislation is also riddled with much unnecessary regulation and new mandates. Federal Communications Commission (FCC) Chairman Reed Hundt made this clear when he announced recently that the agency "will need substantial resources" to implement the legislation. "We'll need economists, statisticians, and business school graduates," Hundt went on to say.

Although this may be the type of deregulation FCC bureaucrats like, it is falls well short of what most experts and consumers would view as true deregulation. In fact, a recent scoring of S. 652 by the Congressional Budget Office revealed the bill would require approximately \$60 million in additional FCC spending over the 1996-2000 period.

Realizing the need for a more deregulatory approach, you plan to introduce a package of

amendments on the Senate floor that will correct much of the bill's overly regulatory emphasis. Only by including amendments such as these can the Senate assure S. 652 will be deregulatory in both rhetoric and reality.

Cutting out the regulatory fat. Although S.652 makes some important improvements over current law, most experts agree too much regulatory fat has been added to the bones of the bill. Whether it was added to appease special industry interests or particular legislators makes little difference—the fact remains that the bill contains dozens of new rule-making powers and open-ended mandates for the FCC.

Your amendments would correct many of these flaws by offering language that would do the following.

Eliminate lengthy potential delays that would result from a "public interest" test on Baby Bell entry into new markets by demanding that the FCC allow such firms to enter new markets once they have satisfied a pre-determined checklist of requirements.

End numerous unnecessary common carrier regulations by requiring mandatory FCC forbearance when markets are deemed competitive.

Sunset transitional regulations to ensure rules do not become permanent fixtures.

Eliminate price controls and expensive mandates on carriers that serve rural health care providers, schools, and libraries.

Narrowly define universal service as basic phone service and create a more efficient, pro-competitive delivery mechanism.

Adopting these provisions would improve markedly the deregulatory scope of the bill. In fact, comparing a report card of the relevant section of S. 652 that your amendments focus on, illustrates the magnitude of this improvement. (See Table 1).

A REPORT CARD ON THE PRESSLER PLAN FOR TELECOM (S. 652) WITH AND WITHOUT PACKWOOD-McCAIN AMENDMENTS

Report card item	Grade without amendments	Grade with amendments
Elimination of barriers to entry and regulation (telephony).	B-	A-
Elimination of telecommunications bureaucracy.	D-	B
Elimination of telecommunications entitlements.	F	B+

Many of the amendments that Commerce Committee Chairman Larry Pressler (R-SD) plans to offer as part of a "manager's" package could also broaden the deregulatory nature of the bill. Specifically, if the Chairman offers amendments further scaling back cable rate regulation, adding more substantial broadcast deregulation, vacating the GTE consent decree, eliminating asymmetrical regulations on AT&T, as well as language broadening the scope of the spectrum auctioning authority of the FCC, then this bill overall would score a solid "B". But, again, this would be the case only if all the free-market oriented amendments being proposed are adopted.

Although the adoption of these amendments would clearly improve the scores S. 652 receives, to obtain perfect marks the Senate would need to include language that: unconditionally eliminated all barriers to entry in every segment of the market after one year; completely devolved all authority for the delivery of universal service to the states; repealed all cable regulations and created a clear and unconstrained legal environment for the delivery of video services; privatized completely the radio spectrum by creating property rights in wireless spectrum holdings; unconditionally repealed all protectionist foreign ownership barriers; eliminated entire bureaus and departments

at the FCC; and made explicit mention of the preeminence of the 1st Amendment in the emerging telecommunications legal environment.

However, inevitable political trade-offs and compromises probably diminish the chances such comprehensive reform language could be inserted into the bill so late in the legislative process. In addition, certain issues such as continued downsizing of the FCC bureaucracy and the privatization of the radio spectrum could be handled in separate bills later this session.

Last chance till 1997. If the S. 652 fails to pass the Senate, in all likelihood there is little chance legislation would resurface until the next Congressional session in 1997. Such deregulatory delay would cost both the industry and consumers billions of dollars in lost economic output, higher prices, and foregone job opportunities.

However, the overly regulatory baggage attached to S. 652 would also impose significant costs on the industry and consumers and, therefore, should be removed if Congress desires a rapid and unfettered transition to free markets. The Packwood-McCain amendments would strip out such elements of the bill and facilitate such a beneficial transition. If coupled with deregulatory language found in Senator Pressler's amendment package, S. 652 could then be considered truly "deregulatory" in both rhetoric and reality.

Mr. MCCAIN. I will quote from the memorandum from the Heritage Foundation. It says:

While the bill makes considerable strides toward the liberalization of the telecommunications market, the legislation is also riddled with much unnecessary regulation and new mandates. Federal Communications Commission (FCC) Chairman Reed Hundt made this clear when he announced recently that the agency "will need substantial resources" to implement the legislation. "We'll need economists, statisticians, and business school graduates," Hundt went on to say.

Although this may be the type of deregulation FCC bureaucrats like, it is falls well short of what most experts and consumers would view as true deregulation. In fact, a recent scoring of S. 652 by the Congressional Budget Office revealed the bill would require approximately \$60 million in additional FCC spending over the 1996-2000 period.

Your amendments would correct many of these flaws by offering language that would do the following:

Eliminate lengthy potential delays that would result from a "public interest" test on Baby Bell entry into new markets by demanding that the FCC allow such firms to enter new markets once they have satisfied a pre-determined checklist of requirements.

End numerous unnecessary common carrier regulations by requiring mandatory FCC forbearance when markets are deemed competitive.

Sunset transitional regulations to ensure rules do not become permanent fixtures.

Eliminate price controls and expensive mandates on carriers that serve rural health care providers, schools, and libraries.

Narrowly define universal service as basic phone service and create a more efficient, procompetitive delivery mechanism. It shows increases in grade with this amendment.

The Heritage Foundation concludes by saying:

If the S. 652 fails to pass the Senate, in all likelihood there is little chance legislation would resurface until the next Congressional session in 1997. Such deregulatory delay

would cost both the industry and consumers billions of dollars in lost economic output, higher prices, and foregone job opportunities.

However, the overly regulatory baggage attached to S. 652 would also impose significant costs on the industry and consumers and, therefore, should be removed if Congress desires a rapid and unfettered transition to free markets. The Packwood-McCain amendments would strip out such elements of the bill and facilitate such a beneficial transition. If coupled with deregulatory language found in Senator Pressler's amendment package, S. 652 could then be considered truly "deregulatory" in both rhetoric and reality.

That is what I am hoping we can add here.

AMENDMENT NO. 1260

(Purpose: To require Congressional notification before the imposition or increase of universal service contributions)

Mr. MCCAIN. Mr. President, I send an amendment to the desk and ask for its immediate consideration.

The PRESIDING OFFICER (Mr. DEWINE). The clerk will report.

The assistant legislative clerk read as follows:

The Senator from Arizona [Mr. MCCAIN] proposes an amendment numbered 1260.

Mr. MCCAIN. 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:

On page 42, strike out line 23 and all that follows through page 43, line 2, and insert in lieu thereof the following:

"(j) CONGRESSIONAL NOTIFICATION OF UNIVERSAL SERVICE CONTRIBUTIONS.—The Commission may not take action to impose universal service contributions under subsection (c), or take action to increase the amount of such contributions, until—

"(1) the Commission submits to the Committee on Commerce, Science, and Transportation of the Senate and the Committee on Commerce of the House of Representatives a report on the contributions, or increase in such contributions, to be imposed; and

"(2) a period of 120 days has elapsed after the date of the submittal of the report.

"(k) EFFECTIVE DATE.—This section takes effect on the date of the enactment of the Telecommunications Act of 1995, except for subsections (c), (e), (f), (g), and (j), which shall take effect one year after the date of the enactment of that Act."

Mr. MCCAIN. Mr. President, this amendment would mandate that the Congress be notified in advance of any action taken by the Federal Communications Commission that would result in increased receipts to the Government. In other words, increasing taxes. There is a substantial debate about whether this bill mandates taxes or not. I believe it does. I believe this bill should be blue slipped by the House of Representatives due to the fact that the Constitution mandates that all tax bills originate in the House.

According to CBO:

CBO estimates that telecommunications firms would have to pay an additional \$7 billion over the next 5 years to comply with the universal service requirements of the bill and believes that these amounts should be included as revenues in the Federal budget.

What may be a receipt to many here is a tax to many in Arizona. We can debate semantics for some time, whether a receipt is a tax or not. I do not intend to do so. But to my constituents, Government-mandated collection of revenues, which we then spend, in my view and their view is a tax.

It is true many of the costs that CBO calculated in this bill currently exist. They are part of a large telecommunications subsidy scheme controlled by the States. That does not change the fact that we are now federalizing that money into some that constitutes a tax.

I am very concerned about this new tax. As I noted, the Constitution states that all revenue measures originate in the House. I have contacted the House Parliamentarian regarding this matter, and it is my understanding that they are very concerned about precisely this issue. After all the hard work of the chairman and ranking member of the Commerce Committee—and they have worked very hard on this matter—I fear it may be for very little due to the tax problem.

Further, under provisions of this bill, not the House nor the Senate but the FCC will have the ability to originate or increase taxes, federally mandated taxes to be paid by companies. Either way, I believe that is an abrogation of congressional duty.

Under the evolving definition of universal service contained in the bill, the FCC in conjunction with a Federal-State joint board can at any time change the definition of universal service. Although I applaud the committee for accepting the suggestion I made for tightening the bill's definition of universal service, I remain concerned. However, the definition is changed. The FCC in the future could mandate call waiting, three-way calling, and any other number of services that no one has yet thought of for all Americans. Such services do not come for free. They come with a substantial cost.

The bill allows the FCC to force all telecommunications companies to pay into the universal service fund an amount necessary to subsidize such services. And, yes, these costs, the costs of paying federally mandated access, will be passed on to the consumer. When American companies are taxed, when American consumers are taxed, when anyone is taxed in this country, the Congress—not an executive branch agency—should be making these decisions.

Because of the structure of the bill it is not possible to allow the Congress to veto FCC authority we give them. Such a legislative veto bill violates the Chadha decision. This amendment, however, does mandate that the FCC notify the Congress of its intent to raise the fees that it charges telecommunications companies. The Congress could then act to stop the FCC. We could choose to do anything. But it is imperative that we know of such changes and have time to act.

I understand that some will state that any such changes promulgated by the FCC would appear in the Federal Register, and, therefore, the notification requirements mandated by this amendment are not needed. I disagree. We should not allow tax-for-fee increases to occur merely after notification in the Federal Register. Direct notification is appropriate. Congressional committees should concur. That is exactly what this amendment does.

I ask that it to be adopted.

Mr. President, I believe that the managers of the bill are receptive to this amendment. I would ask for the yeas and nays. But I am not sure it is necessary to do so.

Mr. PRESSLER. We will accept this amendment. We commend the Senator from Arizona for his support.

Mr. STEVENS addressed the Chair.

The PRESIDING OFFICER. The Senator from Alaska.

Mr. STEVENS. I join in recommending that it be accepted. But I want to point out some things to my friend from Arizona.

I, too, have no objection to this concept of notification of increased requirements for the requirement to report if there is going to be increased cost for universal service and if there is going to be an increase in the universal service contributions.

I point out in the first instance that I believe the House is operating under a misinterpretation of this bill. If we do not enact this bill, the cost of the universal service under existing law will be about \$10 billion. If we do enact it, it will be more than \$3 billion less. I do not understand why the House indicated it would have an objection to a bill that would reduce the existing cost of universal service. Because of the change in this system the Congressional Budget Office has indicated that even though private contributions do not come through the Treasury, and private expenses do not come through the Treasury, as I said before since it is a mandate, it would be included in the budget process. But I have every reason to believe, and I do believe, that the cost of these systems will decline dramatically in the period ahead, and it is because primarily of this bill opening the door to telecommunications competition.

Again, I want to quote my friend George Gilder who indicated that "the computer industry will double its cost effectiveness every 18 months. The wireless conversions of digital electronics and spectronics will allow the industry to escape its copper cage and achieve at least a tenfold drop in the real price of telephonic service in the next 7 years."

I believe, and everything I have read comes to the same conclusion, with more competition and the addition of the new technology, tumbling as it is, we should see an ever-decreasing cost of telecommunications services. We have modified this bill so that it reflects the approach of the essential air

service. It is not a universal service concept as exists under existing law. It is certainly not a tax. There is no way that this could be determined a tax. It is continuing the process that the industry itself started in the interstate rate pool. The interstate rate pool to my knowledge has never been included in the budget process. But because now we are limiting it, the Congressional Budget Office has decided that it ought to be referred to in the budget process.

Again, Mr. President, that is merely taking into account the money that customers pay and then having that money paid out pursuant to the provisions of the bill. But it is not paid to the Government. Surely it is stretching the Budget Act, as I have said before.

But I do want to say to my friend from Arizona, Mr. President, I made some comments about the long statement my friend made before. Let me say this at the very outset. The intention of this bill is to take the regulation of the telecommunications service away from the courts. What we have done is restored the States rights and we have reestablished oversight in the FCC. If you want to look at the cost of the courts over the last 10 years under the modified final judgement and add it to what we have put out for the Justice Department antitrust operation in that time, we are reducing the cost to the Government of the administration of the telecommunications law because the courts will not have jurisdiction over these cases that they have had before under the modified final judgment.

I do believe that we have a series of matters we ought to discuss. But I certainly want to compliment the Senator from Arizona in terms of his approach of pushing further and further for deregulation. But the deregulation comes about as we increase competition. If we just deregulate the monopolies in their own areas, we will not end up with a kind of telecommunications competition that will bring about this constant reduction in costs because of the entrance into this telecommunications area of these new technologies.

Above all, I urge Members of the Senate to look at the studies that have been made about what is going to happen as we do in fact bring in the new technologies and allow them to compete. We are really not going to be talking about telephones. My friend from Arizona said we ought to have telephone service for these people. Telephone service in the future is going to be like giving people vouchers to ride in an Edsel. We are not talking about telephone service anymore. We are talking about telecommunications connections which will enable people in rural America to have computer services just like everyone else. As George Gilder points out, the computer is going to be so pervasive that it will be the means of communication for most Americans by the turn of the century. It will not be telephones. There will be

what amounts to phone connections in the computers.

By the way, the cost of the computers themselves is coming down at such a great rate. The cost of the base stations that will implement the interconnections are coming down. If we have the ability to use the broadband radio the way it has been described and use it for interconnections, I tell my friend from Arizona the report from the FCC, if anything I would modify it and say let us know the extent to which the costs are being reduced as well as increased because the progress is going to be in reduction, just as this bill reduces it by almost 30 percent just by the changes we have made. The communications industry itself in 7 years is going to reduce that tenfold.

I do not believe that we should oppose an amendment which would require a report from the FCC of increases in universal service contributions.

Mr. KERREY addressed the Chair.

The PRESIDING OFFICER. The Senator from Nebraska.

Mr. KERREY. Mr. President, I do not know whether or not this might be the appropriate time for us to have a roll-call vote on the amendment of the Senator from Arizona.

Prior to making some comments about that amendment, I point out to my colleagues that many of the things that the Senator from Arizona said in his statement I said last night and again today. It might surprise some to hear me say this, but I, in fact, might embrace a lot of the things that the Senator from Arizona is trying to propose. I do think if you are going to move to a competitive environment the quicker you can get there the better off in many ways, and that to hold this thing back might make it difficult for us to get consumers to understand how it is we are going to adjust because there is going to be substantial adjustment to the changes we are proposing in a regulatory structure.

I must say again, as I have said a number of times, I am not getting a lot of complaints from citizens saying, "Gee. I do not like the way this is thing is working." I do not get a lot of people coming to me talking about enhanced services and all of that. I do not hear people say the current regulation makes it difficult for technology to be deployed. And I happen to be a relatively high-end consumer. I must tell you I have not been struggling to get existing technology, and hearing the companies say that it is not cost-effective. We are not going to provide you the kind of services that existing technology allows under variety.

It really is not that the regulation prevents them from doing it. They just are not doing it. So in a competitive environment, if they do not provide it to me, I will go someplace else. I will get somebody else to provide the service for me.

As I see this legislation it is attempting to move us to a point where I at the

local level—and I know competition, by the way. Let me stop here a little bit and define it. Competition for me means I choose. If I do not like what you are giving me, I will go someplace else. In my particular business, if my customers do not like what I put on the table in front of them, they have a lot of choices, lots of places they can go. To me, the idea of competition is not AT&T competing with MCI or Bell Atlantic competing with CTI and all that sort of stuff. Those are big companies coming into a competitive environment.

What I think of competition is potentially a whole generation of entrepreneurs who are not here lobbying, by the way, that are not talking to us, that are not asking for anything. In fact, if you look at the jobs created in the State of Nebraska in technology, they are created by businesses that have not even contacted my office. They are created by people who are not even aware of S. 652. When I am at home on the weekend, and I say what do you think about S. 652, is it going to help or hurt? They say what the heck is that? I have to ship it to them and show them what it is all about.

The new entrepreneurs that are coming in for services with the ones that are likely to have customers are saying, boy, this is working; this is terrific.

I say, as I envision competition, there are four big areas where people are going to be able to compete, if we transition this thing properly. One is people are going to come in and say to me as a consumer you do not have to buy dial tone separately; you do not have to buy video separately; you do not have to buy all your information separately.

I have about \$70 or \$80 for local and long-distance telephone service. I have about \$40 or so for cable—I do not know the exact dollar amount—and about \$30 for other sort of published accounts, published documents, newspapers, and magazines that are coming in. I have \$150 a month. If we deregulate properly, entrepreneurs coming knocking on my door or contacting me through E-mail or however they want to get to me say, BOB, you are spending 150 bucks a month, we can do it for \$89.95, and we can give it to you in a different form, faster, clearer, and better than what you are getting right now.

In that kind of an environment—instead of buying dial tone separately, cable separately, and all these other sorts of services separately, I buy them in a package—I believe the consumers will be excited about it, because I believe price will go down and quality will go up.

Second, we are going to have competition in switching. By that I mean people say, well, gee, the phone is the one that is doing all the switching. It is not true. There are a lot of entrepreneurs coming online today that are doing switching, that have the technology, that have the gear, that have

the hardware, the software in a remote location and they are switching long-distance calls, and they can do it cheaper and do it faster and better.

There is going to be competition in switching. You have this idea that you have somebody down in an office still sort of either doing it manually or digitally, moving these packets about. Well, that can be done in lots of different locations in lots of different ways and there is going to be competition, the second area of switching, of getting whatever information you got, whatever bundle of goods and services you want to move from point A to point B. They are going to get those bundles wherever you want and retrieve whatever you desire to retrieve in a most competitive fashion.

Third, there is going to be competition in content, if we do it right, if we do not yield to people who say, as the Senator from Arizona was saying, I really like competition but could you just kind of protect me a little while until I figure out how I am going to compete with somebody who has 2 people working in his office instead of 2,000. How do I compete against an entrepreneur that understands that he has to keep his salary down and his fringe benefits down and other sorts of things down in order to be able to compete.

The fourth area is there is going to be a tremendous amount of competition in a whole range of services. As I said, I consider myself relatively high in, but this stuff still confuses me an awful lot, and I am going to be paying people to tell me how to connect this hardware with that hardware and how to get on this network and that network, how to make it work inside my office or make it work inside my home—all kinds of questions that I am going to have on all kinds of new services. There will not be one company that comes when you have a problem in your home to call up and say, gee, I have a question here. And the company says, well, I can get to you next Thursday or next Friday or, gee, we do not really get into that kind of thing, BOB. We are not involved with that kind of thing.

That whole world, if we write the language of this law correctly, can create a competitive environment that I think will benefit consumers and I think prices will go down and quality will go up.

So I share many of the concerns the Senator from Arizona raised and I declare it right up front. It may be there is potential for compromise where it may not be so obvious that there is potential for compromise between myself and the Senator from Arizona and the Senator from Oregon, who have an amendment. Unfortunately, I have not seen that one. We are talking about this one smaller amendment that deals with the universal service fund, and I would like to talk about that now.

The universal service fund that we have right now is rather complicated. I

will not even pretend to describe it to you because frankly I do not understand it. But I do understand one thing, and that is that we do have subsidies going on to people who are not using them quite right. Sometimes it is used to keep the price of residential service artificially low. You can go to some places in America today, they are paying \$6, \$7, \$8 for basic residential service where you go to a city with no universal service fund where they are paying \$14. The business rates are substantially lower and the technology has not been upgraded.

In many cases the universal service fund is not being used in a fashion that you think of when you hear it described. You say, well, gee, I need the universal service fund because I have people out there who cannot afford it. Well, that is terrific; if they cannot afford it, let us help them get it. The idea of a voucher may have merit. In fact, it may have merit to go in that direction rather than having this very, very difficult to administer thing and very difficult for us to understand from our vantage point. In fact, there are an awful lot of us who, up until the last 2 or 3 years, were not even aware that there was a universal fund being administered and checks written and redistributed out throughout the country, and they come and tell us such things as the entire State of Georgia as I understand it is a universal service fund. I do not know if that is true or not, but I was told recently that is the case.

Well, I mean that just indicates how difficult it is to sit here in Washington, DC, with a good idea in mind; little people cannot afford to buy the local or residential service, making sure they are able to buy the product. It is a terrifically good idea to help somebody be able to communicate out of their home that otherwise might not be able to communicate. But it is difficult for us with that good idea to put it in practice. And I think if we were to have a lengthy debate about how the current universal service fund operates it might inform an awful lot of us as to why this system needs to be changed. We are basically accepting the status quo, and I declare and disclose, I participated with the farm team as we tried to keep this universal service idea alive.

As the Senator from Arizona cited, some corporate entity that he discussed this issue with, they said, well, we do not like it, but you know the politics of it; we have to keep it in place, and we sort of presumed the same thing.

It may be there is the mobility of altering the way we operate that universal service fund, but let us presume for the moment that we are going to keep the universal service fund the way it is. As I said, I am open to suggestions of ways to do it differently. Presuming that is the case, if you look at the language of this bill, what it is attempting to do—and I now turn to my friend

from Arizona because I really have a question as to how he sees this thing working. The idea that we have in subsection (c) on page 40 of the act, which is referenced in this amendment, is that if you are going to have a universal service fund, I mean if that is the idea that we are going to keep this universal service fund concept alive and use that method of funding, what is going to happen is you are going to get new telecommunications companies coming into the arena.

The idea is they should make a contribution as well; that it should not be just the phone companies or should not just be the existing entities that are making a contribution to the universal service fund; that, in fact, it should be everyone who is now providing these new information services should be making a contribution.

As I see this—maybe the Senator from Alaska, who understands this well, can comment—as I see what this does, it actually provides an opportunity for a reduction in the assessment that the established carriers are paying into a universal service fund because it broadens the base of contribution. That is the idea of subsection (c). I do not have strong feelings against this amendment. I do not mind having the FCC notify. I think it makes genuinely good sense. It was blank on my copy of the amendment. As I understand it, it is 120 days. The Senator from Arizona in his amendment is saying from the time notification of the committee occurs and the time the assessment can occur there will be a 120-day period lapse?

Mr. McCAIN. The Senator is correct.

Mr. KERREY. Will the Senator from Alaska comment? Am I right, are we not trying in subsection (c) to say we are broadening the contribution base? If I had new companies coming on-line providing service at the local level, they should make a fair share contribution to the universal service fund? As I say, I am not trying to oppose this amendment, I want to make sure we do not get something in here that ends up coming back to haunt us.

We are trying to actually broaden the base of the universal service fund contribution which should for telephone ratepayers result in a reduction of the levy that they currently have for a universal service fund payment.

Mr. STEVENS. Mr. President, if the Senator will yield to allow me to answer that question, that is the intent of the bill. When new providers of service enter into competition, they will contribute to the fund as those who are currently providing the service. So it will broaden the contribution to the fund.

The courts have held that the current universal service system is not a tax. I do not view this as a tax. I view it as one of the requirements to enter the system in a competitive spirit. I think CBO itself did not say it was a tax but said it had to be taken into account in the budget process.

What we are saying is those who provide the services will contribute to the fund. It will broaden the base, as the Senator indicated.

I accept the Senator's amendment. If nothing else, it will give Congress notice every year how the cost of this system is going down by virtue of what we have done.

Mr. KERREY. I would, in fact, love to have the FCC provide in notification some explanation of how this fund works. I would not mind that at all, if I could understand the thing once and for all.

The question I have is really the 120-day period. Notification is not a problem for me. The question is, does this delay? Would this have the impact, do you believe, of delaying an opportunity for reducing the levy on other carriers?

Mr. McCAIN. I say to my friend from Nebraska, if he will yield, it is only if there is an indication of an increase would the 120-day prior notification—

Mr. KERREY. The language of the amendment says "may not take action to impose universal service contributions under subsection (c), or take action to increase the amount of such contributions, until—"

Subsection (c) is an attempt to broaden the base of contributions, to get new providers of services who are currently not contributing to the universal service fund to make a contribution to the universal service fund.

My concern is that if that is what we are trying to do, we could delay the actual reduction that is currently being imposed on other carriers. I do not know if that is right or not. I just raise the question.

Mr. McCAIN. Mr. President, I will say to my friend from Nebraska, that is not the intent of the legislation. I can see how it would possibly be interpreted that way. But what we were trying to say is they may change the formula, which would not have an immediate impact, but then would have an impact later on.

That is why the first part of it says "may not take action to impose universal service contributions." In other words, the immediate impact may not be an increase in rates but the long-term impact would be. As I say, I will glad to modify the amendment in such a fashion that if there is a rate reduction, which would be contemplated in any event, this would not apply.

I ask unanimous consent to modify the amendment to reflect the colloquy just discussed between myself and the Senator from Nebraska. We will write it up.

The PRESIDING OFFICER. The Chair advises the Senator he can modify his amendment, but the Chair will need the modification. The Chair does not have the modification.

Mr. McCAIN. With the indulgence of the Chair, we will have it in approximately 1 minute. In the meantime, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. McCAIN. 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. 1260, AS MODIFIED

Mr. McCAIN. Mr. President, I send a modification to the desk and ask for the appropriate portion to be read by the clerk. It is a new paragraph.

The PRESIDING OFFICER. The clerk will report.

The legislative clerk read as follows:

On page 2, after line 6 of the amendment, add the following: (3) The provisions of this paragraph shall not apply to any action taken that would reduce costs to carriers or consumers.

The amendment, as modified, is as follows:

On page 42, strike out line 23 and all that follows through page 43, line 2, and insert in lieu thereof the following:

"(j) CONGRESSIONAL NOTIFICATION OF UNIVERSAL SERVICE CONTRIBUTIONS.—The Commission may not take action to impose universal service contributions under subsection (c), or take action to increase the amount of such contributions, until—

"(1) the Commission submits to the Committee on Commerce, Science, and Transportation of the Senate and the Committee on Commerce of the House of Representatives a report on the contributions, or increase in such contributions, to be imposed; and

"(2) a period of 120 days has elapsed after the date of the submittal of the report.

"(3) The provisions of this paragraph shall not apply to any action taken that would reduce costs to carriers or consumers.

"(k) EFFECTIVE DATE.—This section takes effect on the date of the enactment of the Telecommunications Act of 1995, except for subsections (c), (e), (f), (g), and (j), which shall take effect one year after the date of the enactment of that Act."

Mr. McCAIN. Mr. President, I hope that will satisfy the Senator from Nebraska.

Mr. KERREY. It most assuredly does. I appreciate the change made, and I believe it is an improvement. I have no objection to the amendment.

The PRESIDING OFFICER. The question is on agreeing to the amendment, as modified.

So the amendment (No. 1260), as modified, was agreed to.

Mr. PRESSLER. Mr. President, I move to reconsider the vote by which the amendment was agreed to.

Mr. HOLLINGS. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

AMENDMENT NO. 1261

(Purpose: To prevent excessive FCC regulatory activities)

Mr. McCAIN. Mr. President, I send an amendment to the desk and ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

The Senator from Arizona [Mr. McCAIN], for himself, Mr. PACKWOOD, Mr. CRAIG, Mr. KYL, Mr. GRAMM, Mr. ABRAHAM, and Mr.

BURNS, proposes an amendment numbered 1261.

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

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

The amendment is as follows:

On page 90, line 6, after "necessity," insert: "Full implementation of the checklist found in subsection (b)(2) shall be deemed in full satisfaction of the public interest, convenience, and necessity requirement of this subparagraph."

Mr. McCAIN. Mr. President, I understand that my colleague from Alaska has a very important commitment. He wanted this amendment raised at this time. I am more than happy to do so. I understand that it is a very important one, in his view. As always, I look forward to vigorous discussion of this amendment.

Mr. President, this amendment would clarify the role of the FCC regarding public interest tests contained in the bill. It is supported by Senators PACKWOOD, CRAIG, ABRAHAM, KYL, and GRAMM and a letter supporting this amendment was signed by Senators PACKWOOD, McCAIN, CRAIG, BURNS, KYL, GRAMM, HATCH, THOMAS, and BREAUX.

As S. 652 is currently drafted, it contains two substantial hurdles for a regional Bell operating company before the company can fully compete in any marketplace. I believe the consumer would be better off if such hurdles did not exist and companies were allowed to compete at a date certain.

I understand that some believe there is a need for a competitive checklist. Originally, the approach that others and myself favored allowed competition at a date certain. It was my understanding, in dealing with my colleagues on this issue, that the compromise would be a checklist that the regional Bell operating companies would have to comply with.

During the compromise, obviously, that changed. And so in addition to the checklist, we went back and placed judgment of this in the hands of the FCC in the form of public interest.

Entrepreneurs, not the Congress, nor the FCC, should make these kinds of decisions, in my view. Neither I nor anyone else in the Senate wants the FCC to act contrary to public interest. My concern is that different individuals will have different interpretations of what is in the public interest. I strongly believe that our interpretation and that of the commissioner of the FCC would be different.

A finding of public interest is an ill-defined, arbitrary standard which implies almost limitless policymaking authority to the FCC. The public interest test gives the FCC policymaking authority. The purpose of this bill should be to lessen the FCC's authority, not to enhance it. The public interest test allows the FCC to act to establish a policy and control private companies and whole industries. I believe that it can prevent full competition for a very long period of time.

The bill States that the FCC must find that allowing a Bell company into other areas of business is "consistent with the public interest, convenience and necessity."

Mr. President, this amendment would not radically change this bill. It preserves the competitive checklist that everybody agrees will ensure that local markets are open. Competition is in the public interest. I do not think we need the FCC to tell us that. The amendment will pare down the bureaucracy envisioned by the bill. As FCC Commissioner Hunt stated, "The FCC will need substantial resources to implement this legislation. We will need economists, statisticians, and business school graduates."

I do not know how much of the additional \$81 million that will have to be spent by the FCC in order to implement this spending legislation would entail in determining what is in the public interest. But I would imagine that, given my knowledge of the nature of bureaucracies, it would consume a very large amount of money. And as the Commissioner of the FCC himself has stated, "We will need economists, statisticians and business school graduates."

I am sure business schools around the country are pleased to note that there will be new job openings. However, I would like to see that employment in the private sector rather than on the taxpayers' payroll.

Mr. President, I ask unanimous consent that Senator BURNS be added as an original cosponsor to the pending amendment.

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

Mr. McCAIN. Finally, I know that this issue is a contentious one. I also understand that there is substantial and significant opposition to this amendment. But the whole thrust of this amendment, in my view, is to accelerate what is the stated goal of the legislation, which is a deregulatory climate, and one which has less and less Government interference and regulation, rather than a continuum, where a somewhat amorphous definition of public interest which is defined not by those who are competing, not by consumers or the Members of this body, but an unelected bureaucracy.

I yield the floor.

Mr. STEVENS. First let me thank my friend from Arizona for his courtesy. I understand Senator PACKWOOD and others wish to speak on this matter. I have a long-standing appointment that I think is very important to the national defense. I do wish to make that appointment. I am pleased that we can take up this amendment now.

I would like to set the stage a little bit for the amendment, because I think Members may not understand the context of the Senator from Arizona's amendment.

This bill adds a new section, section 255, to the Communications Act of 1934. This will set forth the process for the

entry of regional Bell companies into long-distance services. This is the provision that brings to a close the restrictions of the modification of final judgment.

This section has been the most controversial section in this bill. It has been the subject of intense negotiation between all segments of the industry. As the Senator from Arizona mentioned, there are some people that have been involved in it for a long, long time, that are coming back to talk to us about it. Members of the Senate have been involved now for well over 2 years in the whole negotiation of this section. It goes back to the days when the Senator from South Carolina was chairman.

By necessity, the language in this bill represents a compromise between a series of competing viewpoints.

Under the language of the bill, a regional Bell company may provide long-distance service when the FCC determines that the Bell company has fully implemented a specific checklist, which is found in the bill, which the Senator from Arizona mentioned; that the Bell company has complied with the separate subsidiary requirements; and the approval is consistent with the public interest, convenience and necessity. It is this last concept that the Senator from Arizona wishes to change.

This determination by the FCC must be made on the basis of the record as a whole, after a public hearing and consultation with the Attorney General, and is subject to the substantial evidence standard of review by the courts.

Let me point out that, although CBO has scored that this bill will cost, I think, \$61 million over a 5-year period—more than the current FCC requirements—it does not score the decrease in costs of the involvement by the Attorney General or the involvement by the courts. So this is one of the penalties of the system that we operate under. But it is not a significant amount when one looks at the total amount of revenue being brought in now by the FCC under the spectrum auction concept that I authored, which will reach \$10 billion in the near future. I think that the \$61 million over a 5-year period, compared to the billions of dollars they will bring in—and more will come in under this bill than if the bill is not enacted. But we do not score that under the budget process, Mr. President. So it is a very difficult thing to handle.

Some argue that the three-pronged test is too difficult—that there should be no discretion left to the FCC to consider the public interest. Others argue—I am sure you are going to hear this—that it is too weak, and that an independent review and approval by the Department of Justice is necessary to protect the public interest.

In other words, I think you are going to have an amendment come in here that is the opposite of what Senator McCAIN wishes—to delete the FCC's in-

volvement—to one that says the FCC's requirement is not enough, that we must also have the Attorney General involved to protect the public interest.

In my judgment, this compromise we have worked out is just right. The FCC has a long history of considering public interest, convenience, and necessity. That was the bedrock principle of the 1934 Communications Act.

In order to transition to this new era and take the courts out—because under the modified final judgment, the courts have been determining communications policy through administrative hearings under court jurisdiction. In order to take them out, the parties involved wanted to be assured that, at least for this transition period, the oversight role of the FCC would be restored. And the determination by the FCC in this case is subject to a heightened standard of review.

Now, mind you, we have not just put it back to the way it was before the modified final judgment. It is no longer a case of the FCC not being arbitrary and capricious, which is the standard under a long series of precedence in the courts; the FCC must have substantial evidence on the record as a whole to support a decision to either grant or deny a request by a Bell company to enter a long-distance market.

In other words, in this compromise, the FCC comes back, the matter is taken from the courts, it comes back to the FCC, but under a standard that was stronger than it was before the FCC's jurisdiction was removed to the courts under the modified final judgment.

That evidence must support any determination by the FCC that the approval is not in the public interest, just as it must support any decision that the approval is in the public interest. To make any finding under this provision, the FCC must have substantial evidence. That means there will be an opportunity for all to be heard. That may be what has caused the \$61 million over 5 years increase in costs to the FCC.

This is a heightened standard of review, and it is a double-edged sword that will accomplish one of the main goals of the bill, and that is to end the rule of the courts over telecommunications policy in this country.

I think that the substantial evidence standard will prevent abuse by the FCC of the public interest review, just as it will help protect the FCC decision in the grant of approval from a suit by competitors.

If the Senate takes out the public interest test and asks the FCC to base their decision only on the statutory checklist, I think that would invite abuse. Instead of considering the checklist on the merits and addressing any policy concerns in the public interest portion of the review, the FCC would have no alternative but to try to manipulate the checklist if they feel the application should be denied on policy grounds.

Likewise, I think the courts would have an incentive to question the fact-finding process used by the FCC in making the determination solely on the basis of a checklist.

Now, I do believe if the court wants to find the process inadequate, we would be right back where we are now with the courts taking jurisdiction once again over the decisions and affect the telecommunications policy of the country.

The checklist contains 14 technical requirements for interconnection and unbundling of the Bells' local exchange networks. However, the list is not self-explanatory or self-implementing. One of the requirements is there must be the capability to exchange telecommunications between customers of the Bell company and an interconnecting carrier.

Now, I believe the reading of the checklist itself shows where the FCC is going to be involved in discretion in some way. The Senator from Arizona argues that the checklist is all that is needed and it should be straightforward for the FCC to implement. Paragraph 4 of subsection (b) of this bill specifically prohibits the FCC from limiting or expanding the terms of the checklist.

But the trouble is, how will the FCC decide that the capability to exchange communications exists? If we have just the checklist and the FCC decides that the capability to exchange communications efficiently does not yet exist, then it would be off to the courts again, because obviously no person that seeks approval of the FCC is going to take that denial without going to court. As a matter of fact, no protester is going to take the denial without going to court. I say it should only go to court with the increased standard that exists under this bill.

If it goes to court, the court will decide if the broad terms of the checklist have been met. They will second-guess the FCC in endless arguments over what the FCC based its decision on.

Our provision is clear, and will prevent abuse by both the FCC and the courts.

One of the reasons the FCC must be involved is to ensure that there is a concept of understanding of what is the public convenience and necessity, whether or not anyone is going to be harmed by the availability of the new service, and under what conditions those people are going to be harmed.

Now, we are going into a whole new concept of how rates are computed. We are going into a whole new concept of how service is provided. I believe that the gatekeeper in this process, in this period we are in now, must be the FCC, but under the standards we have agreed to now, which are higher standards than the FCC has had before and certainly higher than even the courts have followed under the period of the modified final judgment.

In other words, I tell my friend, we do have the occasion of being opposed

here on the floor quite often. I understand what the Senator wants to do, but again I am hopeful that we succeed in not making the changes that the Senator from Arizona wants at this time because I think without this bill the final step of the integration of Alaska and Hawaii with the rest of the United States will not come about. Without this bill we will not have the stimulus, the development of this competition between the regional Bells and the long distance carriers, between the Bells themselves, and even more than that, between providers of new communication, through new technological systems that I think will ultimately lower the cost for everybody.

Let me, in closing, say this to my friend from Arizona: One of the things that has gotten me involved in this over the years is that when I came to the Senate, on every advertisement concerning phone service was a little tag line at the bottom of the television or on the radio announcement saying "Not applicable to Hawaii and Alaska."

My friend Senator INOUE and I, serving on the Commerce Committee, started what we called rate integration from the offshore States. That led, really, into a whole concept of what that meant, why we had higher costs to start with and how we could bring about a reduction in the costs of communications to our States and at the same time an increased amount of service.

Actually when I came to the Senate, the Army was running the telephone service for Alaska. Alaska communication service was an Army concept. We brought about the sale of that to a private carrier, and part of that sale was a commitment that telephone service would be expanded rapidly within the State of Alaska. That has been done—but not totally even yet.

One of the reasons I am deeply involved in this, I say to my friend from Arizona, is I still believe that the process we are going through is decreasing the cost. I think we can show that the whole process, even of rate integration that Senator INOUE and I instituted, brought about a reexamination of the interstate rate pool, a determination that, yes, it could be expanded to Alaska and Hawaii. It was expanded to Hawaii first, and it is still being expanded to Alaska.

As that came about, the contributions from individual consumers rate pool has declined in the past. It will continue to decline now. It was a private mechanism, integration of the telephone service. It continues to be a private mechanism under this bill. But with the competition that this bill now will bring in to the providers of telephone service per se, communication service will come through satellite service, like DBS; it will come to us through radio service; through fiber optic cable, in one instance; through the old links that are there, the sys-

tems that have existed even before we became a State.

What I am saying is that the net impact of this bill will be the completion, really, of the process that Senator INOUE and I started in trying to integrate Alaska and Hawaii totally into the telephone system of the United States.

When this bill passes, there will be no distinction between the service to any portion of the country. We will have the concepts of telecommunication and the freedom to enter and compete, to bring new telecommunication systems into the arena, and to have the ability to compete with existing carriers, existing carriers whose costs of installation may have been a magnitude of 10 for 100 times what the new service will be.

My request to the Senate is that the amendment of the Senator from Arizona be defeated. Again, I hope the time comes when we are both in the Senate when we can join together and say we passed through this interim period and it is time to totally deregulate telecommunications of this country.

I think we will live to see that day. I do not think it is here now. I do not think it will even come about without this bill, because without this bill we are still under the courts. This is the bill that takes back to the legislative process the regulation of the telecommunications industry in the United States.

THE PRESIDING OFFICER. The Senator from South Carolina.

Mr. HOLLINGS. Mr. President, the distinguished Senator from Arizona allowed that he and I had different philosophies. He is right. But let me talk about different facts, which brings about a confidence in this particular Senator's philosophy.

As the Senator from Arizona was talking about the improvements of deregulation in the airlines we went out and doublechecked. If you want a round trip ticket on USAir, Charleston, SC, to Washington, it is \$628. But if you want to go 500 miles further, right across Charleston to Miami and back to Washington, it is only \$658. Miami is 1,000 miles away, Charleston is a half-way point at 500 miles. So what you have in essence—and this is the fact, not the philosophy, and it is a very understandable one—you go an additional 1,000 miles just for \$30.

It is what you call economies of distance in the airline industry. Fearing this, listening to certain experts at the time—Senator Howard Cannon, of Nevada, was the chairman of the Commerce Committee. I was engaged then in a communications bill. I was chairman of the Subcommittee on Communications and I could not make all the hearings and check. I said, "Be sure the small- and medium-size towns are protected."

He said, "Oh, yes, we have the protection. We have the protection. Do not worry. This is going to work in the public interest."

And the opposite, of course, has been the fact. The fact is, yes, I had three airline routes coming up, three direct to Washington and three going back with National Airlines. I now have only one. For a time I had none. We worried about National Airlines continuing. They sold out to Pan Am. National is gone. We wondered about Pan Am's survival. Pan Am is gone. We wondered about Piedmont and Piedmont is gone. Air Florida crashed out here. And the very rights, the slots that the distinguished Senator from Arizona and I debate, were sold off by Air Florida, and we lost those landing rights that had been premised and founded on public convenience and necessity.

What has happened in the transportation industry, both by truck and airlines and otherwise, is the public convenience and necessity—the communities got the airports and facilities and developed them. They enticed an airline to come along with them to Washington. They had hearings before the old Civil Aeronautics Board. And on the basis of public convenience and necessity, proper service at an affordable price, they were awarded the routes and the carriage and everybody was making money, holding fire. The equipment was sound. They were competing. And everyone was happy until someone came to town with this virus to get rid of the Government, deregulate, deregulate, deregulate.

So what has happened is exactly what we feared. I voted for airline deregulation, so I am a born-again regulator. I learned anew there is no education in the second kick of a mule. I can tell you here and now, I have learned the hard way, trusting going with the amendment of the Senator from Arizona in doing away with convenience and necessity of the public. Because we go right immediately to what has occurred. What has occurred, the fact is that all of the American airlines are on the ropes. And who is taking over? The regulated ones. KLM is coming over and coming in and saving Northwest. British Air is saving USAir. Those are all the regulated airlines in Europe are taking over the so-called deregulated where we are running around like ninnyes: Deregulate, deregulate, market forces, market forces.

It is just like this silly trade crowd running around hollers about free trade. Free trade, free trade—there is no such thing as free trade. The Japanese mercantilist, protectionist system is taking us over.

I was talking last night with the distinguished Senator from New Jersey. He was talking about Bellcore and the research. Do not worry about Bellcore. The Japanese are right next door, hiring the same research scientists from Bellcore like gangbusters. They do not have to move. They are in the same homes. Their children go to the same schools. And they are taking it over.

We are against industrial policy. We run around saying we cannot have industrial policy. We have the Japanese

industrial policy here. That is what we have. How much do you think it costs for that Lexus? \$55,000. How much does it cost back in Tokyo? It costs \$85,000. And that is why I oppose the amendment of the Senator from Arizona, because the size, the financial size can take over here.

How are you going to regulate? We are not against size in the Bell Companies, but they built themselves up into the largest financially-wealthy-sized company that you can find in this country. On cash flow, the average, for example, AT&T, is 19 percent cash flow margin. The cash flow margin of a Bell Company is 46 percent. Why do you think the Bell companies are not all in with zeal for a communications bill? Who wants to get out of a cash flow margin of 46 percent to get into a business that is 19 percent? Come on. So, if one is going to occur, they want to make darned sure that it occurs very, very gradually.

The amendment of the Senator from Arizona is that if you take off this convenience and necessity, then they can get down this checklist they have about the unbundling, interconnection, dial parity—go right on down the checklist. But using their size they come like Japan. They will have loss leaders, as we call it.

I practiced law in the antitrust courts for a large grocery chain, the Piggly-Wiggly, in South Carolina. We got up to 120-some stores. They said we had a loss leader for a half-gallon of milk. We proved otherwise, but I had to go all the way to the Supreme Court to prove it. So we know about Robinson-Patman. We know about Sherman. We know about the Clayton Act.

But the public convenience and necessity goes to the philosophy and difference. The distinguished Senator from Arizona, when he says politics and politicians take over—I think it was Elihu Root—I hate to quote a Republican—but Elihu Root, the Republican Secretary of State for Teddy Roosevelt, who said that politics was the practical art of self government, and someone has to attend to it if we are going to have it. And going along talking he concluded with a very cogent observation: "The principal ground for reproach against any American citizen should be that he is not a politician." In representative America we all count. In this particular body that is what we are here for. We are representing the public convenience and necessity.

I know one way we can agree. The Senator from Arizona and I will agree we have the best communications system in the world. He nods.

"Let the record show, if your Honor please, that the witness nodded."

Now, Mr. President, I have the Communications Act of 1934 in my hand and I can read from it, I understand the Senator from Alaska has other commitments.

But I have it documented. Reading here again, as the Senator from Ari-

zona was speaking, it appears 73 times—the "public interest" and "convenience." In title I of the 1934 act it appears five times; in title II of the act, eight times; in title III of the 1934 act, 43 times; in title IV, one time; in title V, zero times, but in title VI, 12 times; in title VII four times. Seventy-three times back in 1934 when they believed in Government, when the Government at that time was taking this "market forces, market forces," throwing us into the depths of the Depression. The Government saved us, and got us out of the Depression and saved this great United States of America. The minds of the representatives of the people here in this Congress were thinking right. They were thinking the public interest, public convenience and necessity—73 times.

So it is that as we come here the networks all came to Washington—ABC, NBC, CBS, and the rest. And on the basis of public convenience and necessity were licensed to use the public spectrum. The public convenience and necessity has gone along all the way, and we cannot do away with it. We are never going to pass a communications bill in this Congress, I am convinced, with these kind of market forces—"deregulate, deregulate, market forces controlling." On the contrary, we want to get out of the way of the technology. A new technology could come in that we do not know about.

The Senator from Alaska is reading very interesting articles which are being written in these various magazines, and communications editorials. Yes. There could be a takeover by computerization from telephones. What will happen there about the public convenience and necessity? It will not be a checklist down there for computers. We have the unbundling and all the checklists. But there still has to be that FCC, the public airwaves, the public being protected and particularly for universal service.

So we are very supportive, very strongly of the philosophy that the market forces are best. We have found that there are many instances, particularly in public transportation, public health, public safety, and public communications that, as I said on yesterday or last evening when we opened up, the one industry, the communications industry, was the one that came and begged for regulation. They were not begging for market forces. They tried it on for size.

I will go back two sentences. Our friend David Sarnoff was on top of that Wanamaker Building at the sinking of the Titanic. He picked up the actual radio signal, directed some of the rescues, picked up the names of survivors, stayed on station there for some 72 hours. And everyone got themselves a wireless. By 1924, everybody had a wireless. So nobody had a wireless because they just jammed the airwaves. So they came to Herbert Hoover, Secretary of Commerce. And they said,

"Mr. Secretary, for Heaven's sake, regulate us." The market force of the people's spectrum up here is jammed. No one can get no one. As a result, we passed the 1927 act, and then the formative act, of course, in 1934.

So we wanted to take hold of our senses here in the National Government as we try to get ourselves out as a roadblock to the information superhighway, because the technology is on course, and the superhighway is already being developed. We in Congress can go home and adjourn for 10 years. They are going to get it. But whether they are going to get it in a monopolistic fashion, and whether concerned about the rural areas, about the less-populated areas, concerned about the general public convenience and necessity against monopolistic practices and prices, they can come in.

I can tell you right now. If I ran one of those Bell companies, you would just deregulate everything. I would go down the checklist, and if you did not have this public convenience and necessity provision in here, I lost leave of you. I would price it below cost. Just go like they are pricing this Lexus. I got a Toyota Cressida. I just checked the price of that—\$21,800 in downtown Washington; \$31,800 in Tokyo. Look at Business Week at the end of the year. Last year, they took over—in spite of Detroit's comeback, having a quality product, and making big profits—the Japanese took over 1.2 percent additional of U.S. market at a loss of \$2.5 billion.

You give me one of these Bell companies and the checklist, and I got it. I can comply with it. But I can put you out of business unless you have public convenience and necessity. This is what the Bell companies want so they can run amuck.

The other one is going to come with the Department of Justice. My senior colleague is going to come with it. That is the long-distance crowd. So they can muck it up over there at the Justice Department.

So you have the Bell companies wanting a little. And we have the long-distance crowd wanting a little favor over here. We have not tried to fight them. For what? The public convenience and necessity.

Several Senators addressed the Chair.

Mr. PRESSLER. Mr. President, I ask unanimous consent that a time be set for a vote on this at 2:15 and that the time from now until then be equally divided between the Senator from Arizona and myself. I would like to vote at 1:30. There is a Senator at the White House, another Senator wants to speak at 2 and cannot; no amendments, and an up-and-down vote, at 2:15.

The PRESIDING OFFICER. Is there objection?

Mr. McCAIN. Mr. President, very briefly, I always appreciate the educational experience of listening to the Senator from South Carolina on a broad variety of issues, including the airlines.

The PRESIDING OFFICER. Does the Senator reserve the right to object?

Mr. McCAIN. No.

Mr. PRESSLER. I would like to lay aside my request until we hear from the leader. And then the Senator will yield to me to ask unanimous consent.

The PRESIDING OFFICER. Is the request withdrawn?

Mr. PRESSLER. Yes, temporarily.

Mr. McCAIN. If there is anyone who would ever be interested, I would enjoy a long, extended public debate on the issue of airline deregulation, although that is not the issue before the Senate today. I felt compelled to call the travel organization here in the Senate. And the Senator from South Carolina might be interested in knowing that there are six USAir flights between Dulles and Charleston, and three United Airlines flights between Dulles and Charleston, and many of those seats are available for \$249. I will find out and submit for the RECORD what exactly that cost was in 1974 before the deregulation of the airlines.

Mr. PRESSLER. Mr. President, I ask unanimous consent that a vote occur on this amendment, and no further amendments, up or down, at 2:15, and that the time between now and then be equally divided between the Senator from Arizona and myself, and that all Senators be on notice that the vote will occur at 2:15. I think we have accommodated everybody. We have to move this bill forward.

The PRESIDING OFFICER. Is there objection?

Mr. HOLLINGS. I have to momentarily object, Mr. President.

Mr. McCAIN. I informed the Senator from Alaska that one of the Senators requested that we hold it until 2:15.

The PRESIDING OFFICER. Objection is heard.

Mr. CRAIG addressed the Chair.

The PRESIDING OFFICER. The Senator from Idaho.

Mr. CRAIG. Mr. President, I am pleased to join my colleagues, Senators McCAIN and PACKWOOD, in offering this amendment to define the public interest test.

As currently written, S. 652 gives the Federal Communications Commission in my opinion exceptionally broad discretion in defining a Bell company's fitness to provide interLATA long distance services.

The bill authorizes the FCC to block, if you will, the Bell companies from offering interLATA services if it deems that their entry into the long-distance business is not "in the public interest"—even after full compliance with a comprehensive interconnection and unbundling checklist, which is now included in S. 652.

The current language in the bill gives the FCC an open field to interpret the public interest standard any way it wishes. The FCC could, for example, decide that a market share test is required before Bell company entry into long distance on the grounds that the test is in the public interest.

A market share test in my opinion is anticompetitive and will only serve to prolong long-distance competition. It would put the fate of the Bell companies' long-distance plans in the hands of their competitors. And in a market environment, it is always amazing to me that somehow Federal regulations would allow that kind of thing to happen. Potential competitors could choose to delay their own entry into the local phone market in order to prolong the entry of one of the Bell companies into the interLATA market.

In order to avoid the potential abuse of the public interest standard, it should at a minimum state that any kind of market share test be barred from the FCC's consideration of this standard.

Mr. President, of particular concern is the extraordinary time and resources it takes for the FCC to make a public interest determination. The FCC's typical review process includes hearings and rulemakings and comments and replies and painstaking analyses. The committee report on S. 652 states that the public interest test for all Bell company provisions of long distance service must be based on substantial evidence on the record as a whole.

The report goes even further than the current FCC public interest standard by requiring the applications of heightened judicial scrutiny of the substantial evidence standard as opposed to the lesser arbitrary and capricious standard. In other words, in a bill that is deregulatory in some areas, Mr. President, this appears to be a bill that in this area is even more regulatory. And that is, of course, exactly why this amendment is now in this Chamber.

In an industry where new technologies are evolving at a record pace, this regulatory bureaucracy is counterproductive and it unnecessarily, in my opinion, delays delivery of beneficial services to the customers. And I would suggest, Mr. President, we are in the Chamber today debating a new world for the consuming public and not a new world for the companies involved, if that, of course, is the intent of S. 652.

A case in point is the history of cellular phone technology. Back in the 1970's, AT&T asked the FCC to allocate spectrum for the development of cellular services. Because of all of the encompassing nature of the public interest test, it took a decade—let me repeat, it took a decade—for the FCC to determine how best to allocate the spectrum.

Now, that is a 10-year delay in the ability of a communications technology that has become one of the fastest growing consumer products in America's history. Of course, we know, since the day we entered the cellular world, we have seen more growth in 10 years and more productivity and more jobs than the bureaucratic nightmare of the 10 years it took to open up the marketplace.

Another example of how time consuming and labor intensive the public

interest test can be is to look at video, the concern over video dial tone. The Commission first addressed the idea of additional cable TV competition from television companies in early 1991. It has taken more than 4 years for the FCC to create a general framework for video dial tone, and with each successive ruling more and more constraints have been placed on telephone companies wishing to offer cable TV services.

That is not the way to foster competition. And it is not giving consumers the additional cable choices they have all asked for and they think in a free market they ought to be able to receive. In effect, the FCC 4-year delay has prevented robust competition in the cable industry. I would argue that this is hardly in the public interest and yet, in this legislation, that kind of bureaucracy would largely still exist and might even be enhanced over current law.

Cable industry competition would have been far preferable to the stifling regulations that have been imposed under the 1992 Cable Act. My last example concerns the Commission ruling in the mid-1980's allowing telephone companies to provide new services like voice mail that enhanced basic telephone service. In other words, some people would ask you today: What did we do before voice mail? Well, I will tell you what we did. We had a great, complicated process in many of our offices just to get communications through to the individual, and where you did not have the ability to hire the person to take the phone call, often your phone went unanswered or a call went unreturned. Today, we know voice mail works marvelously well.

Boise, my State capital, was among the first US West cities to offer voice mail service, and the service is now available from telephone companies across the Nation. It is clear to me that services like voice mail provide real benefits to consumers and to businesses yet, even after a decade, the public interest issue is still unresolved.

The Ninth Circuit Court of Appeals has twice questioned the FCC's public interest determination when it allowed telephone companies to offer new services to consumers. Because of the legal situation surrounding these FCC orders issued nearly a decade ago, phone companies are currently offering voice mail and other services under, believe it or not, a special waiver—not a standard rule of the marketplace, but a special exception or a special waiver.

Mr. President, with the heightened public interest standard included in S. 652, a decade-long wait for cellular service or resolution of voice mail issues, believe it or not, could take even longer while the consuming public believes that now to be a standard of the industry.

Before closing, Mr. President, I would like to share a few quotes from a March 8, 1995, paper on S. 652 entitled "Deregulating Telecommunications,"

written by Thomas Hazlett from the University of California, Davis.

In this article, he reviews the public interest standard.

While he praises the deregulatory provisions included in the bill, and there are some and they deserve to be recognized, he qualifies that praise by stating that the bill, through the inclusion of the public interest test, "fails to move us beyond the highly regulatory paradigm under which we live today." Hazlett argues that S. 652 retains the source of all anticonsumer policies since the 1934 act that we are now changing under this legislation, the public interest test. He states this:

This is not a proconsumer standard. This fundamental defect is further revealed in the bill's [four] announced objectives: Nowhere is consumer protection listed as a goal of this legislation.

Mr. President, let me repeat that. In a bill that is argued to be positive for consumers, nowhere in this bill is consumer protection listed as a goal of the legislation. I think this is wrong, and Mr. Hazlett says he believes it is wrong, also.

Indeed, the very first aim of this or any telecommunications policy should be: "Lower prices, improved choice, and better, more innovative services for consumers." The glaring omission of this goal is far more than a systemic problem.

Mr. President, Mr. Hazlett goes on to discuss the origins and purpose of the public interest standard at its inception in the 1927 Radio Act, and the subsequent 1934 Cable Act, which we are now amending today. This standard was included at the behest of incumbent radio broadcasters:

The industry liked it because it would allow Government a legal basis for denying licenses to newcomers. Senator C.C. Dill, the author of both the 1927 and the 1934 acts, liked it because it would not only allow the industry what it wanted, it would give policymakers such as himself political discretion to shape the marketplace.

Let me repeat that. It would allow public policymakers political discretion to shape a marketplace; in other words, a political free marketplace and not the marketplace that creates the kind of competition that is self-regulating at best.

This was terribly important to the Senator at the time, Dill wrote later, because established principles of law were already shaping spectrum access rights as private property.

In other words, Mr. President, the public interest test was the regulatory means by which the policymaker—that is us—not the marketplace and certainly not the consumers, could control the development of technology in the market. And we know that has never worked. The explosion of service and the quality of service that the American consumer now expects in telecommunications has only been created in the last decade as we move toward a more deregulated environment.

This was hardly a competitive criteria, and let me suggest that in this legislation, that test will stifle the kind of competitive environment that we want to create.

One last point I would like to share from this article brings us to our current situation. Mr. Hazlett argues, and I would agree, that even after years of use of public-interest standard, we still do not know what it means.

In 1993, FCC Commissioner Duggan lashed out at Commission critics who claimed this, saying it was not impossible to define public interest, and that the Commission would proceed to do so. That was 1993.

William Mayton wrote an interesting article in the Emory Law Journal in 1989 which pointed out how curious a standard the public-interest standard is by defining whatever a Government agency does in the public interest is the public-interest standard.

I find that fascinating, and yet the FCC today still struggles in its ability to define and to appropriately announce to the policymaker and to the consuming public. In short, Mr. President, anything could be deemed either in or against the public interest, and unless you treat it in the marketplace where the public ultimately makes the decision, then the public interest is in the eye and in the mind of the Commissioner or the policymaker, and that is not necessarily, and in almost all instances has never been, in the public interest.

Therefore, it is a standard that has no standard. This is the most subjective test possible, and I would argue that it will not, in effect, serve the interests of the American people.

Congress should clearly define the parameters of the public-interest standard and outline the factors that should be weighed in the making of the determination.

I submit that the competitive interconnection and unbundling checklist is in the public interest and fully meets the standard, and that should be the only provision in this law as an amendment to the 1934 act that frees the marketplace and determines the public interest. That is why I am in strong support of this legislation.

Mr. PRESSLER. Will my friend yield for a unanimous-consent request?

Mr. CRAIG. I yield back the remainder of my time.

Mr. PRESSLER. The Senator need not do that.

Mr. CRAIG. I am through.

Mr. PRESSLER. We finally, after much negotiation, arrived at the time of 2:10 for the vote on this amendment. I shall move to table at that time. I ask unanimous consent that we vote at 2:10 this afternoon.

The PRESIDING OFFICER (Mr. ABRAHAM). Is there objection?

Mr. CRAIG. Mr. President, I reserve the right to object.

Mr. BURNS addressed the Chair.

The PRESIDING OFFICER. Is there an objection?

Mr. CRAIG. I object.

The PRESIDING OFFICER. Objection is heard.

Mr. BURNS. Mr. President, if the Senator from Idaho does not have the floor at this time—

Mr. CRAIG. I do not.

The PRESIDING OFFICER. The Senator from Idaho has yielded the floor. The Senator from Montana.

Mr. BURNS. I thank the Chair. I will not be long, but I want to agree with my friend from Idaho in one respect. Public interest is kind of like art or beauty: It is in the eye of the beholder.

When we talk about putting up different barriers, we are really saying that it is going to be a select few who will decide who gets in the business and who does not, where I think most of us believe that the marketplace should dictate that, because from that comes perfection, and from that comes a very competitive medicine: Lower rates for everybody who wants to use that service.

There are those who serve in this body and those who will serve without this body that can take a public service interest before the FCC and completely delay the advancement of any kind of technology or any kind of deployment of any kind of services in the telecommunications industry by just a delaying tactic that would prevent any kind of progress to be made in that area.

Whenever we start talking about this industry, what are we referring to? The Senator from Nebraska [Mr. KERREY] was saying there is no public clamor for change in this area, but there is a clamor to allow new technologies to be introduced, to do more things with the tools that we have now. That is what it is all about. We talk about great distances, and we talk about remote areas and new services that will be provided to our rural areas and our remote areas. We are trying to dictate technology such as digital, digital compression, and all of those kinds of new technologies, trying to deploy it under an act that was written some 60 years ago and that has served this industry very well, by the way. But we are talking about the nineties-and-beyond technology. In other words, we are trying to do something in the nineties with a horse-and-buggy kind of regulatory environment that does not serve either one very well.

Unnecessary delay will hinder job creation because it will prevent openings of communications markets to competition simultaneously. One has to have incentives in order to progress in this industry or in any other industry. If there is no competition at home, there is no competition internationally because this is where we hone our skills.

This amendment only helps to clarify and define the public interest. It is like I said, there are many definitions of public interest. That is why I support this amendment. It will do things not only in this industry but other industries and send a strong signal that we are a strong country within and without in the competitive marketplace, especially in new technologies and the deployment of those new technologies.

This bill already removes all legal barriers, as well as mandates the Bell

companies fully comply with the requirements concerning interconnection, unbundling, resale, portability, and dialing parity. In other words, we have already gone through this business of interoperability of competition on the same lines. And that, too, has to be confronted in this bill.

So I rise in support of this amendment and just believe that it has to be done in order to make this bill in final passage truly a procompetitive and proconsumer piece of legislation.

Mr. President, I thank you, and I yield the floor.

Mr. PRESSLER. Mr. President, the public interest, convenience, and necessity standard is the bedrock of the Communications Act of 1934 and the foundation of all common carrier regulation. I am surprised that this standard has come under attack.

WHERE "PUBLIC INTEREST" ORIGINATED

The public-interest standard has been part of English common law since the 17th century. In a treatise on seaports by Lord Hale, this fundamental concept was stated: When private property "is affected with a public interest, it ceases to be subject only to private control."

This public-interest concept is the basis for the government's authority to regulate commerce, in general, and common carriers, in particular. The public-interest standard has been a cornerstone of U.S. common carrier law for more than a century.

The U.S. Supreme Court applied the public-interest concept to American commerce for the first time in 1876. In *Munn versus Illinois*, the Supreme Court considered the possible constitutional limits upon government regulation of business. In *Munn*, the Court relied on Lord Hale's statement regarding public interest. The Supreme Court added that this principle "has been accepted without objection as an essential element in the law of private property ever since." Two hundred years of English common law supported this precedent.

The 19th century U.S. Supreme Court summarized the common law public interest test as follows:

Property does become clothed with a public interest when used in a manner to make it of public consequence, and affect the community at large. When, therefore, one devotes his property to a use in which the public has an interest, he in effect, grants to the public an interest in that use, and must submit to be controlled by the public for the common good, to the extent of the interest he has thus created.

The public interest is fundamental to the law of common carriage. The Supreme Court in *Munn* noted that this common-law principle was the source of "the power to regulate the charges of common carriers" because "common carriers exercise a sort of public office, and have duties to perform in which the public is interested."

The Communication Act's public interest, convenience, and necessity standard grew out of this common-law

notion of property that is "clothed with a public interest" and therefore subject to control "by the public for the common good."

The public-interest standard was first codified in the Transportation Act of 1920, which extended Federal regulation of railroads. The public-interest standard governed the grant of licenses under the Radio Act of 1927, the forerunner of the Communications Act's broadcast and spectrum licensing provisions.

The phrases "public interest" and "public interest, convenience and necessity" appear throughout the Communications Act of 1934 as the ultimate yardstick by which all of the FCC's different regulatory functions and responsibilities are to be guided. For example, the public-interest standard specifically applies to the physical connections between carriers (section 201(b)); the acquisition or construction of new lines (section 214); the imposition of accounting rules on telephone companies (section 220(h)); the review of consolidations and transactions concerning telephone companies (section 222(b)(1)); and the grant, renewal, and transfer of licenses to use the electromagnetic spectrum.

Thirty-two States and the District of Columbia have public-interest standards in their communications statutes similar to the standard in the Communications Act.

PUBLIC INTEREST AND S. 652

Despite the fundamental nature of the public-interest standard to communications regulation, questions have been raised about the inclusion of the public-interest standard in relation to the competitive checklist in S. 652. Critics say the public-interest standard will frustrate the Bell companies' ability to enter the interLATA market. The fear appears to be that the FCC will use the public-interest standard to keep the Bell companies out of the interLATA market even though they have, in fact, opened their markets to competition by complying with the checklist.

PUBLIC INTEREST HAS LIMITS

These critics assume the FCC's discretion is unrestrained. This is not the case. The FCC's functions and powers are not open-ended. The Communications Act specifies in some detail the kinds of regulatory tasks authorized or required under the act. In addition, the act specifies procedures to be followed in performing these functions. Such delineations of authority and responsibility define the context in which the public-interest standard shall be applied. By specifying procedures, the act sets further boundaries on the FCC's regulatory authority.

S. 652 is no different. The bill would require the FCC to make two findings before granting a Bell company's application to provide interLATA telecommunications service: First, that the Bell operating company has fully implemented the competitive checklist in new section 255(b)(2); second, that

the interLATA services will be provided through a separate affiliate that meets the requirements of new section 252. In addition, the Commission must determine that the requested authority is consistent with the public interest convenience, and necessity.

Opponents of the public-interest standard in section 255 argue that a Bell company could fully implement the checklist, meet the separate affiliate standards, and be arbitrarily denied authority to provide interLATA service by the FCC. This simply is not the case.

The FCC's public-interest review is constrained by the statute providing the agency's authority. For example, the FCC is specifically prohibited from limiting or extending the terms used in the competitive checklist. In addition, the procedures established in S. 652 ensure that the FCC cannot arbitrarily deny Bell company entry into new markets.

THE TRUTH OF PUBLIC INTEREST IN S. 652.

In S. 652, Congress directs the FCC to look at three things: the implementation of the checklist, separate affiliate compliance, and consistency with the public interest. The FCC's written determination of whether to grant the Bell company's request must be based on substantial evidence on the record as a whole. A reviewing court would look at the entire hearing record. If the FCC would find that a Bell company meets the checklist and separate affiliate requirements, but denies entry based on the public interest, the agency's reasoning must withstand this heightened judicial scrutiny. Those who oppose public-interest review would ask us to sanction action that the FCC affirmatively finds to be inconsistent with the public interest. How could this be good public policy?

Mr. President, on earlier points, I will point out that the Citizens for a Sound Economy has endorsed the bill that is before us. It has endorsed some of the amendments, but also the entire bill.

This bill is much more deregulatory than any we have had before us. It is not a perfect bill. But it will be a great step toward deregulation and a pro-market competition.

Let me also say that we will be reducing the costs of the Justice Department administration. It seems for some reason the Justice Department wants to stay in the regulation business. The Justice Department is to enforce certain antitrust standards and to carry out certain other functions.

In our bill, the FCC refers their decision to the Attorney General and the Attorney General can make a recommendation as to whether to use the 8(c) test or whether to use the Clayton standard test, or indeed whether to use the public interest standard, or any other standard that he deems necessary. So we still have involved consultation with the Justice Department in our bill.

There are many other points to be made here regarding this bill. But I believe we have completed debate on this amendment.

I suggest the absence of a quorum.
The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

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

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

Mr. President, I ask unanimous consent that the McCain amendment vote occur at 2:10, and the time between now and 2:10 be equally divided in the usual form, and no amendments be in order. I further ask unanimous consent to table the McCain amendment at 2:10.

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

Mr. THOMAS. Mr. President, I strongly support the amendment offered by my colleagues—Senators MCCAIN, PACKWOOD, CRAIG, and others—to clarify the public interest standard in the bill.

This public interest test will certainly cause unnecessary delays in the deregulation of the telecommunications industry. The public interest is a vague and subjective standard. A deregulatory bill, as this bill is supposed to be, should establish clear and objective criteria to open the industry to competition. This bill does not. Instead it dictates that a few folks at the Federal Communications Commission [FCC] will decide when true competition begins on the information superhighway.

The FCC's regulatory track record is horrendous. In addition, allowing the FCC to interpret what is in the public interest introduces a perverse incentive for FCC officials to slow down deregulation. Increased competition decreases the agency's workload and diminishes its need for existence. At a time when we are downsizing Government, we ought not to be expanding the role of the FCC. The bottomline is that FCC officials cannot create competition with bureaucratic entry tests.

By delaying true competition, this bill hurts consumers. According to several studies, this delay could result in billions in lost economic output and millions of new jobs. With such severe economic costs, it makes little sense to delay competition with this public interest standard. Quick deregulation will ensure that all companies face the most ruthless regulator of all—the American consumer.

This amendment puts all parties on equal footing—the Bells can offer long distance services when long distance companies can offer local telephone service—no sooner, no later.

Mr. President, the bottomline is that competition is in the public interest. It expands consumer options, lowers prices, creates new jobs and increases our international competitiveness. I urge my colleagues to join me in supporting this proconsumer amendment.

Mr. CRAIG. Mr. President, after many years of failed attempts, this Congress will have the overdue opportunity to reform the 1934 Communications Act. Senator PRESSLER, the chairman of the Commerce, Science, and Transportation Committee, is to be commended for his efforts to get legislation passed out of the committee and onto the floor of the Senate.

Mr. President, the Telecommunications Competition and Deregulation Act of 1995, S. 652, is a very comprehensive bill covering all areas of the telecommunications industry. S. 652 is a vast improvement over the status quo.

However, it could be made more deregulatory, better enhancing competition in the marketplace. Therefore, I hope that the final bill passed by the Senate will incorporate a number of deregulatory amendments.

As I mentioned, this is a very comprehensive bill, so I will limit my remarks at this time, to more general issues of concern and interest. First, and foremost, it is important that we do not lose sight of the ultimate goal of reforming the 1934 act, which should be to establish a national policy framework that will accelerate the private sector deployment of advanced telecommunications and information technologies and services to all Americans by opening all telecommunications markets to competition.

In addition, working toward that goal should spur economic growth, create jobs, increase productivity, and provide better services at a lower cost to consumers.

Passing legislation that will open competition in this \$250 billion industry will have broad-reaching effects.

It is important that we seize this opportunity to limit the Government's role in this vibrant sector of our economy.

Last year we debated health care—that is, impact. It is not often that the Congress has an opportunity to write telecommunications legislation. Therefore, it is important that we pass legislation that is clear, forward-looking, and does not perpetuate regulations that outlive their usefulness or create monopolies.

It is my position that the best way to achieve this is to move toward a competitive system by removing barriers to access in the various sectors of industry. Let me emphasize this point, because I think it reflects some of the differences of opinion on how to get to competition, competition will exist when all barriers to market access have been removed.

To deregulate through regulation reminds me a little of the term widely referred to in last year's health care debate, "Managed Competition." I am very concerned that efforts to control deregulation through regulation will put the Government in the position of determining the winners and losers in the marketplace.

This is not a role for the Government to play. As a conservative, and one who

strongly believes in limited Government, I am very concerned about the powers delegated to the FCC in S. 652, which could allow unnecessary delays in fully opening the telecommunications market.

In short, S. 652, as I read it, deregulates through regulation. It gives an inch with new competitive freedoms—then takes a mile with new layers of regulatory conditions and market entry barriers. It is my hope that we can preserve the pro-competitive aspects of S. 652 and clarify those sections that unnecessarily restrict competition.

With that in mind, there are several amendments that I will be supporting during debate on this bill, which will promote deregulation and competition.

First and foremost, we must ensure that the bill provides for the elimination of obsolete regulations, once certain competitive conditions are met. In order to achieve those competitive conditions, there should be clear, reasonable and objective requirements or conditions that will remove access barriers that currently protect monopolies.

Having said that, once those barriers protecting monopolies are removed, a competitive marketplace is established and there should be open competition. More specifically, if a market is contestable, regulators should not interfere with natural competitive forces.

Competition will provide the lowest price, the best delivery of new services, and infrastructure investment—*not* regulators.

Mr. President, I think it is important to emphasize that this is not just an industry bill. This legislation has the potential of creating thousands of new jobs and enhancing access to a wide array of communication and information services to all Americans, but especially folks who live in rural or remote communities.

According to a recent study by the WEFA group, which is an econometric forecasting agency, competition in the telecommunications industry will dramatically benefit the American economy.

The WEFA study concluded that delaying competition just 3 years will result in a loss of 1.5 million new U.S. jobs, and \$137 billion in real gross domestic product by the year 2000.

Conversely, the study found that the immediate and simultaneous opening of all telecommunications markets would create 2.1 million new jobs by the turn of the century, and about 3.4 million over the next 10 years.

The study also shows that during the next decade, full competition in telecommunications would increase GDP by \$298 billion; save consumers nearly \$550 billion through lower rates and fees for services; and increase the average household's annual disposable income by \$850.

In Idaho alone, thousands of jobs would be created with simultaneous and immediate competition. According

to the WEFA study, Idahoans would benefit from the creation of 7,400 new jobs by the year 2000.

In addition to the issue of job creation, rural States have a great deal at risk if we do not pass legislation to deregulate telecommunications.

There are many examples in my home State of Idaho that demonstrate how current regulations reduce customer choice, restrict growth and access to new technologies.

In March 1994, U.S. West Communications was forced to cancel two new information services in Idaho, Never-Busy fax and Broadcast fax, due to the MFJ requirement that equipment providing the services must be located in each LATA. Because of population density, there were not enough customers to support the cost of maintaining the necessary equipment in the Boise LATA.

Technically, one piece of equipment can serve several States, but the law requires the extra expense of replicating equipment in each LATA just to meet outdated regulations that are not consistent with market demands.

In addition, Boise was selected by U.S. West to be one of the first areas in the company to be wired for broadband service, giving residential and business customers access to voice, video, and data over a single line. Due to the long timeframe associated with the FCC approval process and limitations of current MFJ regulations, the project has been delayed indefinitely.

In 1988, the Idaho Legislature approved one of the first modified regulation structures in the country.

All services except local exchange services with five or fewer lines were completely deregulated. As a result of opening the marketplace, over 150 companies now provide long-distance calling within the State.

The total volume of calling has increased by 60 percent and the long-distance market share of U.S. West has declined by over 15 percent. The end result has been a reduction in both the prices paid by the long-distance carriers to gain access to the network and the price paid by the consumer for services. This, in spite of the fact that local exchange services were still perceived to be what some would term as a "monopoly" service. Opening Idaho's market has enhanced competition and improved prices for consumers.

In both an article and an editorial, the Idaho Statesman outline how businesses in Idaho were able to save millions of dollars through increased productivity and improved services because of the infrastructure and services offered by the local telephone company as a result of the modified regulation made possible by legislation I have described.

The Statesman recognizes the value of a competitive communications marketplace, and has been proactive in its editorials in encouraging an open telecommunications industry.

Mr. President, I would like to take a few moments to discuss some concerns

on the need for deregulation on the cable industry. Let me begin by saying that I opposed the Cable Act of 1992, and voted against passage of the bill.

Since the enactment of S. 12, I have received numerous complaints from fellow Idahoans who felt that the changes resulting from S. 12 worsened rather than improved their cable service and cost. In addition, a number of very small independent cable systems in Idaho have been in jeopardy of closure because of the astronomical costs associated with implementing the act.

A rural community hardly benefits, if it loses access to cable services because the local small business that provides the service cannot handle the burden of Federal regulations. Quite the opposite is true.

Competition, not regulation, will encourage growth and innovation in the cable industry, as well as other areas of telecommunications, while giving the consumers the benefit of competitive prices.

As I mentioned before, Mr. President a central goal of S. 652 is to create a competitive market for telecommunications services. Cable companies are one of the most likely competitors to local telephone monopolies. Cable companies will require billions of dollars in investment to develop their infrastructures in order to be competitive providers.

The Federal regulation of cable television has restricted the cable industry's access to capital, made investors concerned about future investments in the cable industry, and reduced the ability of cable companies to invest in technology and programming.

Mr. President, rate regulation will not maintain low rates and quality services in the cable industry. Competition will.

New entrants in the marketplace such as direct broadcast satellite [DBS] and telco-delivered video programming will provide competitive pressures to keep rates down.

In short, Mr. President, deregulation of the cable industry is essential for a competitive telecommunications market—and it is necessary as an element of S. 652, and the competitive model envisioned in the bill.

It is my preferred position that S. 652 should completely repeal the Cable Act. However, I am very supportive of efforts to repeal rate regulation for premium tiers, and complete relief of rate regulation for small cable companies, who have been hit so severely by the 1992 Cable Act.

Before closing, Mr. President, I would like to take a moment to share some interesting letters I have received from various groups outside the telecommunications industry. First and foremost, I was very interested as a member of the Senate Veterans affairs Committee to see the great interest veterans service organizations have in seeing a deregulatory bill passed.

In a letter from James J. Kenney, the national executive director of AMVETS, he states the following:

America's veterans and their families have a real stake in the debate in Congress over competition in telecommunications.

We know that full competition—now—means millions of new jobs spread throughout every section of our economy. A recent study by the WEFA group calculated that 3.4 million new jobs would be produced over the next ten years if all telecommunications companies were allowed to compete right away. These jobs are desperately needed for the estimated 250,000 men and women who are being discharged every year due to downsizing of the military

Veterans want Congress to be on our side in this fight—to stand up for us—for new jobs and lower prices. We don't want to have to wait for the benefits of new competition. . . .

On behalf of AMVETS and all of America's veterans, I urge you to move forward quickly in assuring that S. 652 will be a telecommunications reform bill that will allow immediate and simultaneous competition in the marketplace.

Mr. President, I intend to stand up for our veterans, and other of our citizens. I think this letter shows just how important this bill is to all Americans and the benefits that we can all enjoy from a robust and competitive telecommunications market.

Another interesting letter on this legislation, written by former Surgeon General C. Everett Koop, M.D. and Jane Preston, M.D., and president of the American Telemedicine Association, also urges the Congress to "Pass telecommunications reform legislation that opens up full competition in both local and long distance communications without delay."

Their interest in S. 652 is the potential advances it can bring to the medical field through greater access to telemedicine.

As a member of the Senate/House ad hoc Committee on Telemedicine and Informatics, I agree with the interests outlined in this letter.

One of the single largest obstacles to the Deployment of Telemedical services LATA boundaries. Many of those involved in the field of telemedicine see LATA boundaries as "toll booths on the information highway." The existence of LATA boundaries, (and accompanying high rates for long distance services) was not a problem in the early stages of telemedicine research and demonstration projects. . . . However, with the development of telemedicine projects as ongoing, financially viable operations and with the steady increase in telemedical interactions, the cost of long distance services has become a major program. Therefore, we ask you to eliminate this barrier by lifting existing restrictions and allowing all companies to compete immediately for local and long distance services.

The letter goes on to describe the many health care uses of the telecommunications infrastructure such as the training and education of health care professionals, consultation, and diagnostics, in addition to all the administrative functions that use the system. This is especially important to the future of the delivery of health care in remote and rural communities.

Mr. President, I don't support the unnecessary Government regulation of private industry. Some will argue that

the regulations incorporated in S. 652 are not only necessary, but they are the only way we can reach a competitive marketplace. I disagree. There will be a number of amendments offered to curb the regulations that remain in this bill. With these clarifications and improvements, I am confident that S. 652 will positively change the telecommunications landscape for the betterment of American consumers and the national economy. I hope my colleagues will join me in support of those amendments.

The PRESIDING OFFICER. Who yields time?

If neither side yields time, time will be charged equally against both sides.

The Senator from Idaho.

Mr. GRAIG. Mr. President, I suggest the absence of a quorum. I ask that no time elapse equally.

The PRESIDING OFFICER. Without objection, it is so ordered. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

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

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

Mr. LOTT. Mr. President, may I inquire about the time arrangement at this point?

The PRESIDING OFFICER. At this point we have a vote on the McCain amendment set for 2:10. At this point, there are remaining 2 minutes 3 seconds on Senator PRESSLER's time for discussion on that amendment, and 20 minutes remaining on Senator McCain's amendment.

Mr. LOTT. Let me ask it this way. Is there time in here that I may use that is not designated on one side or the other?

The PRESIDING OFFICER. It would take unanimous consent to proceed in that fashion. But the effect would be potentially delaying the vote if the advocates and proponents of the amendment were to withhold this time.

Mr. LOTT. Mr. President, I ask unanimous consent that I be allowed to speak against the amendment for the next 5 minutes.

Mr. STEVENS. Reserving the right to object, I shall not object, so long as it comes off both sides. I understand that is agreeable to Senator MCCAIN. We still want the vote at 2:10.

The PRESIDING OFFICER. There are only 2 minutes left of Senator MCCAIN's time. If that were to be equally divided, it would exhaust all the time he has left plus additional time.

Mr. STEVENS. Senator PRESSLER has 2 minutes.

The PRESIDING OFFICER. I believe Senator MCCAIN has 2 minutes because the last speaker spoke, I thought, in support of the amendment.

Mr. STEVENS. Mr. President, as I understand it, consistent with Senator MCCAIN's desire, just take the time and allow the Senator to speak.

Mr. LOTT. Mr. President, I think we all understand that. I will be brief. I want to be recognized briefly to speak against this amendment. I think what we have here is a classic case of the defeat of the good in pursuit of the perfect. Perhaps this legislation is not perfect, but it has been worked out very laboriously in a bipartisan way. It may not be totally perfectly deregulatory. I am sure it would be wonderful if we could eliminate the FCC. A lot of us would like to see no need for the FCC. But we are going from what has been a monopolistic system, an antiquated system, to a new, dynamic, open, more competitive, and much less regulatory system. This language, the public interest standard, that is included in the bill is a very important part of the core. It was a part, an important part, of putting together the agreement on the entry test. In my opinion, it is sort of part of the checklist. Once the Bell companies meet the checklist, there is this one additional thing, the public interest question. I think it is important to make sure that we have a fair and level playing field. This is part of that effort to make sure that we have done it right.

Our purpose here is to have more competition and less regulation. But I do not believe it is going to be constructive at this point if we take that public interest language out of there.

So I urge my colleagues, if we are going to keep this compromise agreement together, we need to leave this language in there.

I urge the defeat of the McCain amendment.

I yield the floor.

Mr. MCCAIN addressed the Chair.

The PRESIDING OFFICER. The Senator from Arizona.

Mr. MCCAIN. How much time remains?

The PRESIDING OFFICER. Eighteen minutes forty seconds.

Mr. MCCAIN. Mr. President, I yield myself such time as I may consume.

I really am struck by the comments of the Senator from Mississippi because it is exactly what is in this editorial of the Wall Street Journal. It is not a good idea to have the public interest provision in the bill, but let us do it because we have a compromise here. Let us make a bad deal, but it is a deal. I cannot tell my colleague from Mississippi how deeply I am disappointed in his position on this issue.

I had many conversations with him when we were talking about a checklist and how a checklist would satisfy the concerns of those who were in opposition to this legislation. Now, obviously, that was not enough. But we are going to make a deal. Let us change the debate around here. Instead of debating a piece of legislation, let us make a deal. The fact is the public interest aspect being added onto a checklist negates the entire checklist. What in the world is the need to have a checklist to say we comply with the checklist and then send it over to the

FCC to decide what the amorphous position of the public interest is? The reason we will not do away with the checklist is we went down this road of concession after concession. We decided first that we will not have a checklist, then whether we needed a checklist. Then that was not sufficient to get enough support, so we added the public interest clause. So we end up with a meaningless checklist.

What in the world is the sense of having a checklist then after the checklist has been complied with? OK, it has been complied with, but it is up to you, FCC. What relevance does a checklist have?

Mr. President, I continue to be disappointed at what the Wall Street Journal describes as the "problem here is a familiar one." Companies lean too heavily on their insider Washington representatives whose skill is chiseling arcane special provisions out of an arcane process. These people are part of the reason the public is cynical about Washington. The CEO's know what is right, but they are given to believe it is never attainable considering universal service.

Mr. President, I am aware that this amendment will probably not be passed. But this is a clear example of what is wrong with the way we do business here in Washington. In the face of principle, we now compromise, and instead of doing so, let us have a bad deal, but it is better than no deal at all. I do not agree with that. I believe that we do a great disservice to the people whom we represent in the name of deregulation to add 80, according to the Wall Street Journal, 80 new regulatory functions, all designed, of course, to ensure competition and fairness.

Part 1 of those 80 new regulatory functions—part of the \$81 million that the FCC is going to need to enforce this deregulation, and, of course, in the words of the Commissioner of the Federal Communications Commission, they will need accountants, statisticians and business school graduates. So let us call this what it is—a plus to some special interests and perhaps some improvement in the status quo but certainly not deregulatory legislation.

I reserve the remainder of my time.

The PRESIDING OFFICER. Who yields time?

Mr. STEVENS. I yield such time as is remaining to the Senator from Nebraska.

The PRESIDING OFFICER. The Senator from Nebraska.

Mr. KERREY. Mr. President, I thank the Senator from Alaska.

I rise in opposition to the amendment. The most difficult thing to have happen in the law that we are deliberating here is the competition at the local level. That is the most perplexing and most difficult part of all. By competition, I do not mean competition for phone service. I do not mean competition for cable service. I do not mean

competition for information businesses that want to preserve this kind of line of business distinction. I mean competition to package information services, not coming from the big guys that we talk to all the time in this town, but from that new entrepreneur that hires their lawyers at \$50 an hour, not by the dump truck load, who need to make certain they will have an opportunity to compete.

This checklist, such as it is, I do not know if the checklist is going to work. There are 14 things on the checklist. Take a look at it. You tell me. One of the problems that I have in this whole mechanism is that it says the FCC is supposed to determine whether or not we have competition. How do I determine? Well, I have a checklist.

Then I have one final test that, by the way, has been litigated many, many times over the course of time. The Supreme Court has spoken many times on this issue. They understand the intent with a lot more clarity than meets the eye in this area. This is an effort to make certain that in fact we do get competition at the local level. I assure my colleagues, if we do not get competition at the local level, our consumers, our citizens, households are not going to be happy because their rates will not come down for overall information services. Their quality will not go up. Only in the competitive environment will that happen. Only if the provider of services knows that the customer can walk and go someplace else is there going to be a competitive environment, and only if the law encourages and allows new entrepreneurs and startup companies, as I believe the language in this bill allows, and that the amendment will strike.

Mr. President, I yield the floor.

The PRESIDING OFFICER. Who yields time?

Mr. MCCAIN. Mr. President, I yield my remaining time to the Senator from Oregon.

Mr. PACKWOOD. Mr. President, I thank my good friend from Arizona. I apologize for being late. The Finance Committee met from 9:30 until about quarter of 1. I have just gotten here now.

I realize the time constraints we are under, and I am not going to make a lot of long opening comments. This amendment is a simple amendment. No matter how anybody cuts it and attempts to parcel the bill, there are two competitive tests in this. I am going to refer to them as section A and section B, and they are genuinely competitive, objective tests. But then there is a conjunction at the end of the second section. We get into this public interest. It reads, "And if the Commission determines that requested authorization is consistent with the public interest, convenience and necessity," and what not.

What that means is that if any applicant meets the first two, which are objective and measurable, they still have to get over the hurdle of the third test,

which is the public interest test. That is amorphous. That is anything the Federal Communication wants it to be. It is an unneeded test. It is going to be a test that is going to tie up every applicant not for weeks, not for months, but for years as we go through not some kind of an objective what is the public interest but on every single application to extend service to consumers, every single application to get more competition into the communications field, every one of those is going to have to pass a subjective public interest test, because I can assure the Presiding Officer and I can assure this Chamber that anybody who opposes one of your competitors getting into your business is going to say it is not in the public interest and you are going to have to prove that it is in the public interest.

And here is where I wish to complain about established bureaucracy generally, and I do not mean it critically, but I do mean it in the sense that there is a great tendency of any regulatory body to like what is. And there is a triangle between applicants and regulators and employees who used to be with the regulators, who now represent the applicants and who will also be representing the opponents of the applicants. And there will be a cozy tendency not to want to expand.

I am just going to give 3 minutes of history here on deregulation efforts I have seen since I have been on the Commerce Committee. I have been on it now since 1977, and I have been through every single deregulatory phase that we have had. Airlines in 1978—no one in the airline industry except United Airlines, to their credit, favored deregulating the airlines, nor did any of the unions that worked for the airlines want deregulation. In 1980, truck deregulation was opposed by the American Trucking Association and the Teamsters Union and not very enthusiastically looked at by the Interstate Commerce Commission, which then regulated trucking. We deregulated trucking by and large in 1980, and the Interstate Commerce Commission has shrunk from about, as I recall, 2,200 employees in 1981 down to around 500 or 600 now. My hunch is that the life of the Interstate Commerce Commission is not long in being. But because we deregulated, they shrunk down.

Now, what is the one thing that we left unregulated—I should not say we—that was left unregulated. When AT&T agreed with the antitrust division for the modified final judgment in 1982, the one thing that is not part of that judgment was cellular phones. Why? Because nobody cared. In 1982, you had 100,000 cellular phone customers. Do you know what the historical analogy is?

It is England and France after World War I, when they decided to divide up the Turkish territories, Turkey being an ally with Germany in World War I, and they lost. Turkey had control of the entire Middle East. England and

France divided it up. England took Israel, Jordan, and Iraq; France took what became Lebanon and Syria. Nobody wanted Saudi Arabia—nothing but a desert. So it was left to drift on its own. No one knew there was any oil. I am sure Britain and France would have carved it up also if they thought they wanted it.

Nobody cared about cellular phones in 1982, so with 100,000 then, 25 million now, and 28,000 new customers a day, we will be at about 120 million cellular phone users by the year 2002. There are only 150 million telephone subscribers now. The reason this service is growing—and is it competitive? Read the advertisements. Hear the television. Listen to the radio. Competitive? Are the prices coming down? Is it big competitor after big competitor about some interesting small-niche competitors that understand this business, and because they are small and often personally held, they can beat AT&T or MCI or Bell Atlantic? That never would have happened had they been included in the modified final judgment.

I can see exactly what is to happen if we do not get rid of this public interest part of this bill. In is going to come a smart young engineer who worked for AT&T until he or she was 38 and decided to leave and form a little niche company of their own, and they are going to want to get into Bell Atlantic's territory. We think this is Bell versus AT&T. They are going to want to get into that territory, and they are going to make an application. And they are going to be kept out, or Bell Atlantic is going to be kept out if they want to get into AT&T's territory because they do not meet the public interest test.

Mr. President, of all of the areas of business in this country that no longer need regulation, communications is it. The argument is made that we are operating under an act that was passed in 1934. That is true. If we pass this act today, this takes us up to about 1964, 1974 at most.

Mr. President, we are not 5 to 10 years from the day that wired systems are going to be irrelevant. We are going to go back to broadband broadcasting where your computers are going to be hooked up by radio waves or the equivalent rather than wires, and we are going to have more spectrum than we know what to do with. And we are going to be hobbled because this bill will not give the freedom to competitors that is necessary, and the public interest test will do more to stop that freedom of competition than any other single thing.

I hope very much the Senate will adopt this amendment. This amendment by itself will do more to make sure that we have the equivalent of the kind of competition we have seen in cellular in the last 10 years than any other single thing this Senate will consider.

I thank the Chair.

Mr. MCCAIN addressed the Chair.

The PRESIDING OFFICER (Mr. GRAMS). The Senator from Arizona.

Mr. MCCAIN. I ask unanimous consent that Senator THOMAS be added as a cosponsor.

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

Mr. PRESSLER. Mr. President, I move to table.

Mr. HOLLINGS. I move to table.

The PRESIDING OFFICER. Does the Senator from Arizona yield back his time?

The Senator yields back his time.

Mr. PRESSLER. I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second?

There is a sufficient second.

The yeas and nays were ordered.

The PRESIDING OFFICER. The question now is on agreeing to the motion to table the amendment. The yeas and nays have been ordered. The clerk will call the roll.

Mr. LOTT. I announce that the Senator from Mississippi [Mr. COCHRAN] is necessarily absent.

The PRESIDING OFFICER. Are there any other Senators in the Chamber who desire to vote?

The result was announced—yeas 68, nays 31, as follows:

[Rollcall Vote No. 243 Leg.]

YEAS—68

Akaka	Glenn	Moseley-Braun
Ashcroft	Gorton	Moynihan
Bennett	Grams	Murkowski
Biden	Grassley	Murray
Bingaman	Harkin	Nickles
Bond	Hatfield	Nunn
Boxer	Hollings	Pell
Bradley	Hutchison	Pressler
Bryan	Inhofe	Pryor
Bumpers	Inouye	Reid
Byrd	Jeffords	Robb
Campbell	Kassebaum	Rockefeller
Chafee	Kennedy	Roth
Cohen	Kerry	Sarbanes
Conrad	Kerry	Simon
D'Amato	Kohl	Snowe
Daschle	Lautenberg	Specter
Dodd	Leahy	Stevens
Dorgan	Levin	Thompson
Exon	Lieberman	Thurmond
Feingold	Lott	Warner
Feinstein	Lugar	Wellstone
Ford	Mikulski	

NAYS—31

Abraham	Faircloth	Mack
Baucus	Frist	McCain
Breaux	Graham	McConnell
Brown	Gramm	Packwood
Burns	Gregg	Santorum
Coats	Hatch	Shelby
Coverdell	Heflin	Simpson
Craig	Helms	Smith
DeWine	Johnston	Thomas
Dole	Kempthorne	
Domenici	Kyl	

NOT VOTING—1

Cochran

So the motion to table the amendment (No. 1261) was agreed to.

Mr. PRESSLER. Mr. President, I move to reconsider the vote.

Mr. HOLLINGS. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

PRIVILEGE OF THE FLOOR

Mr. PRESSLER. Mr. President, I ask unanimous consent that Rosanne

Beckerle be permitted privilege of the floor.

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

Mr. DOMENICI. Mr. President, I ask unanimous consent that Erica Gum, an intern in my office, be permitted privilege of the floor during the remaining debate of this issue.

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

AMENDMENT NO. 1262

Mr. MCCAIN. Mr. President, I send an amendment to the desk and ask for its immediate consideration.

The PRESIDING OFFICER. Without objection, the pending amendment is set aside.

The clerk will report.

The legislative clerk read as follows:

The Senator from Arizona [Mr. MCCAIN] proposes an amendment numbered 1262.

The amendment is as follows:

Strike Section 310 of the Act and renumber the subsequent Sections as appropriate.

Mr. MCCAIN. Mr. President, this amendment would strike the provisions in the bill that force private companies to give preferential rates to certain other entities.

Specifically, the bill mandates that any health care facility, library, or school receive telephone service at cost. In other words, the telephone company must offer such service at reduced rates.

We all support helping education, furthering the ability of all individuals to have access to libraries, and helping people get medical help.

Mr. President, I am very concerned that the provisions of this bill go too far. Rural health providers will be provided with these low, preferential rates. I question whether such action will help low income rural Americans receive health care or will it help wealthy doctors become even wealthier when their telephone bills are reduced.

I question whether such an across-the-board mandate for schools to receive preferential rates is really necessary for wealthy suburban schools?

And for all of these provisions, I must question does anyone truly know the cost involved here?

For the following reasons, the public users section of this bill should be struck.

First, these provisions amount to an unfunded mandate. Earlier this year we passed legislation to discourage us from passing unfunded mandates on to companies. Make no mistake, this is an unfunded mandate.

Second, many States are already giving some entities preferential rates. There is no reason we should federalize a legitimate function of the States.

Third, if we are to pass such a provision, at a minimum, it must be means tested. There is no reason to give preferential rates to individuals who do not need them.

Fourth, we do not have an accurate assessment of how much this entitlement will cost.

Last, these provisions contain huge loopholes that many will exploit. Will abortion clinics apply for preferential rates as medical facilities? Will law firms with legal libraries seek preferential rates? These terms are not precisely defined in the bill and are open to exploitation.

Mr. President, as an example of what would be provided, it says in the bill on page 134, paragraph 3:

Health Care Provider. The term "health care provider" means post-secondary educational institutions, teaching hospitals, and medical schools.

After reading through the bill language and also after consultation with staff, I am told that the term "elementary school" means a nonprofit institutional day or residential school that provides elementary education as determined under State law.

Does that mean a nonprofit private school falls under this? Does it mean, as I said before, that clinics that perform abortions are a medical facility? Does it, under the term "secondary school," mean a nonprofit institutional day or residential school that provides secondary education, as determined under State law, except that such term does not include any education beyond grade 12?

Does this mean private schools? I know that some private schools such as private parochial schools are not very wealthy. I also know that we all know there are certain private schools that are extremely well off.

Mr. President, I just think this is a wrong idea. It passed by a vote of 10 to 8 in the committee without a large amount of debate.

I hope we can strike this from the bill. I have no idea how much this would cost. I believe that we have spoken very loudly and clearly that unfunded mandates are something that we are rejecting. I urge the adoption of this amendment.

Mr. President, I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second?

There is a sufficient second.

The yeas and nays were ordered.

Mr. BRYAN. Mr. President, I ask unanimous consent that we might return to morning business for 3 minutes.

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

Mr. BRYAN. Mr. President, I thank the Chair and the distinguished managers of the bill.

TRIBUTE TO CAPTAIN O'GRADY

Mr. BRYAN. Mr. President, the nation sighed with relief this morning as we heard reports that Air Force Capt. Scott F. O'Grady, the United States pilot downed by a Serbian surface-to-air missile, had been found in good health, and was resting comfortably on a United States aircraft carrier.

Yesterday, in the Senate Armed Services Committee, Secretary of Defense Perry and Chairman of the Joint

Chiefs of Staff, General Shalikashvili, gave a presentation on United States policy towards Bosnia. As was clear from this hearing, there is little agreement on what United States policy should be towards this war-torn region, and many deeply troubling questions continue to surface regarding the depth of United States involvement in Bosnia, and the need for a strong and coherent United States and NATO policy.

But today, I would like to focus on a good news story, and extend commendations to Captain O'Grady and the American military personnel who were involved in his remarkable recovery.

Although details of the rescue effort are still being released, it is clear that many American military personnel put themselves at great risk in the all-out attempt to locate Captain O'Grady and safely bring him out of Bosnia.

The ability of Captain O'Grady to evade capture by the Bosnian Serbs for nearly 6 days in heavily wooded areas is a great tribute not only to the courage and survival skills of Captain O'Grady, but also to the outstanding training he has received as a U.S. Air Force pilot.

Equally outstanding was the courage and competence of the marines who went into Bosnia under extremely dangerous conditions. Early reports indicate two CH-53 Sea Stallion helicopters under attack by both Serbian surface-to-air missiles and small arms fire were able to land within 50 meters of where Captain O'Grady was concealed. The commander of these marines, Col. Martin Berndt, reached out, grabbed the young pilot, and took off in a matter of seconds.

Finally, many American pilots risked their lives during the past 6 days, flying through a highly sophisticated Serb integrated air defense system in an attempt to pinpoint the location of Captain O'Grady. Many of these flights were extremely hazardous routes in and out of thunderstorms. During the actual rescue mission, additional American pilots covered the Marine helicopters with fighter and electronic monitoring aircraft.

Mr. President, the training, competence and experience that led to the spectacular success of this rescue mission gives credit to the outstanding job done by Secretary of Defense Perry and General Shalikashvili, as well as Adm. Leighton Smith, the NATO commander for Southern Europe. But our highest tribute should go to the courageous young men who were on the ground in Bosnia or flying low overhead. They have demonstrated the best of our U.S. Armed Forces, and the quality of the young men and women we have defending our national security. And a special tribute must go to the remarkable young man, Captain O'Grady, whose actions and courage serve as an example for us all.

Mr. President, I yield the floor.

AIR FORCE CAPT. SCOTT O'GRADY

Mrs. MURRAY. Mr. President, I want to join the President, my House and Senate colleagues, and the American people in expressing my deep relief at the safe return of Air Force Capt. Scott O'Grady, who was shot down over Bosnia 6 days ago while on a NATO mission.

It is a tribute to Captain O'Grady and the Air Force that trained him that he was able to survive for so long under such difficult circumstances. And certainly we must all loudly applaud the brave marines who put their own lives on the line and rescued him under the most treacherous circumstances, braving both missile and small-arms fire during their 5-hour rescue mission, to pull one of their own to safety.

Captain O'Grady's family has no doubt had a week of anguish and hope, and I celebrate with them this wonderful news and the remarkable strength and courage of Captain O'Grady and the marines who come to his rescue.

Scott O'Grady, who is from Spokane, WA, is an inspiration to citizens across my State and this nation, and I am proud to join the many many voices today that are celebrating his safe return.

THE TELECOMMUNICATIONS COMPETITION AND DEREGULATION ACT

The Senate continued with the consideration of the bill.

AMENDMENT NO. 1262

The PRESIDING OFFICER. Is there further debate on amendment No. 1262?

The Senator from South Carolina.

Mr. HOLLINGS. Mr. President, as we know, the distinguished Senator from West Virginia, Senator ROCKEFELLER, on the Commerce Committee, has been the lead Senator on our side, and the distinguished Senator from Maine, Senator SNOWE, on the majority side of the Commerce Committee with respect to the public entities. They did not realize this amendment was coming up and they are on their way to the floor.

My friend from Arizona got some quick figures and questioned the figures I had given relative to the air fares. So let me once again state that the USAir fare from National to Charleston round trip is \$628. United from Dulles round trip to Charleston is \$628. There is a Continental flight at \$608 round trip from National.

With respect to USAir going down to Miami, we talked about flying 500 miles further and of course the 500 miles coming back, 1,000-mile difference. There is a USAir \$658 round trip to National, and if you walk up to the counter, there is a special of \$478 for the 10 seats available that the clerk at the counter can give at that reduced rate.

Perhaps that is what was the case with respect to the quoted figure of going from Dulles to Charleston, D.C. to Charleston, the \$249 fare round