ORDERS FOR TUESDAY, JUNE 13, 1995

Mr. LOTT. Mr. President, I ask unanimous consent that when the Senate completes its business today it stand in recess until the hour of 9:15 a.m., on Tuesday, June 13, 1995, that following the prayer, the Journal of proceedings be deemed approved to date, the time for the two leaders be reserved for their use later in the day, and there then be a period for the transaction of morning business not to extend beyond the hour of 9:45 a.m., with Senators to speak for up to 5 minutes each; further that at the house of 9:45, the Senate resume consideration of S. 652, the telecommunications bill.

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

PROGRAM

Mr. LOTT. Under a previous order debate will be equally divided from 11:30 to 12:30 on the pending Thurmond second degree amendment to the Dorgan amendment, with a vote to begin on the motion to table the Dorgan amendment at 12:30; I now ask unanimous consent that at the conclusion of vote the Senate stand in recess until the hour of 2:15 p.m. on Tuesday for the weekly policy luncheons to meet; and further that Members have until 1 p.m. to file first degree amendments to S. 652, under the provisions of rule XXII.

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

Mr. LOTT. For the information of all Senators there will be a rollcall vote on the Department of Justice amendment at 12:30 tomorrow. Additional votes are expected on the telecommunications bill following that vote, but not prior to 4 p.m., in order to accommodate Members attending the memorial service for former Secretary Less Aspin. Also Members should be on notice that a cloture motion was filed on the telecommunications bill tonight, but it is the hope of the managers that passage of the bill would occur prior to the vote on the cloture motion. Senators should be reminded that under the provisions of rule XXII, any Senator intending to offer an amendment to the bill must file any first-degree amendment with the desk by 1 p.m. on Tuesday.

ORDER FOR RECESS

Mr. LOTT. Mr. President, I understand that the distinguished Senator from South Dakota wishes to make one final statement.

I would like to go ahead and conclude now by saying that if there is no further business to come before the Senate after the statement by Senator PRESSLER, that we stand in recess under the previous order.

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

THE TELECOMMUNICATIONS COMPETITION AND DEREGULATION ACT

The Senate continued with the consideration of the bill.

Mr. PRESSLER. Mr. President, I would like to summarize where we are with this bill and take a look at tomorrow and finishing this bill, which I hope we will be able to do.

We have a very tough vote coming up tomorrow regarding adding the Department of Justice to the regulatory scheme. I would just like to point out that referral to the Department in the past precludes timely resolution, because the Department does not take timely action.

Now, the Department is filled with very brilliant lawyers and they have a reputation of moving very slowly on these waiver applications. I will show a couple of charts that illustrate how slow the Department has been.

In the original 1982 MFJ, it was suggested that the Department complete its work on each waiver request within 30 days. And, although the decree itself contemplates that waiver requests will be filed directly with the court, in July 1984 the court announced that it would consider application for waivers of the line of business restrictions only after review by the Department of Justice.

This procedure was imposed after only 7 months' experience with the waiver process and was not expected substantially to delay the processing of waiver requests. To the contrary, in establishing this procedure, the court noted the length of time that previously filed waiver requests have been pending and accordingly directed the Department to endeavor to return those requests to the court with its views within 30 days.

I am going to repeat that because I think it is very important. The court noted how slow the Justice Department was moving on these waivers and told them the length of time requests had been pending and accordingly directed the Department to endeavor to return these requests to the court with its views within 30 days.

So the framework for what I am saying is that the Justice Department was asked to do this within 30 days; not 90 days, as my friends have put into their bill. But what actually happened? Let us look at the facts. Let us go to the videotape, so to speak.

Contrary to the court's expectations, delays in administrative processing of waiver requests soon began to grow. In 1984 the Department disposed of 23 waivers. The average age of waivers pending before it was a little under 2 months. By 1988 the average age of pending waivers topped 1 year. Then, in 1993, when the Department disposed of only seven waivers, the average age of pending waivers at year end had increased to 3 years. More recently, in 1994, the Department disposed of only 10 waivers. This left over 30 waivers with an average of 2½ years still pending.

The Department now takes almost as long on the average to consider a single waiver request as the total time intended to elapse before comprehensive triennial reviews—which the Department has refused to conduct. This has occurred notwithstanding significant decreases in the number of waiver requests. While requests have decreased substantially since 1986, the Department had not even made a dent in the backlog. To the contrary, because the Department disposes of fewer and fewer waiver requests each year, the number of pending requests continues to grow. No matter how few waiver requests the BOC's file, the Department simply cannot keep up. In light of the multiyear delays in processing waiver requests, it is remarkable the court originally directed Department review within weeks, not months or years.

So the court directed the Department of Justice to act within a few weeks. And it has taken it years to act. So the point is, if we adopt the Dorgan-Thurmond amendment, we will be adding probably 2 or 3 years to this so-called deregulatory process, because that is what has happened in the past.

More significantly, the court ordered virtually immediate Department action because of prior delays that now seem comparatively minor. The eight waivers at issue since July of 1984 had been pending just an average of 5 months, with none more than 6 months old. Today, a waiver request rarely makes it through the Department in less than a year, and 2½ years is the mean.

Think about that; it takes 2½ years for the Department of Justice to approve or disapprove a waiver request that originally the district court thought could be done in 30 days. What is going on? Why is that?

As AT&T argued in 1986, and the court noted in 1988, the Department is clearly overwhelmed by its decree responsibilities. Aware of this, the Bell operating companies several years ago attempted to reform waiver procedures within the limits of the court's orders to eliminate the mounting backlog of pending requests. Following consultation with the Department, during 1991 the Bell operating companies agreed to consolidate the large number of pending waiver requests into a handful of generic requests and to limit their filings of new individual waiver requests. In exchange, the Department committed to acting promptly on generic waiver motions.

Once again the Department has not kept its part of the bargain. Four generic waiver requests have been filed. The first covered international communications. It was filed with the Department in December 1991 but did not receive departmental approval for 7 months, even though AT&T indicated within 3 months of the waiver request that it had no objection. Thus, we have a circumstance where the company, AT&T—a party to the consent decree—