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House of Representatives

The House was not in session today. Its next meeting will be held on Tuesday, June 13, 1995, at 10:30 a.m.

Senate

MONDAY, JUNE 12, 1995

(Legislative day of Monday, June 5, 1995)

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

PRAYER

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

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

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

Oh God, help us care for our children. Give us wisdom to create regulations that will protect the innocent. In times past, You have used the Senate to deal with problems of air and water pollution, and the misuse of our natural resources. Lord, give us courage to balance our reverence for freedom of speech with responsibility for what is said and depicted.

Now, guide the Senators as they consider ways of controlling the pollution of computer communications and how to preserve one of our greatest resources: the minds of our children and the future moral strength of our Nation. Amen.

RECOGNITION OF THE ACTING MAJORITY LEADER

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

SCHEDULE

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

RESERVATION OF LEADER TIME

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

MORNING BUSINESS

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

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

The PRESIDING OFFICER. The Senator from Oklahoma is recognized.

THE TELECOMMUNICATIONS BILL

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

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

Times have changed a great deal. As some of my experience back with the Rural Electric Association showed, seeking to bring electricity to areas where there was relatively low density and where there were few people living, no one in the competitive business was really interested in serving those areas

● This "bullet" symbol identifies statements or insertions which are not spoken by a Member of the Senate on the floor.

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that were very low in revenue. Hence, the cooperative effort of the rural electrics.

I think cooperation is necessary and will be here in the area of universal coverage. We need to provide with certainty that there will be telephone communications, and that is part of this bill. At the same time, we need to open it to full access in competition. So many things are happening, so many things are changing, so many things that will bring to a State like mine the opportunity to have all kinds of communications, indeed to conduct the kinds of businesses in Wyoming that you could not conduct without entry to an information network, without the kinds of things that will be provided here.

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

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

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

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

Mr. President, I yield the floor.

The PRESIDING OFFICER. The Senator from South Dakota.

THE TELECOMMUNICATIONS COMPETITION AND DEREGULATION ACT

Mr. PRESSLER. Mr. President, we will be back on the telecommunications bill at 1 o'clock. I urge Senators to bring their amendments to the floor so we can begin to see if we can work them out. We are determined to press forward on the telecommunications bill this afternoon, and we will be starting at 1 o'clock. We invite speeches by Members as well as amendments.

This is a vast bill that will affect every household in the United States. It also affects about one-third of our economy. We have been on this bill for 2 days and we will be going back to it at 1 o'clock. We invite amendments to be offered from that time onward.

I yield the floor.

The PRESIDING OFFICER. The Senator from North Dakota.

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

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

NAFTA

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

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

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

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

Some of us did not believe that to be the case. Some of us believed that if you linked an economy like ours with an average wage of $15 to $17 an hour to an economy like Mexico, which still pays in many areas 50 cents or $1 an hour—in other words, linking our economy to an economy whose wage base is a fraction of ours—we felt it would tip the table so that jobs in this country would move south to Mexico. The jobs would move south because big producers, big corporations want to produce where it is cheap, and sell back into our country.

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

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

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

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

Let me show you two charts. First, the United States-Mexico trade surplus, again taking out transshipments, we had a very significant surplus in Mexico. In 1992, it was $5.7 billion. In 1993, when we had NAFTA passed, it was $1.6 billion. Last year it shrunk to $.5 billion. And, if the first 3 months of this year are any indication—and almost all economists say it is—we will have a $15 billion trade deficit this year with Mexico.

Take a look at that and see which direction we are headed. Are those prophets who predicted these wonderful things for America now looking at their chart and saying, ''Gee, this is wonderful''? I do not think so. We went

from a significant trade surplus with Mexico now to a very significant trade deficit.

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

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

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

Mr. Scott's study also shows that the jobs that we have lost as a result of the imports coming into this country are good jobs, good-paying jobs.

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

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

What have we seen along the border since NAFTA?

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

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

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

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

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

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

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

I hope that soon we will see more aggressiveness and more activity on the issue of requiring fair trade.

Mickey Kantor and the President are confronting the Japanese on the trade issue, and it requires some strength and courage to do that. None of us want a trade war. We understand that. But this is the first time that an American President or a Trade Ambassador has stood up and said wait a second; there is a price to pay to trade with us and the price is fair trade. Our markets are open to you. You open your markets to us. That is what we call fairness in our country.

I support the President. I do not want a trade war. It will not serve anybody's interests. But I want all of our allies to understand this is no longer post-World War II economic aid we are talking about. That is what our trade policy was for 50 years. Our foreign competitors are now strong and tough. Now we want trade fairness, and we insist on it.

On the issue of NAFTA, let us keep score. I can understand missing the bull's-eye. I can even understand missing the target, we find a lot of folks do that around here, especially economists. But I cannot understand missing the bull's-eye, missing the target and shooting yourself in the leg instead and not have people in Congress decide maybe this was a bad decision. I hope all of us will rethink these issues and decide whether or not there is a different strategy or different approach that really supports good jobs in our country and does not give away our economic future with unfair trade strategies that do not work for the interests of America.

Mr. President, I intend to send to other Members of the Senate copies of Mr. Scott's work, which I think is original, interesting, and good work that ought to point us in a different direction on trade policy.

Mr. President, I yield the floor.

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

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

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

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

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

PAYMENT OF BENEFITS TO ILLEGAL ALIENS

Mr. EXON. Mr. President, I rise today to address the issue of payment of benefits to illegal aliens and how it relates to the welfare reform bill that

the Senate will be considering very shortly. As other Senators may know—and I hope that they all know—I have long had an interest in curtailing Federal benefits to illegal aliens as a matter of both sound immigration policy and sound fiscal policy. I have introduced that measure as either a standalone bill or an amendment in every Congress since 1989, long before measures like California's proposition 187 arrived on the scene.

In 1993, when we debated the comprehensive crime bill, the Senate overwhelmingly accepted my amendment to restrict the benefits, but unfortunately those provisions were dropped in conference with the House of Represenatives. That happens all too often.

I need not remind the Senate of the growing concern for what the public considers a runaway immigration policy and porous borders. It is true that many Federal programs specifically exclude illegal aliens and their criteria for eligibility. But we now have the sorry condition of the money flowing out just the same due to expansive and misguided agency regulation and court interpretations.

We also now have large border States filing lawsuits against the Federal Government as a result of failures in our Federal immigration policy, with other States threatening to follow suit.

It should be noted that the long-awaited report from the U.S. Commission on Immigration Reform, headed by respected former Representative Barbara Jordan, has generally recommended that illegal aliens not—not—receive publicly funded services or assistance. I agree wholeheartedly with that recommendation.

I am hopeful that we will soon make significant progress in immigration reform and welfare reform. I am concerned, however, that meaningful measures to restrict Federal welfare benefits to only citizens and legal aliens will be lost in the shuffle.

I submit, that when we turn to welfare reform, we have a golden opportunity to create a new and more coherent policy and stop, once and for all, paying benefits to illegal aliens.

The Senate appears ready to give States more funding flexibility and responsibility to oversee our welfare programs. I think it is only fair that, in exchange for that high degree of flexibility, the Federal Government asks the States to stand with us in verifying immigrant status and identifying illegal aliens for speedy deportation. With the assistance of the States in the verification process, fewer illegal aliens will receive benefits and both Federal and State budgets will reflect those savings. It is a simple fact that a deported alien will not continue to collect welfare benefits for months and even years.

To this point, the Federal Government and the States have essentially been working at cross-purposes in enforcing the immigration law. The States have decried the inability of the Federal Government to police its borders. But when Congress considers dropping benefits to illegal aliens, the States complain that they will be saddled with the full cost of providing these services. But aside from just a few exceptions, the point remains, and the point is this: Neither the Federal Government nor the States should be paying for those benefits to those here illegally.

Illegal alien means just that, illegal. That is why I believe the State agencies must help us identify illegal aliens so that they may be deported before they sap either the State or Federal budgets.

It is time for a whole new way of thinking about this subject. We must initiate a joint new State-Federal resolve—a new compact, if you will—to put an end to these abuses.

Call it a fully funded mandate, and a cost saver as well. I think it is only reasonable to require States to verify the status of applicants, provided we help them give the resources that they need to do the job. It is my opinion that this change in the compact between the States and the Federal Government would yield benefits for both. And this principle should apply to whatever welfare reform compromise eventually passes.

Believe me, Mr. President, I feel that we also need to do more spadework on immigration reform itself. I feel strongly that deportation proceedings should be expedited. I also feel that there needs to be greater enforcement in those many cases where holders of temporary visas intentionally overstay their visas. And I feel that there needs to be stricter enforcement of the sponsor affidavits, aimed at ensuring that immigrants will not be a burden on the taxpayers.

Efforts to provide better border patrol and to attack asylum abuse are also needed. The President has made tough, new proposals in this regard, and I also applied the results of the Immigration and Naturalization Service's Operation Hold the Line at El Paso.

The passage of a welfare reform bill this year is the perfect opportunity to take a step back to look at what has gone wrong in the past and to stop the robbery of the American taxpayers by illegal aliens.

America has a rich history of diversity. Most of our forebears came from abroad, but I do not know how anyone can justify payment of Federal benefits to illegal aliens.

So I put my colleagues on notice. I intend to pursue this matter to the end beginning anew on this year's welfare reform bill. We need teeth to back up our laws, not watered-down compromises. The time for action is now.

I thank the Chair, and I yield the floor.

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

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

THE TELECOMMUNICATIONS COMPETITION AND DEREGULATION ACT

Mr. EXON. Mr. President, today, and very probably tomorrow, almost definitely we will be back into debating a very important part, if not a critical part, of the rewrite of the telecommunications laws of our country. They obviously need rewriting because we have not done anything about it since 1934, and we all know what has happened to communications and the distribution of information since that time.

In the mind of this Senator from Nebraska, who has been involved in telecommunications and distributions of information for 17 years on the Commerce Committee, and before that in other pursuits, a very important part of that legislation, as reported out of the Commerce Committee, dealt directly with something that is sweeping this country, and that is pornography, directed at children primarily, on the information superhighway, generally called the Internet. Too many people are sweeping this aside and saying everything is constitutionally guaranteed, and there is nothing we can do without violating the Constitution. That is nonsense, Mr. President.

I am up this morning just briefly to address this matter and alert every Member of the U.S. Senate, all 100 Senators, to this growing peril in America that needs the direct attention and action, in a constitutional manner, by the U.S. Senate.

A measure cosponsored by Senator GORTON and myself was unanimously adopted in the committee and incorporated in the telecommunications bill before the body. At the time of that action, I said this was not a perfect piece of legislation. I felt it had to be very carefully drafted in great detail to make certain that we did not pass a piece of legislation that would almost immediately be ruled unconstitutional by the courts.

I had amendments to that measure that I was principal sponsor of, along with the Senator from Washington State, in the committee that will further clarify, further define, and further alleviate any legitimate concern for anyone about trampling on the Constitution.

I would simply recite once again the statement of presentation made at some point on this floor on Friday last. It is printed in the CONGRESSIONAL RECORD of Friday, June 9, 1995, starting on page S8089 and running through page S8092. I would like my colleagues that are not on the floor at this particular moment, or their staffs, to take

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

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

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

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

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

The law that we have in place now that I am attempting to get into the legislation with regard to the Internet basically says that we should have the same laws in place with regard to pornography and obscenity that we have had for a long, long time, that everyone seems to generally agree with.

We have laws at the present time to prevent pornography and obscenity in our telephone system. We have laws on our books to prohibit the mailing, through the U.S. mails, of pornography and obscenity. I do not mean that those laws have eliminated any and all type of material, of the type that I am suggesting, of getting through.

I simply say, Mr. President, that without those laws, there would be much more of it, and particularly our children would be placed in harm's way from all of this sex sickness that is rampant on the Internet today.

I will have more to say about this in some more detail as the debate moves forward.

Once again, I would like to reference pages in last Friday's CONGRESSIONAL RECORD that I hope might be of interest to my colleagues and members of their staff. I thank the Chair. I yield the floor.

TRIBUTE TO BRIG. GEN. EDWARD M. FRIEND, JR.

Mr. HEFLIN. With the recent celebration of Memorial Day, we paused to remember all those who gave their lives in service to their county. This Memorial Day has been especially heartfelt because of the recent anniversary of the end of World War II. Brig. Gen. Edward M. Friend, Jr., gave his life in service to his country, not by losing his life on the battlefield, but by surviving the misery and horrors of war, and returning home to live a life aimed at improving, and bettering his community, State, and Nation. He devoted his time, efforts, and considerable energy to achieving these goals, living up to a longstanding commitment he had to serve others.

General Friend was a highly decorated World War II veteran, having fought in the Normandy and Sicily invasions and the Battle of the Bulge, the last attempt by the Third Reich to break through the Allied lines moving toward victory in Europe. Those with whom he served recognized his bravery and skill. He received the Legion of Merit with Cluster, the Croix de Guerre with Palm, the European Campaign Ribbon with seven battle stars and the bronze arrowhead for landing in the Normandy invasion, and the Outstanding Civilian Service Medal.

General Friend's many accomplishments did not end with his outstanding military service. After the war, he returned home to Birmingham, AL, to help found the successful law firm of Sirote and Permutt, having already graduated from the University of Alabama Law School prior to the war. Sirote and Permutt eventually became one of the largest and most prestigious law firms in Alabama.

For General Friend, service to the community meant serving as president of the Rotary Club, United Way, the Birmingham Area Council of the Boy Scouts of America, the Family Counseling Association, and the Metropolitan Arts Council. His organizational and leadership skills were recognized by the Young Men's Business Club of Birmingham, which named him citizen of the year in 1982 for his accomplishments as chair of the United Way Campaign. It is not in any way an exaggeration to say that he excelled at everything he undertook.

The many awards General Friend received during his long life are testaments to his hard work and achievements. He was the recipient of the Alabama Arthritis Foundation Humanitarian Award and received honorary doctor of laws degrees from Birmingham-Southern College and the University of Alabama. He was the Birmingham Bar Association Lawyer of the Year in 1980, received the Educational Advocate Award from the Birmingham Public School System, and was inducted into the Alabama Academy of Honor, and Who's Who in America.

While Ed Friend led a life defined by many varied interests and accomplishments, he had a true passion for the law. He was one of the Nation's great lawyers, specializing in the field of tax law. One of America's great trial lawyers, Frances H. Hare, Sr., once told me that Ed, who was his personal tax lawyer, was the best tax practitioner he knew.

E.M., as he was known to a great number of his friends, was vitally interested in legal education and the improvement of his profession. His service as president of the University of Alabama Law School Foundation sparked an awareness and the beginning of substantial financial assistance to the law school. His tenure as president of the Brimingham Bar Association likewise initiated many years of improvements in the legal profession. His leadership and participation in the judicial reform movement in Alabama during the 1970's resulted in a vastly improved State court system. His concern and achievements in providing legal assistance for the indigent resulted in his founding of the Birmingham Legal Aid Society and serving as its first president. He was also on the board of directors of the National Legal Aid and Defendant Association. At a relatively early stage of his career, Ed Friend joined the cause of improving race relations in Alabama, and throughout his life, did a great deal to better those relations.

He was a great family man. He and his delightful, beautiful wife Hermione were constantly sought out by friends for their company and companionship. Throughout Herme's period of prolonged illness, her husband proved to be a devoted companion. This devotion was true of the entire Friend family, as their children Eddie and Ellen at all times displayed great loyalty to their mother and father.

General Friend gave of himself tirelessly and selflessly in ways that are difficult to describe in words. The impact of his work has been felt by those who knew him, worked with him, served with him, and benefited from his generosity. He will long be remembered for the basic good he did—and the dignity with which he did it—as it continues to touch the lives of others in the Birmingham area and throughout the State. He once said during an interview, ''Everyone should strive to make the world a better place. The purpose of life is not to be happy. The purpose of life is to matter, to be productive, to

have it make some difference that you lived at all.''

When I think of my great friend and how he described what life meant to him, I am reminded of the Ralph Waldo Emerson verse, ''Success.'' It goes:

SUCCESS

To laugh often and much;
To win the respect of intelligent people and affection of children
To earn the appreciation of honest critics . . .
To appreciate beauty, to find the best in others;
To leave the world a bit better, whether by a healthy child,
a garden patch or a redeemed social condition;
To know even one life has breathed easier because you have lived;
This is to have succeeded.

If Emerson was correct about the definition of success, then Ed Friend, Jr., succeeded enough for many, many lifetimes. In knowing Ed, I was always struck by how his simple but eloquent family name—''Friend''—so defined who he was an how he lived. No other epitaph would be needed than simply his name—Friend. He was a friend to his community, State, country, profession, and to the many, many individuals fortunate enough to have known him over the years.

I extend my sincerest condolences to Ed's wife, Hermione, and to their children Frances Ellen and Edward M. III in the wake of this tremendous loss, and ask unanimous consent that a copy of the June 6, 1995, Birmingham News tribute to Ed be printed in the RECORD.

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

GENERAL FRIEND

''He left his imprint on all segments of our society. He was selfless.''

Those two short lines from Birmingham-Southern College President Neal Berte sum up well the life of longtime civic activist Edward M. Friend Jr., was passed away Monday at the age of 83.

You'd be hard pressed to discover something Gen. Friend attempted that he did not excel in.

As a soldier, he received numerous battlefield decorations for his efforts in the Normandy invasion and in the Battle of the Bulge—including the Bronze Star with Cluster, the Croix de Guerre with Palm and the Legion of Merit. Later he was named a brigadier general in the U.S. Army Reserve. Over this past weekend Gov. Fob James appointed him a major general in the Alabama National Guard.

As an attorney, he came back to Birmingham after World War II to help form what would become one of the state's largest law firms.

But as a community leader, he was unbelievable. Among the civic organizations he served as chairman or president of at some point were: the Rotary Club, the Birmingham Bar Association, the United Way, the Birmingham Legal Aid Society, the Birmingham Area Council of the Boy Scouts of America, the Family Counseling Association, the Metropolitan Arts Council, the University of Alabama President's Cabinet and Temple Emanu-El.

In his spare time, he even occasionally penned a letter to the editor about some community problem or effort.

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

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

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

WAS CONGRESS IRRESPONSIBLE? THE VOTERS HAVE SAID YES

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

As of the close of business Friday, June 9, the Federal debt stood at exactly $4,899,367,488,389.95. On a per capita basis, every man, woman, and child in America owes $18,598.08 as his or her share of the Federal debt.

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

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

UNION COLLEGE COMMENCEMENT

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

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

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

UNION COLLEGE COMMENCEMENT ADDRESS

(By Senator Daniel Patrick Moynihan)

In a world made up of some 192 nations, of which a scant 51 existed a half century ago, and of these only eight having existed for a whole century without having their form of government changed by violence, it is a rare experience to graduate from a college founded a full two centuries ago in a new and novel nation with tiny resources and doubtful prospects which not only endures to this day, but stands now pre-eminent among the nations of the world.

It is a matter worth reflection. And a setting designed for just that, by an architect trained at the court of Louis XVI. Union College was, of course, the first educational institution chartered by New York State. It promptly broke with the past creating, as Roger G. Kennedy has written, ''a scientific, almost polytechnical course, in defiance of the classical curriculum then almost universal in America.'' This was so very much in the spirit of the new republic, evoked in The Federalist papers published up and down the Hudson Valley, not a dozen years earlier.

We do well to consult those incomparable essays from time to time, and not simply because the new Speaker of the House of Representatives admonishes that we ought. The first thing to note, or so it seems to me, is the conscious, proclaimed assertion of the Founders that they had discovered what Madison termed ''a new science of politics'' based upon principles—uniformities—in human behavior which made possible the reintroduction of republican government nearly two millennia after Caesar had ended the experiment. Given what Madison termed ''the fugitive and turbulent existence of ancient republics,'' who could dare to suggest that a modern republic could fare better? Well, Madison could. And why? Because careful study had produced new knowledge. To cite Martin Diamond:

''This great new claim rested upon a new and aggressively more 'realistic' idea of human nature. Ancient and medieval thought and practice were said to have failed disastrously by clinging to illusions regarding how men ought to be. Instead, the new science would take man as he actually is, would accept as primary in his nature the self-interestedness and passion displayed by all men everywhere and, precisely on that basis, would work out decent political solutions.''

Until that time, with but a few exceptions, the whole of political thought turned on ways to inculcate virtue in a small class that governed. But, wrote Madison, ''if men were angels, no government would be necessary.'' We would have to work with the material at hand. Not pretty, but something far more important: predictable. Thus, men could be relied upon to be selfish; nay, rapacious. Very well. ''Ambition must be made to counteract ambition.'' Whereupon we derive the central principle of the Constitution, the various devices which in Madison's formulation, offset ''by opposite and rival interests, the defect of better motives.'' (See Daniel Patrick Moynihan, ''Came The Revolution'', Harcourt Brace Jovanovich, New York, 1988, pgs. 302–303.)

The American revolution and the new nation emerged from a crisis of legitimacy in the old European order. The Founders genius was to adapt to that order rather than seeking to abolish all traces of it. As, for example, the French revolutionaries did when they changed the names of the days of the week and declared 1792 to be L'annee Une. Year One.

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

1945 was, of course, the 150th anniversary of the founding of Union College. It was also the year that World War II came to an end. V-J Day was September 2; Union celebrated its Sesquicentennial two weeks later. I was in the Navy then, (as was Joseph Hinchey) and remember those days. The great question here at home was whether the end of the war would mean the resumption of the Great Depression of the 1930s, and generally speaking, the crisis of capitalism which had brought on the war, or was widely held to have done.

Just what does it mean to speak of a ''crisis in capitalism?'' If the term seems puzzling today, it would not have been then. Then it meant going from 3.2 percent unemployment in 1929 to 24.9 percent in 1933, and averaging about 18 percent for the remainder of the decade. Stop and imagine for a moment searching for a job—let alone your first job—when one-fourth of the labor force is unemployed. This was the worst experience, worldwide, in the history of industrial economies. At the height of the Depression 13 million workers were unemployed in the United States.

It seemed, moreover, to be just the latest swing in a steadily amplifying cycle of boom and bust. We have almost lost this memory. The Panic of 1893. The Panic of 1908. The Crash of 1919, of 1929, of 1938. Already, at the beginning of this century, it was widely held that free enterprise capitalism just couldn't work. A great socialist movement began. George R. Lunn, the first socialist Mayor in New York, was elected here in Schenectady in 1911. Not untypically, he came out of the Midwest and was an ordained Presbyterian minister—having received his Doctor of Divinity degree from Union. In 1912, an ambitious Harvard graduate, Walter Lippmann, came here to be the Mayor's executive secretary. This seemingly was where the future lay. And, of course, there was soon a Communist Party in the United States, actively supported by ''Moscow gold,'' as it was sometimes and not inaccurately termed. For Communists the end of the age of capitalism was assumed to be instantly at hand. There was thunder on the right, as well; and as the Depression settled in, a great crisis of confidence in the vital center.

Then knowledge appeared which changed everything. It began with measurement; just what were these business cycles that so often turned into disaster? Obviously, not the ancient rhythm of winter, spring, summer, and fall. But what? A nice place to start is the foundation of the National Bureau of Economic Research at Columbia University, the only institution of higher learning in New York older than Union. C. Wesley Mitchell, who was director of the Bureau for near to half a century (1920–45), put it nicely:

''Our best hope for the future lies in the extension to social organization of the methods that we already employ in our most progressive fields of effort. In science and in industry . . . we do not wait for catastrophe to force new ways upon us. . . . We rely, and with success, upon quantitative analysis to point the way; and we advance because we are constantly improving and applying such analysis.''

Then theory. Principally by John Maynard Keynes in England refuting the assumption of classical economics that markets automatically return to an equilibrium, with all resources employed. An economy could settle in at high levels of unemployed people and underutilized capital.

Next practice. During World War II, here in the United States, the new economics performed surpassingly well, notably as regards inflation which actually declined during the war years.

Finally, there was law. In the Employment Act of 1946, Congress declared it to be:

''The continuing policy and responsibility of the Federal Government . . . to promote maximum employment, production and purchasing power.''

Note the genius of that language. The by now century-old dispute over capitalism had been a dispute over ownership, with the left calling for public ownership as against private. Of a sudden, we changed the terms of the debate. Now we were talking about employment, production, purchasing power. And measuring progress in an Annual Economic Report of the President, prepared by the new Council of Economic Advisers.

Before 1929 the average business cycle contraction lasted nearly 21 months following an average expansion of slightly more than 25 months. About even. Over the past fifty years, however, the average recovery has lasted 50 months, with contractions shortened to an average of 11 months. A very different world. In all this half century, the largest decline in output was 2.2 percent, in 1982. Compare that with a drop of 9.9 percent in 1930; followed by 7.7 percent in 1931; followed by 14.8 percent in 1932. As of now, for example, we are in our 10th post-war expansion which reached its 50th month in May. During the half century period, the size of our economy has quadrupled, and real income per person has more than doubled.

Is our world transformed? Well, yes it is. And it would do us no harm to take note between bouts of self-abasement. The legitimacy of a free enterprise society, with free labor and free markets is acknowledged across the globe.

Now then, are our troubles behind us? Assuredly not; obviously not. My colleague and friend, Senator Bill Bradley, observes that ''the fragile ecology of our social environment is as threatened as that of our natural environment.'' (I would say vastly more so.) He continues:

''The market is governed by the logic of economic self-interest, while government is the domain of laws with all their coercive authority. Civil society, on the other hand, is the sphere of our most basic humanity.''

True enough. Marine Corps Major Stephen Ganyard recently called attention to the passage in The Theory of Moral Sentiments (1759) by Adam Smith, who had something to do with all this market business, in which he writes that in our actions we cannot ''prefer ourselves so shamelessly and blindly to others,'' even if that is the natural inclination of our feelings. (As Madison would have thought.) In our time, Joseph Schumpeter has explained, in Eugene D. Genovese's words, ''the ways in which capitalism relentlessly destroys the pre-capitalist institutions and values necessary for its social and political stability.'' Consider, if you will, the state of the American family. Or note that in Washington today the talk is less about how the economy can create jobs but how a dependent population can be induced to take them. But surely that only strengthens the case for a ''science of politics'' that seeks, however so often in vain, to understand the world which we inherit but which we also in some measure create.

And so, then, on to the Third Century.

CAPTURE OF GILBERTO RODRIGUEZ OREJUELA

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

TRIBUTE TO ARMAND COCCO

Mr. BIDEN. Mr. President, with the death of Armand F. Cocco, Sr., I, and I might add Senator ROTH, have lost a good friend, and my State of Delaware has lost one of its most conscientious citizens. With his wife and constant teammate of 47 years, Anna Zebley Cocco, he devoted a lifetime to energetic service to others.

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

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

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

If Armand and Anna Cocco were a political force to be reckoned with—and they certainly were—they were also friends whose support could be counted on by public officials in both parties, as our Democratic Governor Tom Carper could tell you and my Republican colleague, Senator ROTH, as well as my Republican colleague, Congressman CASTLE could testify.

Armand Cocco was an adroit and accomplished political activist but no party could claim his exclusive allegiance. No party could claim a narrow partisan interest on his part, but he consistently worked for the public interest. He was a very demanding citizen, but he never asked more than he was willing to give. And shoulder to shoulder, along with his remarkable

wife, Anna, he would work with whomever was willing to work for the public interest. Anna survives him, and I am confident she will continue to get things done, although she has lost a very, very potent partner.

Mr. President, no one, no community, can lose a friend like Armand Cocco without feeling sad, but the sadness attending his passing has an especially melancholy quality for me and many of his friends because we fear that in losing him we are also losing one of the last examples of American value and of an American personality that we can ill-afford to move on without—the public-spirited private citizen with a traditional sense of community responsibility that has historically enabled us to deal with a range of social problems that simply lie beyond the capacity of government alone to resolve. The balance between public interest and private interests, the tension between individualism and community responsibility, has been losing the equilibrium that de Tocqueville identified over 150 years ago as the secret to our American democracy.

That growing imbalance is perhaps our greatest national problem today, but it was never a problem for Armand Cocco. He was as strong a personality with a keen sense of the individual as anyone I have ever met. But he knew how to strike a proper balance between his personal aspirations and the needs of his community. He was and will always remain among all those who knew him a model of good citizenship in a democratic society, and an assurance that our democracy will survive if we take his lifelong example to heart.

Mr. President, a very personal note. He was also a loyal friend to my deceased wife. When she passed away, it was Armand Cocco who went to the citizens of that small community and asked that the park be dedicated in her name, the name of which it still carries.

And lastly, I was on my way down here to vote on Friday, but the funeral was Friday. I thought it was important to vote, but I decided—and I must say it publicly to my constituents—it was more important for me to go to the funeral because of a public man like him, who had contributed so much; so I did not come down. I went and expressed my sympathies to his wife, Anna, and to his daughter, and all of the family.

I thank the Chair for its indulgence and allowing me to speak.

THE TELECOMMUNICATIONS COMPETITION AND DEREGULATION ACT

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

The legislative clerk read as follows:

The bill (S. 652) to provide for a pro-competitive, de-regulatory national policy framework designed to accelerate rapidly private sector deployment of advanced telecommunications and information technologies and services to all Americans by opening all telecommunications markets to competition, and for other purposes.

The Senate resumed consideration of the bill.

Pending:

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

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

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

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

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

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

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

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

This bill will also lift some regulation in the broadcast area. It will allow some of our utilities to do things they have not done before in telecommunications. It covers a broad spectrum of American life.

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

We held meeting after meeting for probably 90 days as well as meeting on Saturdays and Sundays, with Senators and staffs being invited who wished to participate. We came to the Commerce Committee with this bill and received all except two votes. We are very proud of the bipartisan effort that we have made and that will remain bipartisan.

I want to pay tribute to my colleague, Senator HOLLINGS, who has done such an outstanding job, and to all the Republicans and Democrats who have worked hard on this bill.

This bill will provide a roadmap for us into the wireless age. It will provide a roadmap for investors to invest in creative and competitive enterprises. It will also help consumers because it will mean more services at lower prices. If we look at what has happened in the computer industry, every 18 months their equipment is virtually obsolete, there is so much competition and so much innovation. I would like to see the same thing in the telecommunications area, and I think we can see that in the next 10 years if we pass this bill.

We still have a long way to go. We have to pass the bill in the Senate and in the House, we have to have a conference, and the President has to be able to sign it. I hope the White House will help us out.

I began this process by going to the White House with a copy of the chairman's discussion draft and talking to AL GORE, trying to get his support. We hope the White House will be supportive of this process, because, if we can pass this bill, I frequently say, it will be like the Oklahoma land rush for the American consumers. Right now, many of our telecommunications areas are in economic apartheid; they are limited just to one group. If we could get them deregulated and competing, there would be an explosion of new investment, an explosion of new services, and a explosion of opportunities and employment.

Presently, many of our largest telecommunications companies have to invest abroad if they want to manufacture, for example, because the regional Bells are prohibited. Others invest abroad because they cannot get into other areas. This will let everybody into everybody else's business. It will allow competition, as it should.

In the future, whether it is 5 or 10 or 15 years from now, we will be in the wireless era. That may well be an opportunity for even more competition because presently you have to unbundle or interconnect with someone else's wires to get access to local telephone service, for example. But we hope that is changed and will be changed by this bill.

I know there are many amendments pending, and I hope Senators will bring their amendments to the floor this afternoon. I plead with Senators to allow us to have some time agreements at some point so we can debate these amendments on both sides. It is not my intention to discourage any Senator from offering an amendment. We are working with staff, trying to get time

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

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

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

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

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

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

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

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

The assistant legislative clerk proceeded to call the roll.

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

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

AMENDMENT NO. 1265, AS MODIFIED

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

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

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

The question before the Senate is what kind of rules shall exist for the competition between various types of communication in our country? The last set of rules was a set of rules in 1934 established to try to govern the circumstances of operations in the communications industry in which we had a regulated monopoly. Phone service was a monopoly. Of course, we did not have computers then, we did not have cable television then, but we had phone service. Communications back then was a regulated monopoly.

Now, in 1995, we are moving toward a deregulated set of circumstances in the telecommunications industry. The question is how do we structure the rules so that you get deregulation with fair competition and at the same time have the buildup of the infrastructure so that communications is not something that exists only where you have affluent neighborhoods or high concentrations of people.

Many of us believe that the issue of communications is universal. It does not matter how big a town you live in or where you live in this country. Your ability to use a telephone or use a computer or access any number of devices in the telecommunications industry and be a part of the information superhighway—your interest and your need for that—is just as intense and important if you come from a town of 300 people in southwestern North Dakota as it is if you live in downtown Manhattan in New York City.

So many of us feel as we deregulate we must make sure there are safeguards in this legislation so that the buildup of the infrastructure, so the building of the information superhighway, reaches, yes, even the rural areas of our country.

As we do that we understand that there is a fundamental tension between deregulation and the search for profits and opportunities by companies who will go to the densely populated areas of our country and the need to try to provide the same kind of service and the same capabilities in rural areas in our country. That is the purpose of this legislation, at least as far as I am concerned.

Some see this legislation simply as opening the door and unlocking the forces of competition. That is part of it. I understand that. I accept that. I think competition can provide enormous benefits for our country. I happen to think that the Bell operating companies are good companies. I met a couple of CEO's of Bell operating companies in recent months who have come to my office. I am most impressed. They are good companies with good growth and plans for the future that are interesting and stimulating.

I also happen to think that we have long-distance carriers in this country that are new, vibrant, and growing, and do a lot of interesting things. In the long-distance area, of course, we have had competition. As a result of that competition with hundreds of providers of long-distance services fighting for the consumer's dollar, we have seen a substantial decrease in the rates for long distance service.

We have not seen a similar circumstance in local service, and this bill will lead to a similar circumstance, some say, in local service, where we open local service to competition.

Well, when we do that, when we open local service exchanges to competition, then the Bell operating systems will want to go out and compete in the long distance market, and this piece of legislation sets the conditions under which that will be possible.

Now, Senator THURMOND and I introduced amendments which said the question of when real competition exists and when the baby Bells or the Bell operating companies shall be permitted to go off and compete in the long distance arena, that is a very critical area in this bill because if the Bells are free to go compete in long distance before there is true competition in the rural areas, you have the makings of a real mess and the makings not of deregulation and not of unleashing the forces of competition for the benefit of the consumer, but instead you have the prospect of once again establishing monopoly forces in the marketplace.

So it is very important to have the right kind of ingredient in this legislation that serves the interest of competition, when you are opening the door to have the Bell operating companies move into the long distance service.

Both Senator THURMOND and I have offered amendments that describe a role for the Justice Department in those determinations. The legislation that came out of the Commerce Committee had a role for the Justice Department that was simply consultative. In other words, the FCC, the Federal Communications Commission, would essentially make the determination of the public interest standards with their checklist about when certain conditions were met and when the Bells would be moving into long distance service and when there was real competition in the local exchanges. And the Justice Department was simply consultative.

We have had some experience on deregulation with respect to consulting the Justice Department. I remember that we deregulated the airline industry and what we had in the airline industry was with respect to mergers and

acquisitions the Department of Transportation would provide its approval and the Justice Department would be consulted.

Well, what has happened since the deregulation of the airline industry is pretty clear. What is happening is we now have five or six very large airline carriers in this country that have bought up their competition and they are getting bigger. Why? Because that is the way the market system works if it is not checked with respect to competition and what we will have is competition among four or five or six behemoths in this country in the airline industry.

Now, the Department of Justice on a number of occasions said, well, we do not think this acquisition makes sense. That is our judgment. The Department of Transportation says it does not matter; we are going to allow it to proceed anyway.

So we have seen some experience with having the Department of Justice in a consultative state, and frankly I think it does not work in this area of deregulation. I want the Department of Justice to have a full role with respect to its antitrust activities and its ability to evaluate when these kinds of activities are in the public interest. I do not want the Department of Justice to become a set of human brake pads so that you have a bunch of lawyers down there who simply put their foot in the door and say we are not going to make any decisions; we are not going to let anything happen. I do not want the Department of Justice to be a brake, but I do want the Department of Justice to be a full participant and a full partner in this judgment about what is in the public interest: when does competition really exist? When do you potentially threaten a now competitive set of circumstances with the potential for concentration that diminishes competition?

So that was the point of my amendment. My amendment used a standard, the VIII(c) standard it is called, and would give the Justice Department a role in those circumstances with a time requirement by which they must act. And Senator THURMOND, feeling I think the same way, that the Justice Department should have a role, introduced an amendment but his amendment uses a different standard, the Clayton 7 standard.

We have worked over the weekend, and Senator THURMOND, I understand, will be coming to the floor in the next half-hour or hour. I believe he is at the White House for a meeting. But we have worked over the weekend with Senator THURMOND and have reached agreement on a modification of his amendment which provides some language that I have suggested and retains the core standard in his amendment, and that is an approach I think both of us support, both of us think advances the interests that we are attempting to advance with our amendments, and I hope when Senator THURMOND comes to the floor and modifies his amendment and discusses it, we would be able to move forward.

It will be a common amendment that both of us will support. We have been working since late last week and worked through the weekend on it, and I think it does advance the interests both of us attempted or wanted to advance with respect to the role of the Department of Justice.

When Senator THURMOND does come to the floor and offers such a modification, I know the managers want to proceed to set a vote on an amendment of this type, and I have no objection to that at all. I know the majority leader has indicated that we would not have record votes today before 5 o'clock. On the question of whether a vote is set on this evening or first thing tomorrow morning, I would be happy to work with Senator THURMOND and with the chairman of the Commerce Committee, the majority leader, the ranking member, and others. It seems to me that is something we can work out in the coming hours. I think there is really not much need to spend a great deal more time.

There are a number of others who want to discuss this subject this afternoon, and we certainly need to allow time for that. The Senator from Nebraska, Senator KERREY, who has been intensely interested in this subject and been active and involved in the discussions about it I know also will be interested in the conditions under which a vote is held.

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

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

Mr. President, with that I yield the floor.

Mr. KERREY addressed the Chair.

The PRESIDING OFFICER. The Senator from Nebraska.

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

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

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

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

I know some will argue it runs at odds with what we are trying to do. Indeed, I must confess, it essentially does run, in many ways, at odds. The problem is our schools, particularly in the K–12 environment, are not market operations, they are government operations. If we do not carve out and provide a special opportunity for them to get access, it is highly unlikely they are going to be able to take advantage of the communications revolution that I think this legislation is apt to set off, at least accelerate. And if they do not take advantage of it, our test scores are not going to be affected by technology. The capacity of our students to do well and prepare themselves either for the work force or college will be significantly diminished. That was a big victory in beating back an effort to strike that language, essentially what would amount to the new section 264 under the 1934 Communications Act.

Second, there was an effort to strike what has been described as the public interest, necessity, and convenience

test. This is a longstanding test that has been applied by the Federal Communications Commission to determine how it is that we regulate. It seems like it is a relatively small effort, but it is a very large victory for American consumers, and I appreciate my colleagues' support in keeping that language in here.

In the managers' amendment offered earlier, the managers changed the regulations as it affects in-area acquisition of cable, which I think is going to be terribly important to maintain a competitive environment. Personally, I believe strongly, at least in the short term, unless households have two lines coming in—a telephone line and a cable line—it is not likely that you are going to get that kind of competitive situation. This in-area acquisition amendment was an extremely important amendment to get attached.

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

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

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

The distinguished Senator from Alaska—I believe it was the first amendment placed on the bill—made certain there would not be any budget point of order by placing an amendment on here that provided the money that CBO says we are going to need to pay for this universal service fund. Even though the bill results in a $3 billion reduction in the cost of the universal fund, CBO, in their own mysterious ways, came up with the $7 billion mark, and the Senator from Alaska changed the bill to provide the money to get that done.

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

The chairman and the ranking member of the committee have attempted to draft legislation that would move us very carefully from a monopoly situation to a competitive situation. The question, though, is, Will competition produce something that makes my consumers happier? Will my taxpaying citizens 1 year, 2, 3, 4, 5 years from now say, as I believe they do in a number of other areas, including the watershed divestiture that occurred starting in 1982, This has been good for me. I have gotten a reduction in price, I have gotten an increase in quality coming as a consequence, Senator KERREY, of a piece of legislation you voted for way back there in 1995.

The bill is divided up into three sections. It attempts to describe in general terms what it is that we are trying to do. It is important, I think, for all of us to try to examine each one of these little words inside of 146 pages, now a bit longer as a consequence of amendments that have been attached, because each one of them could potentially be the tripwire that sets off an explosion at home. Each one of them could at the same time add unnecessary regulation, for all we know. We are attempting to balance the need to move to a competitive environment with the need to preserve some regulation in order to make certain that this transition is smooth.

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

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

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

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

The new section 255 is the one that we are addressing with the Department of Justice role. That is where you have a checklist. If your local phone company wants to get into long distance, they then go to the Federal Communications Commission and present evidence that they are allowing local competition.

As I said, it is significantly different than the language in 251. I for one have not been able to determine whether 255 preempts 251, whether the checklist in 251 is preempted in short by the language of 255. I suspect it is an important question that I have not been able to answer to my own satisfaction.

Nonetheless, the company then comes and says, ''I met the checklist required in the language.'' There is a consultative role for the Department of Justice, and the Federal Communications Commission has a prescribed period of time in which it has to make a decision about whether or not to let that company get into interLATA or basically get into long distance service.

Mr. President, the Department of Justice has a longstanding role in our lives in making sure, with its Antitrust Division, that we have competitive marketplaces, not just in telecommunications but in every other area of economic life. The larger a business gets and the more of the market a business controls, the more likely it is, the more chances and opportunities there are for that business to say, we are going to disregard what the consumer wants, we do not really care what the consumer wants because, frankly, we control so much now of the market that we do not really have to discover what the consumer is willing to pay. We will tell the consumer what they are going to go pay because we control such a large share of the marketplace. There really is no competitive choice.

Well, that is the way it is for most local telephone companies. There is some local competition but not significant local competition. It is also true for many cable companies. They have been given a monopoly franchise, and

there is not much competitive choice. That is why we are suggesting with this language—whether it is the Thurmond language or the Dorgan language—a stronger role for the Department of Justice in making certain that we do have a competitive environment before that permission is granted to get into long-distance service.

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

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

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

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

The Department of Justice has effectively enforced the antitrust laws in the telecommunications industry on a completely bipartisan and nonpartisan basis throughout this century. It sued the Bell system in 1913 and in 1949. Both times the Department of Justice succeeded in obtaining consent decrees and sought to protect competition. But that allowed AT&T to continue participating in local, long-distance, and equipment manufacturing markets.

In the mid-1960's, Mr. President, it filed comments with the FCC arguing that the Bell system should not be allowed to use its local telephone monopoly to force consumers to buy their telephone sets from it. Although the FCC agreed that customers had the right to choose among competitors, the Bell system succeeded in using its local monopoly bottleneck to impose such burdensome conditions on the interconnection of competitors' equipment to the local network that evidence of those conditions was an important part of the monopolization case that the Justice Department then presented in 1981. Open competition in so-called customer premises equipment did not become a reality until after the breakup of the Bell system in 1984.

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

The Department of Justice offered in court almost 100 witnesses and thousands of documents as it systematically laid out the facts that demonstrated how the Bell system unlawfully used the local monopoly bottleneck to hurt competition in other markets.

In negotiations to settle the case, President Reagan's Assistant Attorney General, E. William Baxter, insisted that the only way to protect competition in the long-distance and equipment markets was to separate those markets structurally from the local telephone bottleneck. Unless the local monopolist was prevented from participating in other markets, it would always have the incentive and ability to hurt competition in those markets. At first, the Bell system refused even to consider such a settlement. After hearing the Government's case, and presenting about 90 percent of its own case, 250 witnesses, and tens of thousands of pages of documents, the Bell system relented and agreed to settle the case based on a consent decree that dismantled the vertical monopoly. After it was approved by Judge Harold Greene, the modification of final judgment—which is referred to often as the MFJ—required the Bell systems to split itself into AT&T and the seven regional Bell operating companies now called the Bell companies. AT&T retained the long-distance and manufacturing operations. The Bell companies, independent of each other and of AT&T, retained monopolies over local telephone service in vast geographic expanses, subject to the requirement that AT&T, along with competitors, have equal nondiscriminatory access to customers through the local networks.

The key point of the MFJ was that it removed the Bell companies' incentive to use the local monopoly to hurt competition in long-distance and equipment manufacturing by prohibiting them from entering these markets. By the same token, AT&T no longer had the ability to hurt its competitors in those markets because it no longer controlled the local monopoly. The restrictions on the Bell company grew directly out of the fact noted by Judge Greene that ''the key to the Bell system's power to impede competition has been its control of local telephone markets.''

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

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

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

The Department has supported waiver of the restrictions when it has concluded that Bell companies' entry into other markets presented no substantial possibility of impeding competition in those markets. The Department now has over 50 professionals—lawyers, economists, and paralegals—who are

dedicated and experienced in telecommunications competition issues, and who understand the complex markets and technologies involved.

The Department, therefore, is uniquely positioned to assess what is actually happening in the market and whether there is a danger that entry by the Bell companies could impede competition. That is exactly the task that has been performed since the entry of the MFJ over a decade ago.

Mr. President, the competition long-distance and equipment manufacturing unleashed by the MFJ has benefited the United States of America and its citizens and consumers enormously. MCI, Sprint, and hundreds of smaller carriers buy from AT&T to provide long-distance service.

Prices have dropped and quality has improved, with the result that Americans are talking to each other via long-distance more than ever before. Americans have not been shy about exercising the right to choose that the MFJ guaranteed.

The New York Times reported that 25 million people changed their long-distance carrier in 1994. In an article, ''No Holds Barred for Long Distance Call,'' Edmond Andrews, the New York Times, January 21, 1995, describes the competition that exists in long-distance, and describes who was benefiting from that competition.

Similarly, businesses and consumers enjoy lower prices, more choice, better quality, and communications equipment, as competition has eroded AT&T's power in that market and forced it to compete for customers.

Mr. President, that is at the heart of what this legislation is attempting to do: Force existing monopolies to compete for customers. If that competition occurs, the competition for your business—you as a customer—will force the company to pay more attention to quality, giving not just the quality that you want but give you competitive price, knowing that if either the quality or the price are not what you like, you will see a competitive alternative.

These benefits stem directly from the strict separation of the local monopoly from other markets. Although it now appears possible that the local markets can be opened up to competition, they are not natural monopolies any longer. Removing the separation between the local markets and other markets without ensuring that the Bell companies cannot use the local monopoly to hurt competition and long-distance could squander the gains of the past decade.

The expense of the Bell system in the years before the MFJ, when it frustrated consumer choice and actual competition, long after competition and long-distance service and communications equipment became technologically and economically feasible, counsels against allowing the Bell companies into other markets before determining, based on actual marketplace facts, the effect it will have on the market.

Again, there are two places in this legislation that I call to my colleagues' attention who are trying to figure out what to do with this legislation, whether to support this amendment. There are two sections in this legislation that talk about interconnection. The first will be the new section 255 of the 1934 Communications Act, and the second, the one we are talking about now, the interconnection requirements prior to getting into long-distance that are described in the new section 255.

The fundamental goal for all should be to allow the Bell companies into any market they choose to enter as soon as such entry does not threaten to impede competition in the other markets.

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

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

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

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

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

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

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

The Department of Justice role in promoting competition has been historically not only bipartisan but also nonpartisan. As I indicated earlier, the antitrust investigation against the Bell system was initiated in the Nixon administration.

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

The decisionmaking process of the Department of Justice has not been a partisan issue. It was approved last year by the House, with over 420 votes. It was approved last year by the Senate Commerce Committee by an 18-to-2 vote and supported by President Reagan's Assistant Attorney General for antitrust, Prof. William Bater, Judge Robert Bork, a letter from a bipartisan group, and a former member of the House of Representatives, Vin Weber, in a piece he wrote in the Washington Times.

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

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

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

The Justice Department is the agency that understands the markets, that knows whether or not there is competition, and it is the agency that I believe we need to turn to if we are concerned about what kind of response it is going to be from our consumers, our taxpayers, and voters.

Procedures for the Bell operating company's entry into long-distance over the Dorgan or Thurmond amendment does not represent unnecessary duplication. The idea that we will get a

lengthy process, in fact, is just the opposite of what will occur without this amendment.

What happens is the Bell operating company would file an application for entry into long-distance. The Justice Department and the FCC would review and proceed simultaneously. The Bell operating company would have an answer within 90 days after application, in accordance with a date certain, established by Congress. This procedure is fast. It takes 90 days.

The standard for the Justice Department review will be clear, again, whether it is Clayton or VIII(c). The test has been litigated many, many times in the past. It is not a difficult standard for the Justice Department to apply in either case, in either the Dorgan or the Thurmond case. The procedure will reduce litigation, will reduce the likelihood of subsequent antitrust suits.

Mr. President, I will get into that later, but one of the things, if Senators are concerned about what this will do after a person votes ''aye,'' what final passage will do, what changing the law will do, one question to answer is, Is this process going to take a long time? Is it going to be slow? Can the existing companies in here sort of drag this thing out for a long period of time?

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

Mr. President, the VIII(c) test is pretty well established. I want to talk now about what the language of the Thurmond amendment does. I believe that it is likely to be that test which we will be deliberating, that Members will have to decide whether or not they approve or want the Clayton standard.

First of all, the Clayton Act was passed in 1914 and it was passed to prevent mergers that may substantially lessen competition or create a monopoly. That standard has been applied to every industry, not just to telecommunications. It is applied to mergers with critical national importance such as defense industry mergers like Martin Marietta and Lockheed, applied to mergers in other high-technology industries, software industries, the recent case of Microsoft and Intuit, applied to mergers, long distance mergers in the telecommunications industry like AT&T-McCaw and British Telecom-MCI mergers.

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

If the Bell operating companies want to enter into long distance by buying a long distance company, this is the standard that would be applied. It is logical to apply the same standard if they want to enter long distance in other ways under the unique circumstances of this bill superseding an antitrust consent decree with the intention of creating competition.

The Thurmond amendment, the Clayton language, makes entry dependent on passing the Clayton Act test. This test is normally applied to mergers that would be applied to the RBOC's, even in the absence of this amendment, if they propose to acquire a long distance company. The Clayton Act test would apply to RBOC entry unless the effect of such entry may be substantially to lessen competition or to tend to create monopoly.

This is exactly what we want. We want an agency that is experienced with measuring that question engaged in the process of saying to the American people, if you pass that test, there is no substantial possibility to lessen competition or create a monopoly. We see a competitive marketplace there, and we give permission and a date certain, a time certain. That should remove any doubt about whether or not this thing is going to be dragged on for a long period of time.

Under such a standard, the Department of Justice would consider whether allowing an RBOC, that is a local telephone company, to provide long distance service would give it the ability and incentive to use its monopoly power in local exchange services substantially to lessen competition in the long distance market and raise prices for consumers.

At the end of the game, that is what we are talking about. If you have a monopoly, you have the possibility of raising prices regardless of what the consumers want. You can ignore the consumer if you control a large enough portion of the market share. What we want to make sure is you have competition. With that competition, whether it is coming from below or coming from above, regardless of where it is coming from, give that consumer choice in the household and the consumer will benefit as a consequence of lower prices and higher quality.

The RBOC's could meet such a test and be allowed to enter the long distance market in any one of three ways.

First, if competition has developed in local exchange services so there is no longer a local monopoly that could be used substantially to lessen competition in long distance, or second, if, even absent local competition, safeguards or other constraints would prevent the RBOC's from using their local monopoly to substantially lessen competition in long distance. A very important point, Mr. President. It may be that local competition does not develop immediately. We should not say to a RBOC, you cannot get into long distance under that circumstance. The Department of Justice has experience in making sure that the negative impacts of lack of competition do not occur at the local level, thus actually saying to a Bell operating company, here is a way for you to get into long distance interLATA businesses even faster than what might otherwise be possible.

Third, if some one combination of alternatives to the telephone company local exchange services, safeguards, and other factors should prevent the telephone company from substantially lessening competition in long distance service. More competition would require fewer safeguards, and obviously the opposite is the case as well. Fewer safeguards will be likely. As we get competition in these local markets, we are going to need less and less and less.

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

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

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

Mr. KERREY. Mr. President, let me shorten this by a couple of sections here and then regain the floor at a later time since this debate probably will be going on for some time before we actually vote.

One of the questions, again, I know I have asked myself that I think it is important to answer is whether or not giving the Department of Justice a decisionmaking role in this is going to cost the taxpayers more money. Many have argued against this and implied it is going to increase taxpayer requirements, it is going to result in more and more litigation. The ominous thought of more litigation and more taxpayer cost sort of hangs over the argument.

But a Department of Justice role would avoid complex and expensive antitrust suits in the future by making sure that competition is safeguarded in the first instance. These suits would consume resources better spent on competing to offer American businesses and consumers lower prices and higher quality. I can, and will at a later time, go through many examples where that in fact is the case.

If you go back and look at the situation prior to the filing of the MFJ by the Department of Justice, that is exactly what was happening. It has also

happened since that time during the years that these suits would be litigated. The American economy would suffer from the effects of lessened competition and higher prices. Before the MFJ broke up the Bell system, there were dozens of private antitrust suits against the system ongoing in courts across the country at any given time. AT&T's 1977 annual report said that some 40-such private suits were then pending against it. Asking for more of those suits would be a giant step backward.

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

At the end of the 90-day period, just as would occur at the Federal Communications Commission, the Department of Justice would have to make its ruling. You have a simultaneous process.

I say to my colleagues, if you are trying to reduce bureaucracy, if you are trying to reduce the potential for lawsuit, then either the Dorgan or the Thurmond amendment is something you must be for.

The opponents of the Thurmond and Dorgan amendments argue that all we need to do is allow the Department of Justice to bring lawsuits after competition has been harmed. They never explain how an after-the-fact antitrust case will solve the problem. It took 10 years of litigation to resolve the Government's case against AT&T. Years of litigation is not a solution.

That is a problem we should avoid. Again, either the Dorgan or the Thurmond language—either the no substantial possibility language of VIII(c) or the well-litigated 80-year test of Clayton—would suffice, in my judgment, to make certain we avoid the kind of litigation that I believe both the chairman and ranking member and other advocates of not having the Department of Justice in here are trying to avoid.

Mr. President, I yield the floor.

The PRESIDING OFFICER. The Senator from Vermont.

Mr. LEAHY. Mr. President, I favor the Dorgan amendment, and I wish to commend Senator DORGAN and Senator THURMOND for what they have done. I believe, and I have stated before, here and in the Judiciary Committee, that we have to allow the Department of Justice, our most expert competition agency, to play a more significant role, not just consulting, in deciding whether a Bell company entry into long distance or manufacturing threatens competition in those markets.

Go back to the 1982 consent decree that broke up Ma Bell and separated the Bell companies from AT&T. That took 10 years to litigate and conclude. The decree, the modified final judgment, took all these years of antitrust litigation, required a restructuring of the market, and led to significant consumer confusion.

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

What this bill does, unless amended, is say, ''We hope the checklist of unbundling and interconnection requirements works to unlock the local loop to competition.'' We all hope that. But what if it does not work? What if the checklist is not long enough to ensure that the local monopoly power of the Bell companies is broken and competition can develop?

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

The cleanup after the fact could take years of litigation, just as the prior case that ended with the MFJ took years. The cleanup may require a restructuring of companies, just as the prior case against Ma Bell resulted in spinning off AT&T from the Bell companies. Then, of course, the cleanup could well confuse consumers. I well recall the press and the outrage in the public when they questioned the wisdom of what Judge Greene did in 1982 and whether the breakup would hurt the public and our telephone service.

We have the opportunity to avoid the mess.

As former appellate judge, Robert Bork, recently pointed out, without a Justice Department role in applying a ''standard with teeth,'' allowing the Bell companies into long-distance service and equipment manufacturing, taking the course envisioned by this bill ''would result in even more litigation and regulatory disputes than there were prior to the decree.''

We are sometimes accused of passing a lawyers relief act in some of these pieces of legislation which we consider. This bill, if passed without the amendment, would certainly be a bonanza for lawyers and economists as regulatory disputes proliferated before State and Federal agencies and lawsuits were filed charging discrimination, theft of intellectual property and predation in violation of section 2 of the Sherman Act. I think Judge Bork is right on this.

We should minimize this litigation quagmire by having the Justice Department, with its 25 years of expertise, look at the competitive impact of Bell company entry into the long-distance and manufacturing markets.

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

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

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

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

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

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

services provided over their phoneline may go down, but the prices they pay for those services may go up. We should make sure that this legislation does not produce that kind of result.

Let us have a competitive environment in telecommunications and take steps to deregulate.

Mr. President, we have had remarkable changes in telecommunications just in the years that I have been here in the Senate. I have seen changes from competition which has brought down prices of long distance.

We have witnessed competition that we did not use to see, which now allows anyone who wants to go and buy equipment off the shelf—equipment for everything from teleconferencing to video conferencing, that we were told by the telephone companies, when they had a complete monopoly, was not available—to do so. It was available in every other country. It just was not available in the United States. Once we started to get some real competition, all of a sudden it started showing up here.

We do conference calls from home. We have automatic dialing in our equipment. We have speaker phones. We own our equipment. We do not have to go to one telephone company to buy it or rent it month by month anymore. It was competition that did that.

Rather than encouraging monopolies, we should ensure the competition that will help all of us.

I use the Internet all the time. I will be speaking about an aspect of that a little later on. But I use the Internet all the time. I do town meetings on the Internet. I have a home page. My State uses it. I have one petition that involves legislation of mine which got 10,000 or 20,000 names and electronic letters from all over the country in a matter of days.

These are the things that we did not have just a few years ago. They are extremely important to all of us. I know the distinguished Presiding Officer uses the Internet. We have various services now that provide access to it. We should be encouraging that kind of thing.

Can you imagine, Mr. President, had the Internet, for example, been controlled by just one source, one company, one gatekeeper? Does anybody believe it would have advanced as far as it has, even with its problems? Some parts of it have worked very well, and some parts do not work very well. It would not have happened, had we not had openness and competition.

By the same token, do you think any one of us who have in-the-home telephones and can program numbers into it and have automatic dialing or speaker phones or call forwarding built into our phones would have them without competition? That is what this is all about.

I commend the Senator from North Dakota and the senior Senator from South Carolina and all others who have worked on this important amendment. I am glad I have had a chance to work with them. I think we are going to have a decent solution and a good compromise in the amendment.

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

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

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

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

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

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

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

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

An even more difficult one was the merger of AT&T and McCaw that my colleagues might recall happened, I guess, about a year ago now in 1994. AT&T, obviously, by far the largest of the long distance carriers, was attempting to acquire initially, I think, 50 percent, eventually 100 percent of the larger cellular provider, providing not just long distance but local telephone service as well. There was vertical integration involving two companies with substantial market power. AT&T was dominant in both long distance and manufacturing of cellular equipment used by McCaw's competitors. The question was whether or not by acquiring McCaw, AT&T was going to restrict competition from competitors who were buying equipment that AT&T was manufacturing. McCaw, on the other hand, has only one competitor in each of the markets it has been given by the Federal Communications Commission.

So what happened? The Department of Justice intervenes. They work with both companies. They negotiate between both companies. They declare what it is they are going to be filing, and they file a consent decree which required separation and nondiscrimination safeguards so that McCaw customers will have equal access to long distance carriers and cannot be required to buy long distance from AT&T, and cellular rivals to McCaw that want to use cellular equipment will continue to have access to necessary product and will be free from interference of AT&T should they wish to change suppliers. AT&T and McCaw will not misuse confidential information obtained from AT&T equipment customers or McCaw equipment suppliers.

Those are the kinds of questions, Mr. President, that will occur on an increasingly frequent basis. Who knows? There may be hundreds of these applications that are going to fall into the lap of the Federal Communications Commission solely unless, again, either the VIII(c) test of the Senator from North Dakota or the Clayton test of the Senator from South Carolina is adopted and the Department of Justice is given a parallel, simultaneous role; not a new role, a historic role; not an unprecedented role but a role consistent with the unprecedented nature of this legislation itself.

The third example that I would cite was a very complicated one involving a foreign company, British Telecom, that had proposed to acquire a 20-percent stake in MCI.

Here again the question was that you were dealing with a company with substantial vertical integration, with substantial market power, and once again the Department of Justice comes in and says, well, here is what we are

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Let me talk about this purported delay. You hear, ''Well, the Department of Justice takes a long time; this waiver process takes a long time.'' Typically what is done is a statistical analysis is used of the average age of pending MFJ waivers; that is to say, the request for waiver of the consent decree. There was a consent decree filed in the court. Judge Greene is administering that consent degree on behalf of American consumers who benefited enormously as a result of that Department of Justice action and what Judge Greene has done.

The statistical analysis, in my judgment, is a red herring. This argument that is used against DOJ decisionmaking is that you will see an unnecessary delay as a consequence of this statistical analysis, to back up the assertion this analysis purports to show that a Department of Justice role will cause a long period of time for decisions to be made.

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

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

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

Under that situation, you want the Department of Justice to slow it down if, in their reasoned judgment, based upon the experience that they have had, it is going to restrict competition. They are the ones with the experience. You do not want this process to end if the Department of Justice, before granting permission, interprets the proposal to mean less choice, less competition, because in a monopoly situation, with all the other things that we are doing with this legislation, you are unquestionably going to get increased prices and marginal, if any, improvement in quality.

Entry will be permitted to occur as quickly as possible, consistent with the appropriate entry tests that have been established by Congress in this legislation.

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

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

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

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

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

So, to refer to the current delays and say, here is the problem and this is going to be perpetuated by either the Thurmond or the Dorgan amendment is wrong, Mr. President. These amendments specify 90 days of parallel processing during which both the FCC and the Department of Justice will consider an application by a local telephone company to get into long distance service.

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

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

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

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

Again, there are two reasons why that argument does not stand up. One is a fact I will isolate it in a minute. The other is that both the Thurmond and Dorgan amendment say a 90-day time certain. The recent waiver requests, however, deal almost entirely with lifting the MFJ's core business restrictions—that is, inter-exchange, information services, manufacturing—while early request waivers were primarily for the local company entry into the nontelecommunications business—a much easier waiver to grant. When you get into the core business application, the waivers are more difficult to grant and assess and thus take more time to either approve or to deny. They also evoke more public concern and comments. It is a tough deal when a person comes up and says, ''A company has applied for a waiver, and I do not like it.''

One of the reasons the Department of Justice has taken longer is that you have an increase in the numbers of public comments and expressions of concern. For example, of waivers filed with the Department of Justice in 1993 and 1994, the Department receives nearly six times as many comments per waiver as in the 1984 to 1992 period. So just in the last 2 years, you have had a substantial increase in the number of public concerns and comments which are made on the waiver applications that are put to the Department of Justice. The recent waiver applications present broader and more complex issues. A number of waivers still considered pending are actually subsumed within broader requests that have already been addressed by the Department of Justice.

Despite these challenges, the Department of Justice succeeded in speeding up the waiver review process. In 1994, DOJ disposed of 43 percent more waiver requests than in 1993, while the average age of pending waivers decreased by 17 percent. So if you are looking for how they are doing over there, the 900 or so employees in the Antitrust Division of the Department of Justice who have the responsibility for assessing concentration in the meat packing industry and concentration in all other industries—they have the responsibility for antitrust action in all sectors of the U.S. economy, these 900 employees—if you are looking for facts as to how well they are doing, I urge my colleagues to look at the progress they have made from 1993 to 1994. Look at the complexity of the cases, and look beyond merely an examination that says from 1984 to 1994 in the cases the age of the waiver applications has been lessened. For all kinds of reasons, it is understandable, and it does not indicate that the Department of Justice is incompetent or unqualified. If that does not persuade you, look at the language of the Dorgan amendment and the Thurmond amendment, because they remove all possibility of this thing being delayed for a long period of time by putting a 90-day time certain, a date certain in the law.

Mr. President, the Department of Justice is the agency with the expertise in the competition and telecommunications markets. The Department of Justice has had an unwavering focus on the protection and promotion of competition. All facts support that conclusion. No facts that I have heard support the conclusion that the Department of Justice does not have the capacity to assist the people of the United States of America, as we the Congress attempt to move this local

monopoly into a competitive environment. They have promoted competition in telecommunications on a nonpartisan and bipartisan basis throughout this entire century.

The Department of Justice has deepened its expertise in telecommunications competition over the past quarter century by investigating the Bell system's monopoly, suing to break up the monopoly, and allow competition in long-distance and equipment markets to flourish, and in assisting the Federal district court in administering the modification of final judgment, the consent decree that dismantled AT&T. The benefits to the Nation from the Department's role in promoting competition have been more jobs, more exports, greater innovation, and more products available to businesses and consumers at lower prices than at any time in our history.

I see that the Senator from South Carolina is here.

I yield the floor.

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

AMENDMENT NO. 1265, AS FURTHER MODIFIED

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

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

The amendment is so modified.

The amendment (No. 1265), as further modified, is as follows:

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

(2) Section 309(d) (47 U.S.C. 309(d)) is amended by inserting ''(for subsection (k) in the case of renewal of any broadcast station license)'' after ''with subsection (a)'' each place it appears.

SUBTITLE B—TERMINATION OF MODIFICATION OF FINAL JUDGMENT

SEC. 221. REMOVAL OF LONG DISTANCE RESTRICTIONS.

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

''SEC. 255. INTEREXCHANGE TELECOMMUNICATIONS SERVICES.

''(a) IN GENERAL.—Notwithstanding any restriction or obligation imposed before the date of enactment of the Telecommunications Act of 1995 under section II(D) of the Modification of Final Judgment, a Bell operating company, or any subsidiary or affiliate of a Bell operating company, that meets the requirements of this section may provide—

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

''(2) interLATA telecommunications services originating in any area where that company is not the dominant provider of wireless telephone exchange service or exchange access service in accordance with the provisions of subsection (d); and

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

''(b) SPECIFIC INTERLATA INTERCONNECTION REQUIREMENTS.—

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

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

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

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

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

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

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

''(F) Local switching unbundled from transport, local loop transmission, or other services.

''(G) Nondiscriminatory access to—

''(i) 911 and E911 services;

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

''(iii) operator call completion services.

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

''(I) Until the date by which neutral telephone number administration guidelines, plan, or rules are established, nondiscriminatory access to telephone numbers for assignment to the other carrier's telephone exchange service customers. After that date, compliance with such guidelines, plan, or rules.

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

''(K) Until the date by which the Commission determines that final telecommunications number portability is technically feasible and must be made available, interim telecommunications number portability through remote call forwarding, direct inward dialing trunks, or other comparable arrangements, with as little impairment of functioning, quality, reliability, and convenience as possible. After that date, full compliance with final telecommunications number portability.

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

''(M) Reciprocal compensation arrangements on a nondiscriminatory basis for the origination and termination of telecommunications.

''(N) Telecommunications services and network functions provided on an unbundled basis without any conditions or restrictions on the resale or sharing of those services or functions, including both origination and termination of telecommunications services, other than reasonable conditions required by the Commission or a State. For purposes of this subparagraph, it is not an unreasonable condition for the Commission or a State to limit the resale—

''(i) of services included in the definition of universal service to a telecommunications carrier who intends to resell that service to a category of customers different from the category of customers being offered that universal service by such carrier if the Commission or State orders a carrier to provide the same service to different categories of customers at different prices necessary to promote universal service; or

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

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

''(4) COMMISSION MAY NOT EXPAND COMPETITIVE CHECKLIST.—The Commission may not, by rule or otherwise, limit or extend the terms used in the competitive checklist.

''(c) IN-REGION SERVICES.—

''(1) APPLICATION.—Upon the enactment of the Telecommunications Act of 1995, a Bell operating company or its affiliate may apply to the Commission and the Attorney General for authorization notwithstanding the Modification of Final Judgment to provide interLATA telecommunications service originating in any area where such Bell operating company is the dominant provider of wireline telephone exchange service or exchange access service. The application shall describe with particularity the nature and scope of the activity and of each product market or service market, and each geographic market for which authorization is sought.

''(2) DETERMATION BY COMMISSION AND ATTORNEY GENERAL.—

''(A) DETERMINATION.—Not later than 90 days after receiving an application under paragraph (1), the Commission and the Attorney General shall each issue a written determination, on the record after a hearing and opportunity for comment, granting or denying the application in whole or in part.

''(B) APPROVAL BY COMMISSION.—The Commission may only approve the authorization requested in an application submitted under paragraph (1) if it—

''(i) finds that the petitioning Bell operating company has fully implemented the competitive checklist found in subsection (b)(2);

''(ii) finds that the requested authority will be carried out in accordance with the requirements of section 252; and

''(iii) determines that the requested authorization is consistent with the public interest, convenience, and necessity. In making its determination whether the requested authorization is consistent with the public interest, convenience, and necessity, the Commission shall not consider the antitrust effects of such authorization in any market for which authorization is sought. Nothing in this subsection shall limit the authority of the Commission under any other section.

If the Commission does not approve an application under this subparagraph, it shall

state the basis for its denial of the application.

''(C) APPROVAL BY ATTORNEY GENERAL.—The Attorney General may only approve the authorization requested in an application submitted under paragraph (1) if the Attorney General finds that the effect of such authorization will not substantially lessen competition, or tend to create a monopoly in any line of commerce in any section of the country. The Attorney General may approve all or part of the request. If the Attorney General does not approve an application under this subparagraph, the Attorney General shall state the basis for the denial of the application.

''(3) PUBLICATION.—Not later than 10 days after issuing a determination under paragraph (2), the Commission and the Attorney General shall each publish in the Federal Register a brief description of the determination.

''(4) JUDICIAL REVIEW.—

''(A) COMMENMCEMENT OF ACTION.—Not later than 45 days after a determination by the Commission or the Attorney General is published under paragraph (3), the Bell operating company or its subsidiary or affiliate that applied to the Commission and the Attorney General under paragraph (1), or any person who would be threatened with loss or damage as a result of the determination regarding such company's engaging in the activity described in its application, may commence an action in any United States Court of Appeals against the Commission or the Attorney General for judicial review of the determination regarding the application.

''(B) JUDGMENT.—

''(i) The Court shall enter a judgment after reviewing the determination in accordance with section 706 of title 5 of the United States Code.

''(ii) A judgment—

''(I) affirming any part of the determination that approves granting all or part of the requested authorization, or

''(II) reversing any part of the determination that denies all or part of the requested authorization,

shall describe with particularity the nature and scope of the activity, and of each product market or service market, and each geographic market, to which the affirmance or reversal applies.

''(5) REQUIREMENTS RELATING TO SEPARATE AFFILIATE; SAFEGUARDS; AND INTRALATA TOLL DIALING PARITY.—

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

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

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

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

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

Under my modified amendment, the antitrust standard applied by the Justice Department remains the Clayton section 7 standard. The standard is whether Bell company entry would substantially lessen competition or tend to create a monopoly. This is the standard applied to every merger and acquisition in order to determine whether companies can expand or move into new lines of business. That is the issue that requires analysis before Bell companies enter long distance markets.

One issue I wish to emphasize is that my amendment is necessary to reduce duplication in the telecommunications legislation. Currently, S. 652 provides that the FCC will conduct a public interest analysis of Bell entry into long distance, with consultation by the Department of Justice. This results in both agencies being involved in antitrust analysis, which is wasteful and inefficient. The Department of Justice—and not the FCC—has developed special expertise and specialization in antitrust analysis during the past 60 years.

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

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

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

For all of these reasons, I urge my colleagues to support this amendment.

Mr. President, I ask unanimous consent to add Senator DORGAN as a cosponsor of my second-degree amendment, as modified. Additionally, I ask unanimous consent to add Senator KOHL as a cosponsor.

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

Mr. KERREY. Mr. President, I ask unanimous consent that I be added as a cosponsor to the amendment.

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

PRIVILEGE OF THE FLOOR

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

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

Mr. PRESSLER. Mr. President, I would like to respond to some of the remarks made here today, in part, to say that we already do have antitrust laws that will continue to exist.

We have the Sherman Antitrust, the Clayton Act, and the Hart-Scott-Rodino Act, which will remain in full application.

I would like to go through the regulatory safeguards that already exist in S. 652, to break up local Bell monopolies without a new Department of Justice bottleneck.

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

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

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

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

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

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

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

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

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

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

There is a cross-subsidization ban.

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

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

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

It is not as though, if we defeat the Dorgan-Thurmond amendments, that the Justice Department will have no role. They will have a very active role as they have had in the past. I think that that is something to remember. Again, the Hobbs Civil Appeals Act lets the Department of Justice participate as an independent party in all FCC appeals.

Let me go over here to the competitive checklist, if I may. This is S. 652's measure to assure breakup of local Bell monopolies.

First, access to network functions and services. The interconnect requirement is on the checklist. I think everybody in the Chamber has been in on drawing up this checklist. It is a checklist that the FCC will have to go through before a Bell company is certified that it has met the requirements. This is a definite checklist. It is something that we have worked on around here since January in meetings every night and on Saturdays and Sundays.

Next, capability to exchange telecommunications between Bell customers and competitors' customers;

Third, access to poles, ducts, conduits, and rights of way;

Fourth, local loop transmission unbundled from switching;

Fifth, local transport from trunk side unbundled from switch;

Sixth, local switching unbundled. These are the so-called unbundling portions of it, whereby a company will have to open up and unbundle its codes so that competitors can come in. It is only once they form a small telephone company that there is interconnection and unbundling available.

Next, access to 911 and enhanced 911, directory assistance and operator call completion service;

Next is the white pages directory listing;

Next is access to telephone number assignment;

Tenth, access to data bases and network signaling;

Eleventh, interim number portability;

Twelfth, local dialing parity;

Thirteenth, reciprocal compensation;

Fourteenth, resale of local service to competitors.

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

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

The Justice Department is not supposed to be a decisionmaker in this sense. The Justice Department is not a regulatory agency. It has become one under Judge Greene's rules, but those attorneys theoretically respond to Judge Greene from the district court. They have gotten in the habit over there of having several hundred lawyers who are basically regulators. As, for example, in the Ameritech case, they are even approving phone books and things of that sort over at the Department of Justice.

The Department of Justice is supposed to deal with antitrust issues and the Sherman Act and the Clayton Act and go act as an independent party under the Hobbs Appeals Act. They are supposed to be lawyers bringing cases and lawyers giving interpretations and antitrust rulings and so forth.

What the Justice Department, like so many departments in Washington, wants to do is become a regulator, to have a permanent staff of people who regulate and make decisions. That is supposed to be done over at the FCC.

So I say to my friends who propose this change that, if they want another standard of regulation, let us do it at the FCC where it is supposed to be. Why go over here to the Department of Justice—which has its role, which has its traditional role, and a good role, let me say.

We have read a lot in the paper about the Hart-Scott-Rodino rulings of this year and the Clayton Act standard, which is in the proposal of Senator THURMOND. And, of course, the Sherman Antitrust Act, which started all this, in Judge Greene's decision. The point is the Department of Justice already has a role and will have a role without adding another layer of bureaucracy.

The Dorgan-Thurmond amendment or variations thereof, is the opposite of proconsumer legislation. Consumers want wide open competition. They want lower costs. They want more and better services, and they want these without delay.

The Department of Justice, in carrying out the MFJ, is now averaging nearly 3 years. I believe I have here a list of small charts which show the average time, ''Average Age Of Waivers Pending Before the District Court.'' In 1993 it is 1,600 days, is the average age of the waivers. That is how long it takes to get a decision out of the Department of Justice, 1,600 days.

The ''Waivers Disposed Of Through the District Court,'' that is through the Justice Department, has declined in 1993. It reached a height in 1986 but they are doing less, even slower, even more slowly.

The average age of waivers pending before the Department of Justice year-end is 1,200 days. This is in a Department that in present law says it will endeavor to get these done within 30 days. They have completely ignored that.

Next we come to ''Waivers Disposed Of By DOJ.'' It has dropped to an all-time low in 1993 for some reason.

The point I am making—requests filed with the DOJ hit an all time low in 1992, again in 1993—is people have given up. If they have to wait 3 years or more, it is too frustrating, too futile. I think that is something we should think about very carefully before we add another layer of bureaucracy.

I know my colleagues have the best intentions here, but I have a chart showing the ''Average Age of Waivers Before the District Court Year-end.'' It started in 1985. They were supposed to get theirs, in the law, done within 30 days. They were supposed to get the work done within 30 days. In 1985 it took them an average of about 100 days to get the waivers issued. In 1986 it was up to about 200 days.

Anyway, to make a long story short, if you file a waiver before the Department of Justice today you will wait, on the average, nearly 1,500 days, about 4 years. That is why they dropped so much.

I say to my colleagues, do we want this extra layer of bureaucracy? Or do we really want to open up competition?

I would say it is a great mistake. We are doing all these checklists. We are doing public interest. We are having

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

The way the bureaucracy works around this town—I have been around here awhile watching it—it will probably be more than that before we are through. We are probably talking about a 3- to 5-year delay.

Some of my colleagues have talked about a LeMans start—that is, just start right now, in terms of competition. We would let everybody compete. There are some problems of unbundling or interconnecting with that, but there are Members of this body, indeed we had two members in the Commerce Committee who voted against this bill who felt strongly about an immediate start. There is much merit to that.

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

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

What we have here is a lawyer's dream, a lawyer's paradise.

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

Mr. PRESSLER. I will, just as soon as I am finished. I am almost finished.

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

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

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

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

Mr. PRESSLER. Yes, I will yield.

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

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

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

Mr. KERREY. The question I am asking——

Mr. PRESSLER. Let me answer the question.

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

Mr. PRESSLER. I do not yield the floor.

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

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

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

Mr. KERREY. I do not give——

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

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

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

Mr. KERREY. I am pleased to yield.

The Senator keeps saying miraculously, and three sets of lawyers. I just do not think the facts support that. I do not think the facts support that is what a company would do, have to hire a whole separate set of lawyers or, being a miracle, that there would be simultaneous application. The application process is different at the Department of Justice because the Department of Justice is the agency that has the experience of determining whether or not there is competition. They are the ones with the experience. The FCC does not have that experience. Indeed, the checklist the Senator is referring to is the placement for the VII(c) test. The Senator voted for an VII(c) test last year. Last year, the Senator from South Dakota was quite willing to have simultaneous application then because the Department of Justice had a ruling with an VII(c) test involved.

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

The PRESIDING OFFICER. The Senator from South Dakota has the floor.

Mr. PRESSLER. I will be glad to yield for a question.

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

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

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

Mr. DORGAN. Mr. President, it was not my intention to ask the Senator from South Dakota to discontinue if he was not finished. I appreciate very much his courtesy. Again, I think he and the Senator from South Carolina have done a real service in bringing this legislation to the floor, and while we disagree on parts of it, disagree strongly on this part of it, I, nonetheless, admire the work that both managers have done.

But let me describe where we are. We worked over the weekend with Senator THURMOND and his staff, and Senator KERREY and his staff were apprised. We now have an agreement. Senator THURMOND's second-degree amendment was modified a half hour or so ago. That modification includes some additional language that was agreed to this weekend so that we retain the standard proposed by Senator THURMOND in his second degree. We add some additional language that we wanted to be included, and it now represents in my judgment a satisfactory resolution on the question of the role of the Justice Department. I, therefore, will be supportive by voting yes on a motion that is offered in the second degree. It represents something that Senator THURMOND, myself, Senator KERREY, and others agree with and think will advance the interests of this bill.

Mr. President, while I am on my feet, I ask unanimous consent that Senator LEAHY be added as a cosponsor.

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

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

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

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

I am probably the last one expected to stand here and extol the virtues of lawyers down at the Justice Department involved in the antitrust business. In the House of Representatives, I went to the floor I suppose half a dozen times over the decade of the 1980's, threatening to put the pictures of lawyers down at DOJ on the side of milk cartons, because my notion was we were paying 900 or some attorneys involved in antitrust activity who essentially had vanished. They were not doing anything. So my assumption was they disappeared and that we ought to find them someplace. That was under the old scheme of a Department of Justice that really could not find any activity that they felt threatened the free market system. Any merger was just fine. Any hostile takeover was terrific. They became more like cheerleaders for concentration in the marketplace than they were the guardians of public interest with respect to competition and those who were fighting against antitrust activities.

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

You can have your pockets picked in an economy like ours if you do not have free markets. How do people pick your pockets? The influence that can pick your pockets in a marketplace like ours is when you have concentrations, so much so that enterprises can actually fix their prices, represent anticompetitive behavior, do things in a way to extract money from the consumers in a manner that protects themselves protects the enterprises from the whims of competition. Those things are not healthy. We have been through periods in our country where we had some trust busters that had to break up the cartels and trusts. Free market systems work only when there is a free market, only when there is competition.

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

So I understand, if I were one participant in this battle for the consumers' dollar in the telecommunications industry, I might say, ''Gee, it is a real inconvenience for you all to be suggesting that the Department of Justice ought to have any more of a role than a consultative role.''

This is not about inconvenience. This is about protecting the public interest and protecting the market system to make sure we have a free market with competitive forces.

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

Mr. DORGAN. I would be happy to yield.

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

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

Mr. DORGAN. I do not know the specific answer to the Senator's question except to say that the amendment that we have now modified establishes a Clayton 7 test which is a test below the VIII(c) test that we had in my underlying amendment, which, I might say, the Senator from South Dakota and others voted for last year as it moved out of the Commerce Committee. To whatever extent the procedure followed last year with respect to VIII(c), which is a higher threshold which would have been required, I would suggest that same procedure is now required in the Justice Department except that we have agreed with a somewhat lower standard.

We do not agree, however, with a notion that the Justice Department ought to be dealt out of this altogether, reserving only a consultative role for the Justice Department.

I understand the question. I will try to get an answer with respect to the Administrative Procedures Act I believe the Senator asked about.

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

And under the 14-point checklist that we have and under the public interest rules at FCC, they have to follow the administrative procedures. This provides openness and and protects the rights of parties. But when they go over to the Justice Department—and it was one problem we had with the VIII(c) test very frankly—there is not that openness. The Justice Department does not have to have open meetings

and hearings. It does not have to have ex parte rules. Your rights over there are less than they are when you are before an agency that has the Administrative Procedures Act.

I think this goes to the core of the debate here on the Senate floor. The Justice Department is a different sort of an agency. It is a cabinet agency that does not have to be under the Administrative Procedures Act. It can prosecute people. It interprets the antitrust laws. It interprets the Sherman Act and the Clayton Act and the Hart-Scott-Rodino Act, and it does a good job in those areas.

I might say that the present Assistant Attorney General, a fine woman, has done a great job, in my opinion, on Hart-Scott-Rodino, and she has done a great job in administering this huge group of lawyers over there who are regulators presently under the MFJ. And I suppose that somebody fears they are going to have to let all their lawyers go, somewhere between 200 and 900 lawyers, and I do not know where they are going to go. Maybe that is the problem.

Seriously, on a serious note, the Department of Justice wants to keep on being a regulator without being under the Administrative Procedures Act. And that is a problem. When you get over to the Justice Department—first of all, under the Dorgan amendment, you go to the FCC and you have openness. You can have an open hearing. If one of the commissioners talks to somebody even at a reception about this case, he has to file a report of it and give equal time to somebody else. But you go over here to the Justice Department, you are not under the Administrative Procedures Act. They can operate in secret if they want to. They are a prosecutorial agency. They can operate without the ex parte rules.

I think that is a very important thing. Constitutionally, I do not think you should be able to apply all of the aspects of the Administrative Procedures Act to the Justice Department. They have a different role in the nature of our Government. They have a different mission to carry out. Now, every agency would like to have several rooms full of lawyers who are regulators. And, indeed, if you look in the present Ameritech case, the Department of Justice had regulators checking on the validity of telephone books, to see whether they fit into the rules. They have regulators checking into the validity of Yellow Pages. This is in the Department of Justice, where we hold up the hand of the balance of justice.

This has nothing to do with the balance of justice. This belongs in the regulatory agency that we spend so much money on, the FCC. So that is I think a very core point here in the nature of this debate.

I am going to yield any further time. I will just conclude by saying, because we have to get this debate moving, I challenge my friend from North Dakota to name another area of commerce where the Department of Justice has a decisionmaking role. This is trying to give the Department of Justice a decisionmaking role.

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

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

I yield the floor.

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

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

However, we are not suggesting the role of the Justice Department be a regulatory role. I think somehow the Senator and others are mistaken about that. I do think, though, that when one makes the point we have crafted an amendment that attempts to set up competing forces here that represent dual obstacles for an applicant is just wrong. It is not the way it is written. It is not what the amendment is about. And it is not what we are trying to do.

We are saying the absence of a substantive Justice role in this telecommunications bill we think has the potential of cheating the American people.

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

Mr. DORGAN. Let me yield the floor.

Mr. KERREY. Just for a question.

Mr. DORGAN. I will be happy to yield.

Mr. KERREY. The Senator from South Dakota asked and then raised in the following series of arguments against, after having asserted that the Department of Justice has a different role and function, which it unquestionably does—it has been managing the movement from a monopoly to a competitive environment. Why should it not be different? Of course, it is different. As to the Yellow Pages case, it is a very important anticompetitive case, very important anticompetitive case.

Mr. DORGAN. Let me yield the floor to the Senator from Nebraska, if that is sufficient.

The PRESIDING OFFICER. The Senator from Nebraska is recognized.

Mr. KERREY. Mr. President, I thank the Senator. I am sorry for the long warmup to the question. I appreciate the yielding of the floor.

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

> The commission shall issue a written determination . . .

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

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

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

Mr. EXON addressed the Chair.

The PRESIDING OFFICER. The senior Senator from Nebraska.

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

The PRESIDING OFFICER. Will the Senator from Nebraska yield?

Mr. EXON. I yield.

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

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

Mr. EXON. I thank the Chair.

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

As a lesson in the art of compromise, the role of the Department of Justice is an example of how Congress should work together. Chairman PRESSLER

presented a draft on behalf of his Republican colleagues which embraced a day certain for Bell entry into long distance, no role for the Department of Justice in the long distance decisionmaking, and no savings clause to preserve antitrust authority.

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

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

What we are talking about and debating today—and I think the debate is very worthwhile—is how much authority, how far can the Justice Department go in this area. I happen to believe that while this, like most other bills and most other amendments that we adopt from time to time, is not perfect, we are not certain how it is going to work out. But we are certain in that this issue has been debated very, very thoroughly, and I believe that we have something that makes a great deal of sense. I hope we will hold to the committee position.

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

The compromise did not include a day certain for Bell entry into long distance, but it did include a certain procedure for entry that I think is important. It is a compromise, and I think it will work. It is a compromise which is balanced. It is a compromise which presented a win-win proposition as best we could for both sides. I certainly think that Chairman PRESSLER and ranking Democratic member HOLLINGS should be complimented for reaching out to each other and the Democratic and Republican sides of the aisle to come up with something that I think is something that could be best described as providing a lot of wisdom.

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

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

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

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

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

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

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

Mr. President, I hope that the Senate will follow the well-thought-out and, I think, well-compromised and well-done effort on the measure that we have been debating now for some time.

Thank you, Mr. President. I yield the floor.

Mr. BREAUX. Mr. President, I congratulate the distinguished Senator from Nebraska for what I think has been a very articulate statement about his opposition to the pending amendment and why it is not necessary.

I wonder, as we have these debates on the floor, about how difficult it must be for all of our colleagues who have not sat through weeks and months and, in fact, years of hearings as a member of the Senate Commerce Committee discussing the very complicated telecommunications bills and language and amendments. I know that, as a member of that committee since I have been in the Senate, it is incredibly complicated to me. We use acronyms and talk about so many different agencies and about long distance versus RBOC's. It is very complicated for all of us, including those of us on the committee. I can just imagine how complicated it is for a Member not on the committee to come to the floor and be immersed in the telecommunications debate, trying to figure out what is right and wrong, and trying to understand a little bit about the history of this legislation, knowing that something happened several years back when we had the Department of Justice involved in breaking up the AT&T operations into separate operating companies known as the regional Bell companies. And we see that we are constantly being bombarded by all of the telecommunications suppliers in this country advertising about their services being better than somebody else's services; you will save a penny here or a penny there if you pick us over somebody else. All of this is truly very complicated. I guess there is no way to get around that, because what we are talking about is multibillion-dollar industries.

What I said at a hearing one time when we talked about one side wants to do this and the other side wants to do that, was, ''Who is right?'' I summarized by saying it is like all of these companies were coming before the committee and saying: I want in yours but you stay out of mine. Long distance companies were saying: I want to do local service but you cannot do long distance service. And the local Bell companies were saying: Well, I want to do long distance service, but I do not want you to come do local service. Hence, the summary of the situation being: I want in yours but stay out of mine.

I think the committee is to be congratulated for coming up with a scenario whereby we favor competition. We are going to say that the marketplace, when properly allowed to do so, can be the best regulator for the benefit of the consumer. The problem is, we have not had a telecommunications bill really since 1934. For all of our colleagues not on the committee, the reason why the judges have been involved in setting telecommunications policy in this country is because we in the

Congress have really not substantially written a telecommunications bill for the 1990's. The telecommunications bill that we operate under was written in 1934. Does anyone doubt the technology increases we have had since 1934? We have had 60 years of technological developments, and we are still being guided by an act written in 1934. You wonder why we have problems in this industry and you wonder why the Department of Justice has had to use not a telecommunications statute but an antitrust statute to help set telecommunications policy for the 1990's.

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

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

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

I think we have to understand that, with this legislation, we are calling for fundamental changes in the telecommunications business. We are going back to allowing people to be able to compete, and there will be losers and there will be winners among the companies. But I think that the competition that we will provide will make sure that consumers are the ultimate winners in what we do with this legislation. I think it is very, very important. The role of the Department of Justice—and I have a great deal of respect for the junior Senator from Nebraska, Senator KERREY, for his comments. I understand the points they make, saying that the Department of Justice needs to be involved in order to protect consumers and make sure nobody does things to other people and other companies that they should not. I understand that. But that was appropriate when the old system existed. I suggest that that is not appropriate under the new system.

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

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

Therefore, under the old system when you needed the Department of Justice to enforce the law using antitrust laws, it is no longer necessary, because we have a new document, a new set of rules and regulations, as to how this industry is going to work in this country. The old way was defective. It was written in 1934. Like I said, you had to go back and find antitrust laws to come in and protect the interests of consumers because we did not have the plan, a bill, a document that made sense. This bill makes sense, and this is the new rule book. It says that the Department of Justice's role will be to make sure that antitrust laws are not violated.

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

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

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

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

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

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

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

We are going to allow long distance companies, which in the past have been prevented from providing local service, to provide local service. There will be more people providing local service. It just will not be the regional Bells. There can be MCI, Sprint, AT&T, and a

whole array of new companies providing local service.

Guess what? In return, we will allow local companies, principally the regional Bells, to be able to provide long distance service. There is going to be competition both in long distance and there will be competition in local service.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

If we look at the history of the Department in trying to approve all of these mergers, the time that they have taken to give a ruling has increased from an average pending application of 2 months in 1984 to 3 years in 1993.

No wonder we have problems making the bureaucracy work, and I suggest that that is a very good example.

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

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

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

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

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

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

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

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

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

Mr. PRESSLER. I am a great admirer of my friend and I plead with the Senator, we must move forward. I received word that there are many who would like to vote at 6. We will have to resolve it, perhaps in a private conversation. But for purposes of other Senators in their offices, it is our intention to try to put this to a vote at 6 this evening.

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

Mr. HOLLINGS. Mr. President, let me join in the desire of our chairman here to get a vote this evening. When we broke on Friday the understanding was we would vote at 5 o'clock, perhaps. Not specifically on this amendment. We would have votes. This is the amendment that is up. We discussed it some, actually, on Thursday; all day Friday. This has been a crucial amendment.

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

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

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

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

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

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

Mind you me, S. 1822 did not have the Department of Justice as a checkoff at all when I introduced S. 1822, after much discussion with many of the Members.

''The Chairman,'' as I was acting chairman at that particular time:

> You are suggesting that this be administered by the FCC and the Department of Justice?
>
> Secretary BROWN. That is correct, Senator.
>
> The CHAIRMAN. Well, that is the basic difference, then. You want two entities to start administering communications.

Going on over two or three pages at the bottom of page 43, because here we have at the present time the law with respect to telecommunications is unchanged, as respects the Department of Justice. Section 2 of the Sherman Antitrust Act is untouched, absolutely untouched.

Let me emphasize that. That is where the so-called Department of Justice got all of this wonderful experience that we keep hearing about. They have all of the experience over the years and they have the marketing expertise and what have you. So, on page 8 of the bill, if you follow now, on 8 of the bill down at the bottom on section 7,

> Effect On Other Law . . . nothing in this Act shall be construed to modify, impair, or supersede the applicability of any antitrust law.

Mr. President, you cannot say it more clearly than that. I elaborated on it in the committee report and I turn to page 43 wherein:

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

You see, that had not changed and is not changed by S. 652. So what we were trying to do, and as I pointed out as we started out on S. 1822, was to cut out the duplication, and certainly not give authority for regulation to the Department of Justice. The Department of Justice is a law enforcement department. In fact, under Sherman, Section 2 of the Sherman Antitrust Act, are civil and criminal penalties. I said when we started on this last week the telephone companies were not a bunch of criminals and there was not any reason to start getting them—yes, there is a difference. My distinguished colleague from Nebraska says get a different lawyer. You bet your boots you get a different set of lawyers. It is just like going to a doctor for a broken arm, on the one hand, and going to a doctor, on the other hand, for diabetes. They do not know anything in broken arms about diabetes, and diabetes cannot set any broken arms.

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

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

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

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

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

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

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

So I went on in the bill S. 1822. But those who continually say, ''Well, you voted, you voted—last year. You should be admonished.'' Rather than admonishing me, my original intent as the chairman of the committee was to do just as Senator PRESSLER has provided in S. 652. So in S. 652 we provided the one-stop shopping at the Federal Communications Commission. The Department of Justice is totally unhindered and unaffected with respect to their antitrust responsibilities and authority. There is no question about that. No one has raised that question. They are seeking in the amendment additional authority and responsibility, which I think very positively confuses the situation and constitutes a bad amendment.

Why do I say that? I say that for this language here in the Thurmond-Dorgan amendment. It says the ''FCC, in making its determination whether the requested authorization is consistent

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

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

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

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

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

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

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

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

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

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

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

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

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

What is suggested by the amendment is that we want to start superimposing a whole new series of hearings. About the time you think you can get through the FCC, here is the Congress that has come to town and said we are going to reregulate, we are going to let market forces operate but, oh, by the way, we are going to put the law enforcement into the regulatory and have two regulatory bodies. Here we are getting rid of the ICC because other than railroad mergers it has become deregulated—and the trucking industry. Here we have done away in a general sense with the Civil Aeronautics Board. Mergers, that is under the Justice Department, but under regular routes and approvals and gates and slots and safety we have the Department of Transportation and the Federal Aviation Administration. In communications, we have the Federal Communications Commission and they have talent coming out of their ears over there on measuring market competition.

So the section 7 of Clayton under the Thurmond amendment of trying to determine substantially lessening competition is another market measure that the FCC has to make. That is why we wrote this bill this way. We are trying to get market competition. And we certainly do not want another division of government coming in. At one time they had it written so you had the Federal Trade Commission because under section 7 of Clayton you have both the Federal Trade Commission and the Justice Department.

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

Let us kill this amendment here once and for all and do not act like it is anything other than what it is. We have not affected the fundamental responsibility and authority of the Department of Justice. The amendment is a

jerry-built amendment of two interested Senators trying to get the Judiciary Committee on the Senate and House side with a say-so. They had a similar move over there. They have not reconciled it over on the House side. But it is bureaucracy at its worst. That is why you cannot come to the Government and you need a Senator to go through and lead you through here and lead you through there and everything else of that kind. Let us just get the one place, the one-stop shopping and say come in and here is what you have to prove and here is the entity that has the expertise and they will have it. And we will have the money for them. They made 7 billion bucks the other day in an auction so we have plenty of money at the Federal Communications Commission to do this unbundling, dial parity, nonportability, interconnection, public interest standard, measuring market forces and its competitive nature.

We have all that and let us put it in one place. Let the lawyers get this in one place. Let them get a formative decision. And if at any time the Justice Department finds, as they did against AT&T in the 1970's, and they started in and they went with the antitrust procedures and everything else of that kind on law enforcement enforcing the antitrust laws, fine business.

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

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

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

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

Well, the antitrust affects all within the marketing measurements that we have in here with the unbundling and the checklist and everything else, plus the public interest. So how in the world can they do half a haircut at one department and another half a haircut at another department and call this good law? It is a terrible amendment and it ought to be killed.

Mr. ASHCROFT addressed the Chair.

The PRESIDING OFFICER. The Senator from Missouri.

Mr. ASHCROFT. Mr. President, I rise in strong opposition to this amendment.

I recommend that my colleagues in the Senate carefully consider the implications of this effort to grant an unprecedented role to the Department of Justice. I happen to have the privilege of serving in the U.S. Senate now, but I once had the responsibility of being attorney general for the State of Missouri. I hope that my comments as an enforcement officer of an antitrust unit carry extra weight as we examine these very important issues.

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

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

Those individuals who want to set another layer of bureaucracy on the communications industry and upon the technology, creativity and innovation, those who would sponsor this kind of an amendment that would place lawyer after lawyer of the Justice Department in this mix, are individuals who have gone to the precipice of the future. They have looked into the future, and they are running back in fear, running for the old ways of saying that we need Government to protect us from the system of competition.

The truth of the matter is, nothing could be further from the truth. For what we have seen not only in the cellular area, where we have had competition, but in the long distance area, where we have had increasing competition, is that we do not need protection from the competition. Certainly not multiple governmental bureaucracy protection. We need to let competition help us to have the lower rates in local telephones which we have found in the long distance area. We need competition to provide for us the benefits, as in the area of cellular phones, which competition has been very valuable to us in improving our opportunity for service. So competition is what will help us, and competition in the context of regulation under the Federal Communications Commission, but not with the needless layering of bureaucratic regulation by the Justice Department.

George Gilder is an individual whose name has already been mentioned in several of the conversations in the debate, particularly by the Senator from Alaska. Before publishing his more recent volumes about computers, microcosms, and telecosms, Mr. Gilder wrote:

> In every economy, there is one crucial and definitive conflict. This is not the split between capitalists and workers, technocrats and humanists, government and business, liberals and conservatives, or the rich and poor. All of these divisions are partial and distorted reflections of the deeper conflict: The struggle between past and future . . .

The truth of the matter is, we are confronted again by a struggle between the past and the future, between the existing configurations of industries and the industries that may someday replace them.

Gilder goes on to say:

> It is a conflict between established factories, technologies, formations of capital, and the ventures that may soon make them worthless—ventures that today may not even exist; that today may flicker only as ideas, or tiny companies, or obscure research projects, or fierce but penniless ambitions; that today are unidentifiable and incalculable from above, but which, in time, in a progressing economy, must rise up if growth is to occur.

I believe that is the division we see today. It is the division between those who want to protect us from the future and from those who want to capitalize on the future. It is a division that divides the people who want to embrace the past and those who want to accelerate the future to bring the benefits of the communication age to the American people and to protect the capacity of the American worker to continue to provide the very best, the foremost, the cutting edge of communications technology to the technology industry worldwide.

Mr. President, George Gilder wrote in 1981 about the division of the past and the future, but I believe we are unlikely to find any better explanation for the intense activities surrounding this bill. Both in Commerce Committee sessions and on the floor, one Senator after another has testified to the extraordinary attention given this single piece of legislation. Most Senators imply what the Senator from Arizona said in his opening remarks last week that never before has there been such intense and continued and high-priced lobbying. I imagine that the two managers must have felt the urge last Wednesday evening to stand up and say, ''Mr. President, I rise to bring S. 652 kicking and screaming to the floor of the Senate.''

These two Senators, along with other senior Senators on the Commerce Committee, have fought the telecommunications battles longer than I have even been aware of them, and the counsel of experience rings through their testimony. This is no ordinary bill. The stakes are higher than any of us can

quantify. This bill is fundamentally about change. As Mr. Gilder told us 15 years ago, change is always the definitive conflict.

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

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

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

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

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

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

I do wish to briefly comment on a specific argument that was suggested Thursday night that handing the Justice Department unprecedented authority is somehow justified because we are passing unprecedented legislation. Throughout this debate, that particular argument has been advanced by a Senator, and that Senator has advised this body to proceed with caution on such a monumental piece of legislation. We should instead have caution before putting the Justice Department and its lawyers into a historic role of replacing Congress as the Nation's policymaker.

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

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

> Lawyers from the Justice Department understand competition. The Antitrust Division of DOJ understands where and when competition is, and they are about the only ones in this town that, at least by my measurement, are out there fighting to make sure the marketplace is in fact working.

That argument was made on the floor of this Senate. Mr. President, I find this statement hard to believe. If the Justice Department is the only entity in this town, or in America, that is fighting to make sure that the marketplace really works, why do we not hand over micromanagement of the entire economy to them? You could extend the logic of this amendment from the telecommunications industry—it is an important industry—if you have to have the Justice Department micromanaging that part of Government, why not apply it to all other commercial industries? Why not start with all of the other departments within the Antitrust Division—transportation, energy, agriculture, computers, finance, foreign commerce, professions, intellectual property—take the professions divisions. Do we hear the call from Congress to regulate lawyers from entering different types of practice? Can you imagine the uproar if Congress proposed to have the Department of Justice determine when each law firm could practice different types of law? Well, we do not have to imagine what they are proposing here. What they propose is to single out the most dynamic economic sector of the American economy, the sector undergoing the most rapid and dramatic change, the sector in which we have perhaps the most dramatic competitive advantage in a marketplace—a productive competitive marketplace, the world marketplace—and they want to add the ingredient of governmental cement to the process. We do not need to freeze and to repress the developments in our industry, we need to energize them, and having the Federal Communications Commission there is enough regulation, particularly when you have the Justice Department with its ability to be advice givers in antitrust.

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

Well, let us consider, stop and take a look at some of the decisions we have made in this bill that were influenced by the present policies of those 800 lawyers at the Department of Justice. Let us see if their past performance leaves us with nothing to worry about. Take the GTE consent decree. In 1982, GTE purchased a company called Sprint. The Department thought that these two companies getting together providing local and long distance services could be dangerous to competition, so they said that GTE, before the acquisition of Sprint could take place, would have to agree to a consent decree, with which the company complied. With that consent decree, 10 years later, in place, GTE had disposed of all the Sprint assets, and had divested itself of the entire acquisition. But the Justice Department refused to lift the decree.

By 1992, GTE was essentially the same company that had existed before it had purchased Sprint when it had operated without the oversight of the Justice Department and its army of lawyers. But was the Justice Department willing to relinquish its control over a private business once the bureaucracy had worked its fingers into the situation? Obviously not.

The Justice Department would not lift the decree, and has not lifted the decree to this very day, in spite of the fact that the acquisition of Sprint was the reason for the decree, and the divestiture of Sprint happened years ago. And GTE has returned to the kind of company it was prior to the acquisition. This issue of Sprint was a high priority for me during the course of drafting this bill. If Justice was not prepared to act properly on this matter, then I felt Congress should not reassert the authority of the Justice Department. I am happy to say that having passed the majority leader's deregulation amendment last week, the Senate has finally removed GTE from the micromanaging influences of the Department of Justice.

Please note, Mr. President, that the GTE consent decree was lifted by Congress—or will be lifted by Congress, not by 800 of the so-called I-am-here-to-help-you friendly lawyers at the Justice Department.

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

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

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

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

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

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

In fact, an interesting case developed that led to an incredible situation in Arizona. The non-Bell cellular carrier could offer the entire State in Arizona as a local call. The Bell affiliate could not, bound by the rules that govern wire transmissions. When the non-Bell operator sold its license to another Bell affiliate, that Bell affiliate, having purchased the cellular company, could no longer offer the entire State as a local call. Even though it was not even operating as a cellular carrier in its own landline region, the Bell affiliate operating in another part of the country had to respond to criterion that governed, according to the Department, its own operation in the area of the landline.

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

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

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

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

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

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

Now, the bill that we have here lifts those restrictions. This bill lifts all restrictions on the cellular industry and allows the cellular provider to say: Go ahead, make a long distance call for the same price a local call.

Congress acts in its proper role, and the FCC is instructed to implement that policy.

Supporters of this bill have expected the delicate balance contained in the bill to be severely tested. The first test was on the definition of public interest. There are many who think that 14 criteria are enough, and that should do it.

There was a balance struck in the development of this bill. That balance was that we would protect the public interest by adding a definition including the public interest.

I must admit, Mr. President, I find merit with the arguments of the Senator from Arizona, [Mr. MCCAIN], among the cosponsors of the amendment that sought to take that public interest out of the bill.

I am uncomfortable with the breadth of the term ''public interest,'' and I would otherwise prefer that we leave as little room for subjective analysis as possible; that the Congress, representatives of the people, actually specify the policy, and that policy be carried out by the FCC.

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

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

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

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

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

But the American people know who has the biggest monopoly of all. The biggest monopoly of all is the monopoly of Government. The biggest battle

of this bill is not between the Baby Bells and Mama Bell, and the long distance companies and the local exchange carriers; the biggest battle is found right here in this amendment. It is between the Congress and the Department. It is a battle over who sets policy in this country.

I received a copy of a letter sent to Chairman PRESSLER by Henry Geller, former communications policy advisor under President Reagan, who also happened to testify at one of the committee hearings. If the chairman has not already done so, and if the Senator from South Dakota does not mind, I would like to submit the entire letter for the RECORD. I ask unanimous consent that the letter be printed in the RECORD.

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

HENRY GELLER, COMMUNICATIONS FELLOW, THE MARKLE FOUNDATION,
Washington, DC, June 7, 1995.

Senator LARRY PRESSLER,
Chairman, Senate Commerce Committee, Russell Senate Office Bldg., Washington, DC.

MR. CHAIRMAN: We are disinterested parties who have participated in the legislative process leading to S. 652. We address here the question of the appropriate role for the Department of Justice on the issue of entry by the divested Bell Operating Companies (BOCs) into the interexchange (IX) long distance and manufacturing markets. We urge that it would be an inappropriate and seriously flawed process to give Justice a decisional role.

The Department and the antitrust court were necessary to effect the break-up of AT&T. But that court, using the Department as its ''staff'', is now engaged in essentially regulatory activity—namely, the terms and timing of full entry by the BOCs into all sectors of telecommunications. The FCC, as the expert agency with centralized authority in the telecom sphere, is engaged in the same area, but under an antiquated law.

A main thrust of the pending legislative effort is to remove the antitrust court from the regulatory policy making process and to have the important policy guidelines set by the Congress and implemented by the established Congressional delegatees in this field, the FCC and the State commissions (with the FCC steering and the States rowing). That is the sound approach of S. 652.

Justice, however, argues strongly that it should continue to have a decisional role on the two remaining MFJ issues—IX and manufacturing—and should apply an antitrust standard to these issues. But that makes no sense at all. If these matters are to be settled under antitrust law, there is no reason to remove the antitrust court or the appellate court—to, in effect, leave the ''staff'' as the decisional point in the antitrust field. The whole point of the legislative exercise is to end the antitrust chapter and in its place to substitute Congressional guidelines implemented by the traditional regulatory scheme. Stated differently, with the antitrust court removed, what is left is a regulatory scheme. Justice's role is to prosecute antitrust cases—not to be a regulatory agency duplicating the FCC, so that there will now be two regulatory agencies.

This is not a new position for us. In a 1989 Report to the Benton Foundation on the Federal regulatory structure for telecom, the same analysis and conclusion—that this is a ''cockamamie policy arrangement''—are set out in the context of the then contentious issue of BOC entry into the information services. The pertinent discussion is attached as an appendix. We particularly recommend perusal of the 1988 statement of Assistant Attorney General Charles Rule, who was then in charge of the Antitrust Division in the Reagan Administration.

The Department asserts that it has developed considerable expertise on the issues involved. Of course it has. It can fully bring that expertise to bear in submissions to the FCC. As a party respondent in any appeal from an FCC decision, it can make known its position to the appellate court (and indeed it can appeal in its own right). It can participate fully in any oversight proceedings of the Congress. Finally, it continues to have broad authority under the antitrust laws to prosecute anti-competitive conduct that it regards as violative of those laws.

The Department's expertise is thus not lost at all. What is to be avoided is for the Congress to establish two regulatory agencies at the Federal level to deal with the regulatory problems of BOC entry into the IX manufacturing fields. Such duplication constitutes bureaucratic layering that the Congress and indeed, the Administration should avoid.

The Administration, perhaps unconsciously, may be motivated by what is a common phenomenon in this town—protection of ''turf.'' There is no question as to what is motivating the opposition of private opponents of BOC entry. The more hoops the BOCs have to jump through—the more decisional hurdles for them, the more chance there is of delaying their entry and thus delaying having to face their competition. We do not blame the opponents for this effort: As the late Senator Magnuson wisely said, ''All each industry seeks is a fair advantage over its rivals.''

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

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

Sincerely yours,

HENRY GELLER
(For Barbara O'Connor).

Mr. ASHCROFT. I would like to share the key point expressed:

A main thrust of the pending legislative effort is to remove the antitrust court from the regulatory policymaking process and to have important policy guidelines set by the Congress and implemented by the established congressional delegates in this field, the FCC and the State commissions. . . . That is the sound approach of S. 652.

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

If these matters are to be settled under antitrust law, then why are we passing this legislation? One Senator keeps mentioning the length of this bill. Well, we could reduce these 140 pages down to one simple paragraph and let the Justice Department take over from there. But that is not what we want to do, nor is that what we ought to do. That is not to be the case because the role of Justice is to prosecute cases, not to manage or micromanage industry. Congress has the role of setting national policy. These two roles are fundamentally different, and I know which one I expect to fulfill on behalf of the people of Missouri. I will not vote to transfer policymaking to the Department of Justice, and I encourage the Senate to reject this amendment.

Mr. President, in closing, I offer an observation: We are debating fundamental differences in attitudes. Some Senators say the competition is not the best regulator. I say the American people are the best regulator. Some Senators have looked into the future and they recoil in fear. They argue that the American people are afraid of the future, that they are begging for Government to protect them from the unknown.

I have more faith in the American people. That faith springs from my belief that the enterprising spirit of our people will reap immeasurable benefits in our country, especially in this exciting industry.

We do not wait for a busload of citizens to march into our office and demand this bill. We should pass this bill because Congress must also let the people have the benefits of the 21st century. We should pass this bill because this bill will provide a basis for our competitiveness and productivity, and the growth of this industry is vital to our future, and the benefits will go to every citizen in America.

Mr. DOLE addressed the Chair.

The PRESIDING OFFICER. The majority leader.

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

Mr. KERREY. That would be satisfactory. I have no objection to that. It is the Dorgan-Thurmond amendment.

Mr. DOLE. Dorgan-Thurmond, excuse me. I know the Senator from Nebraska has an interest in it. I would have to check with both Senator DORGAN and Senator THURMOND to see if we could get that agreement so at noon the Senator from South Dakota, Senator PRESSLER, could move to table. That would satisfy the Senator from Nebraska.

I think Senator BUMPERS is prepared to come to the floor to offer an amendment and maybe Senator LEAHY. I am advised that may be an amendment that would take a considerable amount of time.

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

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

I know the managers are prepared. I have just been advised by the chairman

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

I notice an amendment by Senators EXON, LEAHY, and COATS, a bipartisan amendment. I do not know what it is; something on pay phones, foreign ownership, red lining, burglar alarm. Senator LEAHY has another amendment. Senator FEINSTEIN has three amendments.

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

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

Several Senators addressed the Chair.

The PRESIDING OFFICER (Mr. DEWINE). The Senator from Nebraska.

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

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

I, last week, made a mistake in assessing the Department of Justice. I said they have approximately 800 lawyers because I was informed that in 1982, when the consent decree was filed, that is approximately how many people were down there. That is true, 860 —about 800 actually, in 1982. But today there are 323 lawyers and 686 total employees, total staff at the Antitrust Division at the Department of Justice. It is a very small agency.

This bill is about power. I do not walk, as the Senator from Missouri implied, to the precipice of change and be afraid of change. I am not afraid of this bill other than what it might do if we do not have the agency that has not only current responsibility but experience in managing what this bill describes we are going to do. This bill says we are going to move from a monopoly to a competitive environment. That is what it attempts to do. We are going to move from a monopoly in local telephone service in a market—no free market down there, folks. This is not a little mom and pop shop that started in business 10 years ago now with local telephone service. They were given a monopoly franchise.

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

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

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

We have made a reasoned judgment based upon input from a variety of different people that we can go to a competitive marketplace in local service. These arguments have a way of turning it around every now and then. In 1986, a couple of years after the consent decree was fully in place and the divestiture had occurred, I supported legislation in the Nebraska Legislature to deregulate the telephone companies on the question of pricing. I tried to get them to change the law. The legislature changed the law to allow competition at the local level and was told—indeed I was rolled at the time, not told—I was told and rolled we were not going to do that. Technology would not allow competition. That was the argument in 1986. So I lost that battle.

We deregulated on price but we did not deregulate to produce a competitive environment because we were told the technology would not allow it. And lest anybody think I have walked to the precipice and am fearful of embracing change, as was suggested earlier, in 1986 I asked and was given the authority to be the lead Governor for telecommunications for the National Governors' Association. We reached a conclusion—I had a little task force —that we ought to, in an expeditious fashion, eliminate the restrictions that were currently in place in the modified final judgment. I thought we had the votes. It was one of those deals where you were sure you had all the votes, did all the calling and everything. We had a meeting, annual meeting, in South Carolina in 1986. I was sure I had that thing won. That year I got rolled by AT&T. They came to that deal and said: Oh, no, if you loosen the restrictions and you have competition, all these things—they did, like many of the speakers have said—here are the horrible, terrible things that are going to happen. Here are all the bad. Jobs are going to go down the toilet, things are going to explode and be bad. And we lost. We got rolled in 1986 trying to change that policy.

So I understand that there is a lot of active interest in whether or not the Department of Justice should have a role. Earlier, the Senator from Missouri said, ''I am a former Attorney General and I have experience doing this.'' And he said ''I hope I am listened to.''

Mr. President, I ask unanimous consent a letter from 24 State attorneys general be printed as part of the RECORD at this point.

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

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

DEAR MEMBER OF CONGRESS/SENATE: The undersigned state attorneys general would like to address several telecommunications deregulation bills that are now pending in Congress. One of the objectives in any such legislation must be the promotion of deregulation that fosters competition while at the same time protecting consumers from anticompetitive practices.

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

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

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

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

Second, legislation should continue to prohibit mergers of cable and telephone companies in the same service area. Such a prohibition is essential because local cable companies are the likely competitors of telephone companies. Permitting such mergers raises the possibility of a ''one-wire world,'' with only successful antitrust litigation to prevent it. Congress should narrowly draft any exceptions to this general prohibition.

Third, Congress should not preempt the states from ordering 1+intraLATA dialing parity in appropriate cases, including cases where the incumbent RBOC has yet to receive permission to enter the interLATA long distance market. With a mere flip of a switch, the RBOCs can immediately offer ''one-stop shopping'' (both local and long distance services). New entrants, however, may take some time before they can offer such services, and only after they incur significant capital expenses will they be able to develop such capabilities.

In conclusion, we urge you to support telecommunications reform legislation that incorporates provisions that would maintain an important decision-making role for the Department of Justice; preserve the existing prohibition against mergers of telephone companies and cable television companies located in the same service areas; and protect the states' ability to order 1+intraLATA dialing parity in appropriate cases.

Thank you for considering our views.

Very truly yours,

Tom Udall, Attorney General of New Mexico; Grant Woods, Attorney General of Arizona; James E. Doyle, Attorney General of Wisconsin; Winston Bryant, Attorney General of Arkansas; Richard Blumenthal, Attorney General of Connecticut; Garland Pinkston, Jr., Acting Corporation Counsel of the District of Columbia; Calvin E. Holloway, Sr., Attorney General of Guam; Tom Miller, Attorney General of Iowa; Chris Gorman, Attorney General of Kentucky; M. Jane Brady, Attorney General of Delaware; Robert A. Butterworth, Attorney General of Florida; Jim Ryan, Attorney General of Illinois; Carla J. Stovall, Attorney General of Kansas; Scott Harshbarger, Attorney General of Massachusetts; Hubert H. Humphrey III, Attorney General of Minnesota; Joseph P. Mazurek, Attorney General of Montana; Drew Edmondson, Attorney General of Oklahoma; Jan Graham, Attorney General of Utah; Christine O. Gregoire, Attorney General of Washington; Jeremiah W. Nixon, Attorney General of Missouri; Heidi Heitkamp, Attorney General of North Dakota; Charles W. Burson, Attorney General of Tennessee; Jeffrey L. Amestoy, Attorney General of Vermont; Darrell V. McGraw, Jr., Attorney General of West Virginia.

Mr. KERREY. Mr. President, with some assist from my drugstore eye glasses, let me read one paragraph from it. It says, ''The United States Department of Justice should have a meaningful role in determining, in advance—not after the fact—whether competition at the local level is sufficient to allow an RBOC to enter the long distance services and equipment manufacturing markets for a particular region.''

Understand we are not just talking about the interLATA long distance. We are also talking about removing the restrictions on manufacturing.

So the question is, ''Do you have some competition at the local level?''

If you have it, it will allow you to get into previously restricted areas.

The Department of Justice has unmatched experience and expertise in evaluating competition in the telecommunications field. Such a role is vital regardless of whether Congress adopts a ''competitive checklist'' or ''modified final judgment safeguard'' approach to evaluating competition in local markets.

Mr. President, I really do not believe this is one of those amendments that ought to be characterized as a choice between picking the ''dreaded Government regulators who are going to micromanage everything in your life'' or choosing the market. But what we are attempting to do in good faith is answer the question, ''How do we manage this thing?'' This is an unprecedented change, unprecedented that Congress is going to attempt to manage. We have reached the decision, I believe a majority of us have, that we should use competition in the local market, competition in manufacturing, competition in services, competition in switching, not to regulate but to determine what is the best service, what is the best piece of equipment, what is the best switching offered out there. Let competition determine that. We have been successful in long distance. We grow confidence based upon success. We can do it at the local level and in manufacturing. We are about at the edge of enacting legislation to do that.

The question before us is, ''Should we give the Department of Justice more than a consultative role?''

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

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

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

would be a good example to use and based upon the success of airline and trucking deregulation we should not have a DOJ role.

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

From 1985 to 1989, during the transition from airline regulation to competition, the Department of Transportation (DOT) had the authority to approve airline mergers, subject to advice from DOJ. In 1986, DOT approved two mergers over DOJ's vigorous objections: Northwest Airlines' deal with its main rival in Minneapolis, Republic, and TWA's acquisition of its main competitor in St. Louis, Ozark. DOJ advised DOT that each transaction would sharply reduce competition for air travel into and out of the affected city. DOT rejected this advice, concluding that the deals would not result in a substantial reduction of competition in any market.

Unfortunately, DOT—with little expertise in assessing competition—was wrong. Just as DOJ predicted, the transactions resulted in higher air fares and less choice for travelers at the Minneapolis and St. Louis hubs. In fact, a study by the General Accounting Office found that TWA's air fares at St. Louis shot up at two to three times the rate of all other air fares in the wake of the merger.

The Department of Transportation now concedes that assigning the job of making competitive assessments to it, instead of DOJ, ''was not a success.''

Mr. President, we are not talking about an assignment of responsibility here that is heavily bureaucratized. We are talking about a question that we ought to be able to assess, particularly given the fact that I believe it is the case that an awful lot of us are going to be held accountable for this vote. Those of us who are advocates of deregulation are attempting to answer the question, ''How do we do this in a fashion so that our consumers get the benefit of lower prices and higher quality that comes at a competitive environment?'' We want to make sure that, as you move from a monopoly to a competitive environment, the consumers indeed benefit from that transition.

DOJ still has the role. It is not enough. DOJ has the role after the fact, not prior to the decision being made. The Antitrust Division is not doing the same thing as the FCC. It is not duplication, as has been alleged.

As to the delays, I can go through that argument. I have gone through it once before. If you examine the detail of why there has been delay, I think the presentation of the charts going up to the right, in fact, fall on their face.

The Department of Justice is not asking to be a regulator in this thing. I am not coming to the floor because I am concerned about the Department of Justice. I am not on the Judiciary Committee. I am on the Agriculture Committee, the Appropriations Committee, and the Intelligence Committee. I am not trying to figure out how to give some additional authority. They are not asking for regulatory authority. They are merely asking, and I think correctly so in this case, for some additional authority as we try to move from a regulated sector at the local level, at the local loop, and regulated sector in manufacturing as well to a competitive environment. If we get it right, we will end up being rewarded right along with the consumers with the praise as a consequence.

Mr. President, I believe again that the 146 pages that we are about to vote on, whatever it is, relatively soon, we will be voting on final passage, I presume, is one of the most important pieces of legislation that I have had the opportunity to be a part of in my entire political career.

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

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

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

Mr. President, I yield the floor.

Mr. DOLE. Mr. President, I now ask unanimous consent that the pending Dorgan-Thurmond amendment be laid aside until 12 noon Tuesday and at 12 noon Senator PRESSLER be recognized to make a motion to table the amendment.

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

Mr. DOLE. I thank the Senator from Nebraska. I think this will work. He may want to reserve some of that time before noon for final argument, maybe from 11 to 12 to be equally divided between—so you would have 1 hour of debate before the motion to table. So from 11 to 12 noon, unless there is objection, will be an hour equally divided on that amendment.

Mr. HOLLINGS. Right.

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

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

Mr. HOLLINGS. Right.

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

Mr. PRESSLER addressed the Chair.

The PRESIDING OFFICER. The Senator from South Dakota.

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

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

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

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

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

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

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

Next, there is a cross-subsidization ban which the Bells must comply with.

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

Now, also the Bells must comply with existing FCC rules in rigorous annual audits, elaborate cost accounting,

computer assisted reporting, and special pricing rules.

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

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

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

Now, a part of this is the so-called competitive checklist. This is the heart of the compromise that was reached. Some of the conservative magazines and some of the Senators wanted a so-called LeMans start where you set a certain date and everybody competes. The problem in telecommunications is you cannot get on everybody's wire; you have to use the other guy's wires and interconnections and unbundling of his system before you can compete.

So we decided, after weeks of meetings—and all Senators were invited to these meetings, and their staffs—to develop the checklist. I must commend the Senator from Nebraska and his staff because they were present and helped write this bill. But so did several other Senators, Democrats and Republicans. This bill has been around a long time. It is the product of all 100 Senators' work.

But in any event, the competitive checklist was developed, and at the FCC the companies come before the FCC and the FCC goes through this checklist, hopefully very quickly, and this replaces the market test, the VIII(c) or replaces the Clayton 7 Act or it replaces some other types of tests. But this is the test.

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

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

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

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

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

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

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

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

What the Dorgan-Thurmond amendment suggests is that after we finish all this, we then go over to the Justice Department for yet another test, though it is not a regulatory agency. We then ask the Justice Department to give their approval under the Clayton 7 standard, which is another standard.

So if you survived in your State, if you met the competitive checklist, if you have met the public-interest test, if you have met the subsidiary test, and if you have met the nondiscrimination test and the cross-subsidization test, when you get through all of that, then you have to go over to the Justice Department.

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

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

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

The Justice Department got into regulation the first time with Judge Greene's consent in 1982. They have several lawyers over there who carry out, administer the MFJ. That was unprecedented, but it came about. They are working for Judge Greene, not the Attorney General, and that is an important thing. They carry out Judge Greene's orders, a district court order.

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

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

But to give the Justice Department a regulatory role at this time would be a step backward. That is regulation. That is another layer of regulation. Everybody here, even my good friend AL GORE, talks about deregulating and privatizing. Here it is. Here is our chance.

So I think that debating whether or not to have a Justice role on this particular part of this bill is very important.

Let me say that in all aspects of this bill, we are trying to deregulate, whether it is letting the utilities into telecommunications with safeguards, moving toward deregulation of cable with safeguards, getting the Bell companies manufacturing and letting them get into other areas, such as cable, letting the long distance people into the local market, de- regulating the broadcasters—this is a vast bill. It deregulates almost everything.

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

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

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

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

Mr. DOLE. Can I just change the consent?

The PRESIDING OFFICER. The majority leader.

MODIFICATION OF UNANIMOUS-CONSENT AGREEMENT

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

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

Mr. DOLE. I might indicate, this is made to accommodate a number of Senators, Vietnam veterans, who have a special event that does not end until about 12:15, as I understand.

Before the Senator from Nebraska speaks, let me say that it is my understanding that there will be a vote fairly soon, as soon as Senator FEINSTEIN comes to the floor. She has an amendment with Senator LOTT. It should not take much debate.

So I tell my colleagues, or members of their staff, there probably will be a vote in the next 45 minutes.

I am now advised she cannot be here until about 6:30. Let me think about that, and I will say something after the Senator from Nebraska speaks.

Mr. KERREY addressed the Chair.

The PRESIDING OFFICER. The Senator from Nebraska.

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

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

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

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

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

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

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

The question before the body is, do you want the Department of Justice, with a date-certain requirement, involved not just, ''Oh, what do you think about this proposed''—I almost said merger. But that is what it becomes. One of the ironies is, if a local telephone company acquires or merges with a local cable company, the Department of Justice has to approve it. Nobody suggests that is undue regulatory authority. Effectively, when you go from a monopoly with a local franchise into long distance, it is effectively the same thing. The question before us is: Do you want the Department of Justice to say we do not think there is competition?

Now, very instructive for Members, as you try to reach that decision, I think, would be to go through either one of the checklists. There are two, by the way. In section 251, there is a checklist that says here is what a local company has to do, if a long distance or another carrier—and my vision for competition, by the way, again, is that you get competitive choice not for the existing line of businesses, but you get it for a package of information services. So it is likely to come, this desire to compete at the local level, and the competition and the desire is just as likely to come from a medium-sized entrepreneur that wants to deliver information services to a resident in Cleveland, or Omaha, or wherever. That is apt to happen.

In section 251 there is a checklist, as well, that says here is what you have to do. It is a pretty tough checklist. In fact, it may be tougher than in 255. In 255, you have a checklist that says this is what you have to do if you want to do interLATA, or long distance service. If you are a local telephone company, this is what you have to do. Well, I do not doubt—and indeed I know—that the committee spent a long time putting this checklist together. There are 14 things. But read them. Read them and then ask yourself the question: Does this mean I have competition? Does this mean I have competitive choice at the local level? For the consumer a competitive choice means that if they do not like the business

that is offering to sell them something, they can shop it someplace else. That is a competitive choice. Competitive choice means that business person that is selling you something has to make sure that the price and quality and all of the other terms and circumstances of the sale are what you want, or you take your business someplace else. That is what a competitive choice provides a consumer.

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

That would appear to mean that you have a competitive opportunity. I do not know. The real test of competition is going to occur when the consumer says, ''I have competitive choice,'' and when that person in the neighborhood says, ''I do not like my service. I do not like this. The price is too high. The quality is not what I want. I am going to take it someplace else.'' You do not have that today with local telephone and cable.

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

Again, it was not Congress in 1982 that stood up to AT&T. Congress did not stand up to AT&T and say we have had enough of this monopoly, our consumers and citizens are complaining; we are going to pass legislation and divest you. Congress did not do that. The people's Congress did not respond to that and pass legislation. It was the Department of Justice that filed a suit against them originally, and eventually, as a consequence of AT&T believing they would win the suit, write up a consent decree and file it with the judge.

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

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

I yield the floor.

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

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

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

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

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

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

The goal of the bill, Mr. President, is to create added competition in both telephone fields, in both long distance and in the local exchange.

Any additional requirement which slows down that process on both sides of the equations, seems, to this Senator, to be undesirable.

So what the bill does is to set up a set of 14 reasonably objective conditions that must be met by the regional Bell operating companies to open up their local exchange before they could get into the long distance business and provide competition and, one hopes, lower prices.

The committee was not absolutely satisfied any more than the Senator from Nebraska is absolutely satisfied that the simple mechanical meeting of those 14 conditions would, under all circumstances, be sufficient to open up the local exchange.

So it added the public interest convenience and necessity condition, requiring the Federal Communications Commission, which almost from time immemorial, has been the Government entity and agency with expertise in this field, to determine in the broadest possible sense that the requested authorization was consistent with the public interest, convenience, and necessity. A test which has been a test utilized by that Commission ever since or almost ever since its creation.

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

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

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

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

The sponsors of the amendment, in their desire to have two different entities involved in this business, have really created a most curious division of authority.

Where, in the bill as it stands without this amendment, the authority of the Federal Communications Commission in dealing with a determination of

public interest, convenience, and necessity, is essentially unlimited, this amendment deprives the Commission of the ability to consider the effects of the authorization in any market for which the authorization is sought, with respect to antitrust matters.

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

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

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

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

So, to recapitulate, this proposal deprives the Federal Communications Commission of authority it ought to have in order to give a new kind of authority to the Attorney General of the United States, a kind of authority that the Attorney General does not have at the present time.

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

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

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

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

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

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

As a former State attorney general, has he ever seen a proposal where the Justice Department would become the decisionmaker, a regulatory decisionmaker? I guess this question goes to the heart of the division of powers in our Government.

Mr. GORTON. I do not believe I have. I would hate to make a totally generalized statement on that, but certainly I would say not in the memory of my experience as State attorney general nor did I find the Department of Justice have such authority.

I yield the floor.

Mrs. FEINSTEIN addressed the Chair.

The PRESIDING OFFICER. The Senator from California.

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

AMENDMENT NO. 1269

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

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

The PRESIDING OFFICER. The clerk will report.

The legislative clerk read as follows:

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

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

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

The amendment is as follows:

On page 145, below line 23, add the following:

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

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

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

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

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

(c) DEFINITION.—As used in this section, the term "scramble" means to rearrange the content of the signal of the programming so that audio and video portion of the programming cannot be received by persons unauthorized to receive the programming."

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall take effect 30 days after the date of the enactment of this Act.

Mr. PRESSLER. Will my friend yield?

Mrs. FEINSTEIN. I certainly will.

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

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

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

The Senator from California.

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

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

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

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

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

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

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

This is not an isolated program.Until just a few months ago, the local cable company here in Washington also automatically transmitted partially scrambled video pornography—replete with unscrambled and sexually explicit audio—to all of its subscribers.

To their credit, some local cable companies are taking voluntary steps to address this problem. For example, in San Diego, one local cable company restricted the times when such programming was broadcast. In Washington, the local cable company eventually fully blocked the programming so both the video and audio portions of the signal are now undistinguishable.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

While I realize that some cable operators may incur costs in implementing

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

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

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

So I believe the provision is both necessary, timely, will be helpful, and will disadvantage no one. I urge my colleagues to support this commonsense amendment.

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

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

CONGRESSIONAL RESEARCH SERVICE,
THE LIBRARY OF CONGRESS,
Washington, DC, June 9, 1995.

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

From: American Law Division.

Subject: Indecent Programming on Cable Television.

This memorandum is furnished in response to your request for a brief analysis of the constitutionality of your proposal to limit "sexually explicit adult programming or other programming that is indecent and harmful to children on any channel . . . primarily dedicated to sexually-oriented programming." Subsection (a) of the proposal provides that "a multichannel video programming distributor shall fully scramble or otherwise fully block the video and audio portions of such channel so that one not a subscriber to such channel or programming does not receive [such programming]." Subsection (b) of the proposal states that, until a distributor complies with subsection (a), it shall not provide "such programming during the hours of the day (as determined by the [Federal Communications] Commission) when children are likely to view it."

The First Amendment prohibits Congress from abridging the freedom of speech, and the Supreme Court has held that speech on cable television has full First Amendment protection.[1] "The Government may, however, regulate the content of constitutionally protected speech in order to promote a compelling interest if it chooses the least restrictive means to further the articulated interest."[2] In the case in which this quotation appears, the Supreme Court struck down a federal statute that banned dial-a-porn "[b]ecause the statute's denial of adult access to telephone messages which are indecent but not obscene far exceeds that which is necessary to limit the access of minors to such messages . . . ."[3] The Court in this case also reiterated that "the government may not 'reduce the adult population . . . to . . . only what is fit for children.'"[4]

Subsection (a) of your proposal would apparently be constitutional, under the reasoning of this week's decision in *Alliance for Community Media* v. *Federal Communications Commission*.[6] The court of appeals in this case upheld the constitutionality of provisions of the Cable Television Consumer Protection and Competition Act of 1992, Public Law 102–385, including section 10(b), 47 U.S.C. §532(j), which requires the FCC to prescribe rules requiring cable operators who have not voluntarily prohibited indecent programming under §532(h) to place such programs on a separate channel and to block the channel until the subscriber, in writing, requests unblocking. This statute applies only to programming on leased access channels, but otherwise it does essentially the same thing your proposal would do. It requires a separate channel for indecent programming, and it requires blocking until the subscriber requests unblocking. Your proposal would apply to "any channel * * * primarily dedicated to sexually-oriented programming" (in effect, to a separate channel), and would require blocking to non-subscribers (in effect, until they request the channel).[6]

The reason that the court of appeals upheld §532(j) despite the First Amendment's prohibiting Congress from abridging the freedom of speech is that it found that the government has a compelling interest in protecting the physical and psychological well-being of minors, and that the method Congress chose in §532(j) was the least restrictive means available to meet this compelling interest. The same analysis apparently would find subsection (a) of your proposal constitutional.

Subsection (b) of your proposal would give distributors an alternative to the subsection (a): instead of blocking they could not provide "such programming during the hours of the day (as determined by the Commission) when children are likely to view it." To the extent that it is not technologically feasible for distributors to comply with subsection (a) immediately, they will be forced to comply with subsection (b) until they are able to comply with subsection (a). Therefore, subsection (b) should be viewed as a requirement that must be consistent with the First Amendment.

In *Federal Communications Commission* v. *Pacifica Foundation*, the FCC had taken action against a radio station for broadcasting a recording of George Carlin's "Filthy Words" monologue at 2 p.m., and the station had claimed First Amendment protection.[7] The Supreme Court upheld the power of the FCC under 18 U.S.C. §1464 "to regulate a radio broadcast that is indecent but not obscene."[8] However, the Court emphasized the narrowness of its holding:

The Commission's decision rested entirely on a nuisance rationale under which context is all-important. The concept requires consideration of a host of variables. The time of day was emphasized by the Commission. . . .[9]

Furthermore, the Commission "never intended to place an absolute prohibition on the broadcast of this type of language, but rather sought to channel it to times of day when children most likely would not be exposed to it."[10]

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

Even with this uncertainty, it is clear from the Supreme Court's decision in *Pacifica, supra*, that the time in which indecent programming is proscribed must be limited. In *ACT III*, the three-judge panel held that the ban was "not narrowly tailored to meet constitutional standards."[13] It found "that the government did not properly weight viewers' and listeners' First Amendment rights when balancing the competing interests in determining the widest safe harbor period consistent with the protection of children."[14] Furthermore, the government did not demonstrate that its "interest in shielding children from indecent broadcasts automatically outweigh the child's own First Amendment rights . . . ."[15] The court directed the FCC to "redetermin[e], after a full and fair bearing, . . . the times at which indecent material may be broadcast . . . ."[16]

Similarly, in a previous decision by a three-judge panel on a 6 a.m. to midnight ban on indecent programming, the D.C. Circuit held "that the FCC failed to adduce evidence or cause, particularly in view of the first amendment interest involved, sufficient to support its hours restraint."[17] The court of appeals considered the evidence that the FCC had cited to justify its action against the nighttime broadcasters, and found it "insubstantial," and found the FCC's findings "more ritual than real."[18] The court of appeals concluded "that, in view of the curtailment of broadcaster freedom and adult listener choice that channeling entails, the Commission failed to consider fairly and fully what time lines should be drawn."[19]

Assuming that the full court of appeals applies these principles, it appears that the phrase in subsection (b) of your proposal "during hours of the day (as determined by the Commission) when children are likely to view it" may be overboard. This is because some children seem likely to be watching television at all hours of the day (and night), and it would apparently be unconstitutional to ban indecent programming around the clock. To be constitutional, your proposal might have to be changed to prohibit such programming only during hours when the ratio of children to adults watching television is significantly high. This, again, is because "the government may not 'reduce the adult population . . . to . . . only what is fit for children.'"[20]

Please let us know if we may provide additional assistance.

HENRY COHEN,
Legislative Attorney.

FOOTNOTES

[1] Turner Broadcasting System, Inc v. Federal Communications Commission, 114 St. Ct. 2445 (1994).

[2] Sable Communications of California, Inc. v. Federal Communications Commission, 493 U.S. 115, 126 (1989).

[3] *Id.* at 131.

[4] *Id.* at 128.

[5] 1995 WL 331052 (D.C. Cir. June 6, 1995) (en banc). This decision overturned a November 23, 1993 decision of a three-judge panel that found the statute unconstitutional.

Footnotes at end at article.

[6] As you indicated in our phone conversation, three channels are now often only partially blocked to non-subscribers.

[7] 438 U.S. 726 (1978).

[8] *Id.* at 729. The Court stated that, to be indecent, a broadcast need not have prurient appeal; ''the normal definition of 'indecent' merely refers to nonconformance with accepted standards of morality.'' *Id.* at 740. The FCC holds that the concept ''is intimately connected with the exposure of children to language that describes, in terms patently offensive as measured by contemporary community standards for the broadcast medium, sexual or excretory activities and organs, at times of the day when there is a reasonable risk that the children may be in the audience.'' *Id.* at 732.

[9] *Id.* at 750.

[10] *Id.* at 733 (quoting FCC).

[11] 47 U.S.C. §303 note; 138 Cong. Rec. S7308 (daily ed. June 2, 1992), S7423-7424 (daily ed. June 3, 1992).

[12] 11 F.3d 170 (D.C. Cir. 1993), *vacated and rehearing en banc granted*, 15 F.3d 186 (D.C. 1994). This was a companion case to the decision cited in note 5, *supra*.

[13] *Id.* at 177

[14] *Id.*

[15] *Id.* at 180.

[16] *Id.* at 183.

[17] Action for Children's Television v. Federal Communications Commission (ACT I), 852 F.2d 1332, 1335 (D.C. Cir 1988) (opinion by Judge, now Supreme Court Justice, Ruth Bader Ginsberg).

[18] *Id.* at 1341.

[19] *Id.*

[20] *Sable, supra* note 2, at 128.

Mrs. FEINSTEIN. I yield the floor. I thank the Chair.

Mr. LOTT. Mr. President, I am very pleased to join the distinguished Senator from California, Senator FEINSTEIN, in cosponsoring this amendment. It is an amendment that I think is needed. It is one that will complete the effort that is being made by a number of groups and a number of people that are very much concerned about sexually explicit programming on our televisions.

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

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

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

Studies and exposes are showing young people, elementary-age children, are acting out the behavior they are seeing in this type of programming. Teachers and parents are becoming alarmed by the effect of such programming. It is time that we do something about it. We have expressed for over a year our concerns about this matter. We made calls to the industry. Yet in many instances, they have not adequately taken action to safeguard the children. It is an example in my opinion of where we need more corporate responsibility. But since we have not gotten that yet, we need this amendment.

In the amendment, the critical definition is this:

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

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

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

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

The PRESIDING OFFICER. The vote will occur at 6:30.

Who yields time?

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

The PRESIDING OFFICER. Is there a sufficient second?

There is a sufficient second.

The yeas and nays were ordered.

Mr. PRESSLER. Mr. President, I ask unanimous consent that tomorrow the second Feinstein amendment, which will be offered tonight, be voted on at 9:30—Mr. President, I think we better proceed with the vote. I withdraw my request.

The PRESIDING OFFICER. The request is withdrawn.

The question is on agreeing to amendment No. 1269, offered by the Senator from California [Mrs. FEINSTEIN]. The yeas and nays have been ordered. The clerk will call the roll.

The bill clerk called the roll.

Mr. MACK (when his name was called). Present.

Mr. LOTT. I announce that the Senator from Arizona [Mr. MCCAIN], the Senator from Pennsylvania [Mr. SANTORUM], the Senator from Pennsylvania [Mr. SPECTER], and the Senator from Virginia [Mr. WARNER], are necessarily absent.

Mr. FORD. I announce that the Senator from New Jersey [Mr. BRADLEY], the Senator from Iowa [Mr. HARKIN], the Senator from Massachusetts [Mr. KENNEDY], and the Senator from Georgia [Mr. NUNN], are necessarily absent.

The PRESIDING OFFICER. Are there any other Senators in the Chamber desiring to vote?

The result was announced—yeas 91, nays 0, as follows:

[Rollcall Vote No. 249 Leg.]

YEAS—91

Abraham	Faircloth	Lieberman
Akaka	Feingold	Lott
Ashcroft	Feinstein	Lugar
Baucus	Ford	McConnell
Bennett	Frist	Mikulski
Biden	Glenn	Moseley-Braun
Bingaman	Gorton	Moynihan
Bond	Graham	Murkowski
Boxer	Gramm	Murray
Breaux	Grams	Nickles
Brown	Grassley	Packwood
Bryan	Gregg	Pell
Bumpers	Hatch	Pressler
Burns	Hatfield	Pryor
Byrd	Heflin	Reid
Campbell	Helms	Robb
Chafee	Hollings	Rockefeller
Coats	Hutchison	Roth
Cochran	Inhofe	Sarbanes
Cohen	Inouye	Shelby
Conrad	Jeffords	Simon
Coverdell	Johnston	Simpson
Craig	Kassebaum	Smith
D'Amato	Kempthorne	Snowe
Daschle	Kerrey	Stevens
DeWine	Kerry	Thomas
Dodd	Kohl	Thompson
Dole	Kyl	Thurmond
Domenici	Lautenberg	Wellstone
Dorgan	Leahy	
Exon	Levin	

ANSWERED ''PRESENT''—1

Mack

NOT VOTING—8

Bradley	McCain	Specter
Harkin	Nunn	Warner
Kennedy	Santorum	

So the amendment (No. 1269) was agreed to.

Mr. PRESSLER. Mr. President, I urge those Senators who have amendments to bring them to the floor. We are trying to get a final list.

I have been asked by Senator DOLE, with the concurrence of Senator HOLLINGS, to file a cloture motion. I urge all Senators to come to the floor with amendments they might have, or Senators who wish to speak. We will be here as late tonight as any Member wants to speak on this bill or offer amendments.

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

Mr. HOLLINGS. Mr. President, on the adoption of the Feinstein amendment, I move to reconsider the vote.

Mrs. FEINSTEIN. Mr. President, I move to lay that motion on the table.

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

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

I have been in the vanguard of opposing cloture, but I would have to support it in this particular instance because we cannot get amendments drawn and presented and voted upon. So a day passes by and everybody talks about how they would like to get out early and do these other things.

This is the Senate's business. We hope that we can move along now expeditiously on this side of the aisle. If there are any amendments, we do appreciate the Senator from California, ready and willing and able to present the next amendment. Beyond that, I hope we can get some other amendments.

I yield the floor.

AMENDMENT NO. 1270

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

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

The PRESIDING OFFICER. The clerk will report.

The bill clerk read as follows:

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

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

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

The amendment is as follows:

On page 55, strike out line 4 and all that follows through page 55, line 12.

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

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

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

On one hand, the bill before the Senate gives cities and States the right to levy fair and reasonable fees and to control their rights of way; with the other hand, this bill, as it presently stands, takes these protections away.

The way in which it does so is found in section 201, which creates a new section 254(d) of the Cable Act, and provides sweeping preemption authority. The preemption gives any communications company the right, if they disagree with a law or regulation put forward by a State, county, or a city, to appeal that to the FCC.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

What does this mean? It means that financially struggling cities and counties will undoubtedly be forced to include in franchise fees, charges to allow the recovery of the additional maintenance requirements that constantly cutting into streets requires. The exemption means that every time a cable operator does not like it, the Washington staff of the cable operator is going to file a complaint with the FCC and the city has to send a delegation back to fight that complaint. It should not be this way. Cities should have control over their streets. Counties should have control over their roads. States should have control over their highways.

The right-of-way is the most valuable real estate the public owns. State, city, and county investments in right-of-way infrastructure was $86 billion in 1993 alone. Of the $86 billion, more than $22 billion represents the cost of maintaining these existing roadways. These State and local governments are entitled to be able to protect the public's investment in infrastructure. Exempting communication providers from paying the full costs they impose on State and local governments for the use of public right-of-way creates a subsidy to be paid for by taxpayers and other businesses that have no exemptions.

I would also like to point out the preemption will change the outcome in some of the dispute between communication companies and cities and States. The FCC is the Nation's telecommunications experts. But they do not have the broad experience and concerns a mayor, a city council, a board of supervisors, or a Governor would have in negotiating and weighing a cable agreement and setting a cable fee.

If the preemption provision remains, a city would be forced to challenge the FCC ruling to gain a fair hearing in Federal court.

This is important because presently they can go directly to their local Federal court. Under the preemption, a city, State, or county government would have to come to the Federal court in Washington after an appeal to the FCC.

A city appealing an adverse ruling by the FCC would appear before the D.C. Federal Appeals Court rather than in the Federal district court of the locality involved. Further, the Federal court will evaluate a very different legal question—whether the FCC abused their discretion in reaching its determination. The preemption will force small cities to defend themselves in Washington, and many will be just unable to afford the cost.

By contrast, if no preemption exists, the cable company may challenge the city or State action directly to the Federal court in the locality and the court will review whether the city or State acted reasonably under the circumstances.

Edward Perez, assistant city attorney for Los Angeles, states this will be a very difficult standard to reverse, if they have to come to Washington. On matters involving communication issues, courts are likely to require a tough, heightened scrutiny standard for matters involving first amendment rights involving freedom of speech. Courts are likely to defer to the FCC judgment.

The FCC proceeding and its appeal in Washington will be very different from the Federal court action in a locality. Both the city and the communications company are more likely to be able to develop a more complete and thorough record if the proceeding is before the local Federal court rather than before a Government body in Washington.

We also believe the FCC lacks the expertise to address cities' concerns. As I said, if you have a city that is complicated in topography, that is very hilly, that is very old, that has very narrow streets, where the surfacing may be fragile, where there are earthquake problems, you are going to have different requirements on a cable entity constantly opening and recutting the streets. The fees should be able to reflect these regional and local distinctions.

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

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

If the preemption remains in this bill, it creates a major unfunded mandate for cities, for counties, and for States. I hope this body will sustain the cities and the counties and the States, and strike the preemption.

So I ask unanimous consent to have a number of letters printed in the RECORD.

There being no objections, the letters were ordered to be printed in the RECORD, as follows:

OFFICE OF THE CITY ATTORNEY,
Los Angeles, CA, June 12, 1995.

Re S. 652, Section 245(d) Preemption.

Mr. KEVIN CRONIN,
Office of Senator Diane Feinstein,
Senate Hart Office Building, Washington, DC.

DEAR MR. CRONIN: You asked for our thoughts regarding S. 652, Sec. 254(d), which would create broad preemption rights in the FCC with respect to actions taken by local governments. Specifically, you are interested as to how section 254(d) could frustrate the ability of local government to manage its rights of way as Congress believes Local Government should (See Sec. 254(c)) and how it could prevent Local Government from imposing competitively neutral requirements on telecommunications providers to preserve and advance Universal Service, protect the public safety and welfare and to ensure the continued quality of telecommunications services and safeguard the rights of consumers. (See Sec. 254(b)).

Section 254(d) would permit the Federal Communications Commission (''FCC'') to preempt local government:

''(d) PREEMPTION.—If, after notice and an opportunity for public comment, the Commission determined that a State or local government has permitted or imposed any statute, regulation, or legal requirement that violates or is inconsistent with this section, the Commission shall immediately preempt the enforcement of such statute, regulation, or legal requirement to the extent necessary to correct such violation or inconsistency.''

Section 254(d) reposes sweeping review powers in the FCC and in effect converts a federal administrative agency into a federal administrative Court. The FCC literally would have the power to review any local government action it wishes (either sua sponte or at the request of the industry.) The undesirable consequence of this result will be that a federal agency—with personnel who do not answer directly to public—will be dictating in fine detail what rules local government and their citizens in distant places shall have to follow. The FCC would be given plenary power to decide what actions of local government are ''inconsistent with'' the very broad provisions in the bill and, without further review, to decide to nullify or preempt such governmental actions. That is unprecedented and for reaching authority for a federal agency to have over local government.

The FCC does have an important role to play in the scheme of things. It has a professional staff with proven expertise in telecommunications matters such as technical requirements. Moreover, issues that transcend state borders need the FCC as the overseer in order to ensure consistency and fairness between the states. On the other hand, the FCC is not in the best position to know what is best for citizens at the local level regarding local issues. An example of a singularly local issue, historically recognized by Congress and the Courts, is the local government's right to manage the public right-of-way (See Section 254(c)). Federal officials do not have an adequate understanding of local issues nor do they have the staff, either in size or proficiency, to resolve local issues about every city in this country. Local Governments and the local courts (entities which are knowledgeable about local issues) should be the forum for resolution of local issues.

An important point that needs to be explicated to Congress is the procedural problems associated with the FCC resolving local issues in Washington. First is the obvious problem. Most citizens, community groups and cities do not have the financial wherewithal to litigate before a federal agency located in Washington. Even if an action of the FCC is reviewed by the Courts, that also would occur in the Washington D.C. Circuit miles away. Section 254(d) does contain due process language and such a provision may meet the technical requirements of the U.S. Constitution. However, the provision ''If, after notice and an opportunity for public comments * * *'' provides little solace for local governments and its citizens. The FCC all too often provides too little time to respond to its rules and rulemaking proceedings for anyone other than the expensive FCC Bar. It is impractical for local people to respond in a timely fashion and FCC preemption consequently precludes the voice of those most effected.

Second, as a general rule the courts pay great difference to administrative agencies that are created for specific purposes. There is no argument with that proposition because of the proven expertise of federal agencies in matters properly within their purview. However, a serious problem is created when a federal administrative agency is given power over issues where it has little expertise, such as the management of local rights-of-way. This is largely so because of the legal standards for review of administrative decisions. Generally, a decision will stand unless the agency has abused its discretion or has exceeded its authority.

Again, for matters properly within an agency's purview there is no quarrel. However, the sweeping review powers that Section 254(d) places in the FCC would in essence permit the FCC to preempt any statute, regulation, or legal requirement that it believes is inconsistent with the Section 254(a) of the Act. This awesome power clearly belongs with the Courts and not distant administrative staffers. As written, it will be extremely difficult for a court to find that the FCC has exceeded its authority. Consequently, with regard to this standard its decisions may in effect be unreviewable.

Equally troublesome is the abuse of discretion standard applied to federal agency actions. Practitioners in administrative law know all too well that the courts will uphold administrative decisions the vast majority of the time. A reversal occurs only when there is a clear abuse of discretion, a condition infrequently found by the Courts.

The bottom line becomes very clear to local governments, such as Los Angeles, and its citizens. Control regarding telecommunications and zoning issues will be exercised by federal officials three thousand miles away. Individuals who know little or nothing about local interests. the important everyday decisions that should be made by local officials and that should be reviewable by local

courts, will be made by faceless names in Washington.

In addition, because if the procedural structure of the FCC, the normal right to cross-examine witnesses and their testimony is not present. The right to comment and reply to another interested party's comments theorically permits the FCC to make a fair and impartial judgment. However, the comments are not under oath and the testimony that is filed under penalty of perjury is never is reality tested for truth and accuracy. The practical effect is that anybody may say anything they wish with impunity. The decisionmakers, therefore, may be misled into believing erroneous ''facts''. This view is not intended to suggest that the courts are the answer for all issues. There exist some practical problems with the courts; they may be too slow and they may lack the technical expertise. However, Section 254(d) appears to effectively eliminate the courts because of the absence of any real or effective review of FCC decisions. Senate Bill 652 must be amended to leave local issues to local government and thereby permit local citizens, local governments and local courts to be active participants in the resolution of local issues.

Finally, the industry has clearly captured the decision making of officials at the FCC. In recent years the voice of local governments and its citizens have been routinely rejected by the FCC and the industry appears to have a lopsided influence.

We recommend that Section 254(d) be eliminated in its entirety. If that is accomplished, violations of S. 652 will be decided in the forum properly equipped to do so—the local Federal Courts.

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

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

Very truly yours,

EDWARD J. PEREZ,
Assistant City Attorney.

OFFICE OF CITY ATTORNEY,
CITY AND COUNTY OF SAN FRANCISCO,
June 12, 1995.

Re Telecommunications Competition and Deregulation Act.

Hon. DIANNE FEINSTEIN,
U.S. Senate, Washington, DC.

DEAR SENATOR FEINSTEIN: I am writing to commend you for sponsoring an amendment to the telecommunications bill to preserve local control over the public rights of way. It is critical to local governments that subsection (d) of proposed 47 U.S.C. Section 254, which would authorize the FCC to preempt state and local authority, be deleted from the bill.

In San Francisco, as in other cities, we welcome the prospect of new telecommunications providers making expanded services available on a competitive basis. However, deregulation only increases the importance of local control over our streets because it brings many new companies seeking to install facilities in our streets.

City laws now require all street excavators—including telecommunications providers—to comply with nondiscriminatory local laws designed to preserve the public health and safety and minimize the costs to the public of repeated street excavation. Throughout the country, such local laws are tailored to the specific characteristics of each local community, including local geography, density of development and the age of public streets and facilities. The language of subsection (d) would severely undermine local government ability to apply such locally tailored requirements on a uniform basis.

Whenever application of routine local requirements interferes with the schedule or convenience of a telecommunications supplier, subsection (d) would authorize the company to seek FCC preemption. To identify just a few examples, my colleague city attorneys and I will have to send an attorney off to Washington every time a telecommunications company challenges our authority to:

(1) Regulate the time or location of excavation to preserve effective traffic flow, prevent hazardous road conditions, or minimize noise impacts;

(2) Require a company to relocate its facilities to accommodate a public improvement project, like the installation, repair or replacement of water, sewer or public transportation facilities;

(3) Require a company to place facilities in joint trenches owned by the City or another utility company in order to avoid repeated excavation of heavily traveled streets;

(4) Require a company to place its facilities underground, rather than overhead, consistent with the requirements imposed on other utility companies;

(5) Require a company to pay fees prior to installing any facilities to cover the costs of reviewing plans and inspecting excavation work;

(6) Require a company to pay fees to recover an appropriate share of the increased street repair and paving costs that result from repeated excavation;

(7) Require a company to use particular kinds of excavation equipment or techniques suited to local circumstances to minimize the risk of major public health and safety hazards;

(8) Enforce local zoning regulations; and

(9) Require a company to indemnify the City against any claims of injury arising from the company's excavation.

All of the requirements described above are routinely imposed by local governments in exercise of our responsibility to manage the public rights of way. Granting special favors to telecommunications suppliers, compared for example to other utility companies, will undermine the uniformity of local law and could dramatically increase the costs to local taxpayers of maintaining public streets.

In these times, when the federal government is asking state and local governments to take on many additional duties, the FCC should not be empowered to interfere in this area of classic local authority. This is especially true because, for many cities, the FCC is a remote, costly and burdensome arena in which to resolve disputes. The courts are well-suited to resolve any disputes that may arise from the ''Removal of Barriers to Entry'' language of Section 254 without placing heavy burdens on local governments.

I appreciate the leadership you have shown on this difficult issue. Please let me know if I can offer any further assistance with your efforts on behalf of cities.

Very truly yours,

LOUISE H. RENNE,
City Attorney.

The PRESIDING OFFICER. The Senator from Idaho.

Mr. KEMPTHORNE. Mr. President, I am honored to join my friend from California, Senator FEINSTEIN, in this amendment. This is not the first time we have teamed up together. I think perhaps our background as both being former mayors has allowed us to bring to this position some perspective to help us realize, with regard to local and State governments, how this Federal-State-local partnership really ought to be ordered.

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

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

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

An overwhelming majority said in essence enough is enough, that the Federal Government must reestablish a partnership with local government. It is very straightforward. This movement toward local empowerment has consistently been expressed in the legislative reform occurring in both Houses of Congress. But I feel, as I think the Senator from California feels, that this provision in this telecommunications bill is causing a slippage back to our old habits. What we have before us in section 254 of the bill before us is a reversal of the positive progress that we have been making.

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

We are going to give this power to the FCC over the jurisdictions of the local communities and the State governments. This is a disturbing directive that instructs the Federal Commission to invalidate duly adopted State laws and local ordinances that the independent Commission may deem inappropriate. This preemption would be generated by a commission that in a majority of cases would be thousands of miles away from the local government jurisdiction that would be affected by their decision.

I know of no one in local government who objects to the language which ensures nondiscriminatory access to the

public right of way. But what they do vigorously object to is that this proposed FCC preemption does not allow them the prerogative to manage their right of way in a manner that they deem to be appropriate and in the best interest of their community.

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

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

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

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

So why would we step back with all of the progress that we have been making this congressional session in reordering the partnership between the Federal, the State and the local governments in a working partnership?

This language which introduces expanded FCC jurisdiction into the local decisionmaking process is ill-conceived, and it should not be included in the final language of this important legislation. Our amendment would strike the offending subsection in its entirety. This would leave control of local right of way matters with local elected officials, which is exactly where it belongs.

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

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

I yield the floor, Mr. President.

Mrs. FEINSTEIN addressed the Chair.

The PRESIDING OFFICER. The Senator from California.

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

So I want the Senator to know how much I enjoy working with him on this. I thank him very much.

Mr. PRESSLER addressed the Chair.

The PRESIDING OFFICER. The Senator from South Dakota.

Mr. PRESSLER. Mr. President, I reluctantly rise in opposition to this amendment from two of my most respected colleagues in the Senate. The issue addressed in this amendment goes to the very heart of S. 652, eliminating barriers to market entry.

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

The actual authority granted to the FCC in subsection (d) is critical to ensuring that State and local authorities do not get in a way that precludes or has the effect of precluding new entry by firms providing new telecommunications services. At the same time, make no mistake about it, the authority granted in subsections (b) and (c) to the State and local authorities respectively in turn protect them. For example, in subsection (c) it says, ''Nothing in this section affects the authority of local government to manage the public rights of way.''

Mr. President, this is a particularly difficult problem because all of us want to leave authority with State and local government. But this is a deregulatory bill to allow companies to enter and to compete without barriers. If this section were allowed to fall, it could mean that certain requirements would be placed on companies, such as public service projects or certain types of payments of one sort or another for a local universal service, or whatever. We are trying to deregulate the telecommunications markets in the United States. I know it sounds great to say let every city and municipality have a virtual veto power over what is occurring in their area.

Now, it is my strongest feeling that sections (b) and (c) to the State and local authorities, respectively, are more than sufficient to deal in a fair-handed and balanced manner with legitimate concerns of State and local authority. Sections (b) and (c) take into account State and local government authority, (b) says:

> State Regulatory Authority. Nothing in this section shall affect the ability of a State to impose, on a competitively neutral basis and consistent with section 253, requirements necessary to preserve and advance universal service, protect the public safety and welfare, ensure the continued quality of telecommunications services and safeguard the rights of consumers.

Section (c):

> Local Government Authority. Nothing in this section affects the authority of a local government to manage the public rights of way or to require fair and reasonable compensation from telecommunications providers, on a competitively neutral and nondiscriminatory basis, for use of public rights of way on a nondiscriminatory basis if the compensation required is publicly disclosed by such Government.

Now, the preemption clause (d) reads as follows:

> If, after notice and an opportunity for public comment, the Commission determines that a State or local government has permitted or imposed any statute, regulation, or legal requirement that violates or is inconsistent with this section, the Commission shall immediately preempt the enforcement of such statute, regulation, or legal requirement to the extent necessary to correct such violation or inconsistency.

The intent therefore is to leave protected State regulatory authority, to leave protected local government authority, but there have to be some cases of preemption or a certain city could impose a requirement of some sort or another that would be very anticompetitive, and that is where we come out.

I have joined in a lot of efforts here to ensure that our State and local authority be preserved. And I understand there will possibly be a second-degree amendment. We have worked closely with Senator HUTCHISON and the city, county, and State officials to achieve this balance. That is where the committee came out.

I feel very strongly that it is a fair balance. It takes into account State regulatory authority, takes into account local government authority. But it also recognizes the need to open up markets, the removal of barriers to entry. In many cases these do become barriers to entry, barriers to competition.

So I rise in reluctant opposition to the amendment.

Mr. HOLLINGS addressed the Chair.

The PRESIDING OFFICER. The Senator from South Carolina.

Mr. HOLLINGS. Mr. President, you have to be sure of foot to be opposing two distinguished former mayors. The Senator from California is the former mayor of San Francisco, and the distinguished Senator from Idaho is a former mayor of Boise. Both had outstanding records.

But let me suggest that what they have read into the preemption section is a requirement and an idea that just does not exist at all. I will have to agree with them in a flash that the Federal Communications Commission has no idea of coordinating, as the Senator from Idaho has outlined, the digging up in front of all of the sidewalks and stores and everything else, putting in the regular necessary conduit, refirming the soil and the sidewalks again in front. We have no idea of the FCC doing it.

Let us tell you how this comes about. Section 254 is the removal of the barriers to entry, and that is exactly the intent of the Congress, and it says no Government in Washington should, well, vote against it. But I think the two distinguished Senators are not objecting to the removal of the barriers to entry. What we are trying to do is say, now, let the games begin, and we do not want the States and the local folks prohibiting or having any effect of prohibiting the ability of any entity to enter interstate or intrastate telecommunications services. When we provided that, the States necessarily came and said, wait a minute, that sounds good, but we have the responsibilities over the public safety and welfare. We have a responsibility along with you with respect to universal service.

So what about that? How are we going to do our job with that overencompassing general section (a) that you have there. So we said, well, right to the point: ''Nothing in this section shall affect the ability of a State to impose on a competitively neutral basis''—those are the key words there, the States on a competitively neutral basis, consistent with opening it up—''requirements necessary.''

We did not want and had no idea of taking away that basic responsibility for protecting the public safety and welfare and also providing and advancing universal service. So that was written in at the request of the States, and they like it. The mayors came, as you well indicate, and they said we have our rights of way and we have to control—and every mayor must control the rights of way.

So then we wrote in there:

> Nothing shall affect the authority of a local government to manage the public rights of way or to acquire fair and reasonable compensation . . . on a competitively neutral and nondiscriminatory basis.

''Competitively neutral and nondiscriminatory basis.'' Then we said finally, indeed, if they do not do it on a competitively neutral or nondiscriminatory basis, we want the FCC to come in there in an injunction. We do not want a district court here interpreting here and a district court in this hometown and a Federal court in that hometown and another Federal court with a plethora of interpretations and different rulings and everything else. We are trying to get uniformity, understanding, open competition in interstate telecommunications—and intrastate, of course, telecommunications.

Now, that was the intent and that is how it is written. And if our distinguished colleagues have a better way to write it, we would be glad and we are open for any suggestion. But somewhere, sometime in this law when you say categorically you are going to remove all the barriers to entry, we went, I say to the Senator, with the experience of the cable TV. I sat around this town—I was in an advantaged section up near the cathedral. I had the cable TV service, but two-thirds of the city of Washington here did not have it for years on end because we know how these councils work. We know how in many a city the cable folks took care of just a couple of influential councilmen, and they would not give service or could give service or run up the price and everything else of that kind.

We have had experience here with the mayors coming and asking us. And this is the response. That particular section (c) is in response to the request of the mayors. If they do not do that, if they put it, not in a competitively neutral basis or if they put it in a discriminatory basis, then who is to enjoin? And we say the FCC should start it. Let us not go through the Administrative Procedures Act. Let us not go through every individual.

Yes, we want those mayors and all to come here and everybody to understand rules are rules and we are going to play by the rules and the rules protect those mayors to develop, to administer, to coordinate. I agree 100 percent, I say to the Senator from Idaho, that the FCC has never performed the job of a city mayor. But they shall and must perform this job here of removing the barriers to entry. And if we do not have them doing it, then I will yield the floor and listen to what suggestion they have. But do not overread the preemption section to other than centralizing the authority and responsibility in the FCC to make sure, like they have in administering all the other rules relative to communications here and all the other entities involved in telecommunications, they have that authority to make sure while the cities got their rights of way, while the States have got their public welfare and public interest sections to administer, that it is done on a nondiscriminatory basis.

Mr. KEMPTHORNE addressed the Chair.

The PRESIDING OFFICER. The Senator from Idaho.

Mr. KEMPTHORNE. Mr. President, I would like to respond to my two friends, the floor managers of this bill, and then I know the Senator from California would also like to respond.

They referenced, of course, section 254, which is removal of barriers to entry. That is the section and that is the key. They stated it:

> That no State, local statute or regulation or other State or local legal requirement may prohibit or have the effect of prohibiting the ability of any entity to provide any interstate or intrastate telecommunications services.

Period. Period. And nothing in this amendment alters that at all. We affirm that. It is my impression, Mr. President, that when it is referenced that section (b), State regulatory authority, yes, the States feel that that language is good; and section (c), local government authority, yes, mayors had something to do with the writing of that language. They feel good about that. But the problem is, then you go on to section (d) which, it is my understanding, came very late in the process. In section (d), there is this line that says: ''The Commission shall immediately preempt * * *''

We see this so many times with Federal legislation: On the one hand, we give but, on the other hand, we take it away. In section (b) and section (c) we give, but, by golly, we have section (d) that then says that this Commission will immediately preempt. That is the problem. We are not saying that we should not be held accountable to this. That is why there is no language in this amendment to alter the opening statement of section 254. No problem. It is section (d) that then comes right along and, after everything has been said, preempts and pulls the plug, and that is wrong. We should not do this to our local and State partners. It is absolutely wrong.

I yield the floor.

Mrs. FEINSTEIN addressed the Chair.

The PRESIDING OFFICER. The Senator from California.

Mrs. FEINSTEIN. Mr. President, my colleague from Idaho took the words right out of my mouth. I think he is exactly right in his interpretation of this section. The barrier for entry is clearly done away with by this section. Nothing Senator KEMPTHORNE or I would do would change that. What we do change, however, is simply delete the ability of a remote technical commission to overturn a city decision and create an enormous hassle for cities all across this Nation.

I would like to just give you the exact wording of what the city attorney of Los Angeles said this section does. He says:

> It proposes sweeping review powers for the FCC and, in effect, converts a Federal administrative agency into a Federal administrative court. The FCC literally would have the power to review any local government action it wishes, either on its own or at the request of the industry.
>
> A Federal agency, with personnel who do not directly respond to the public, will be dictating in fine detail what rules local government and their citizens across the country shall have to follow. The FCC would be

given plenary power to decide what actions of local government are ''inconsistent with'' the very broad provisions in the bill and, without further review, hold the authority to nullify or preempt state and local governmental actions. That is an unprecedented and far-reaching authority for a Federal agency to have over local government.

I could not agree more. Senator KEMPTHORNE and I were both mayors at one time and we both understand that every city has different needs when it comes to cable television.

I remember as the mayor of San Francisco when Viacom came into the city. It wired just the affluent sections of the city. It refused to wire the poorer areas of the city. Unless local government had the right to require that kind of wiring, it was not going to be done at all. That is just one small area with which I think everyone can identify.

But when it comes to the rights-of-way and what is under city streets, the city must be in the position to set rules and regulations by which its street can be cut. This preemption gives the FCC the right to simply waive any local rulemaking and say that is not going to be the case. It gives the FCC the right to waive any local fee and say, ''That's not the way it is going to be.''

That is why countless cities and counties across the country, not just one or two, but virtually all of the big organizations, including the League of Cities, the national Governors, local officials and others, say, ''Don't do this.'' If a cable company has a problem with anything we in local government do, let them go to court. Let a court in our jurisdiction settle the issue. I think that is the right way to go. For the life of me, I have a hard time understanding why people would want to preempt these local decisions with the technical, far-removed FCC agency.

So I think Senator KEMPTHORNE has well outlined the situation. I think we have made our case.

I thank the Chair.

Mr. HOLLINGS addressed the Chair.

The PRESIDING OFFICER. The Senator from South Carolina.

Mr. HOLLINGS. Mr. President, the distinguished colleague from Idaho said ''came so late in the process.'' I want to correct that thought. I am referring back over a year ago to a bill with 19 cosponsors, this same language:

* * * the Commission determines that a State or local government has permitted or imposed any statute, regulation, or legal requirement that violates or is inconsistent with this subsection, the Commission shall immediately preempt the enforcement of such statute, regulation, or legal requirement to the extent necessary to correct such violation or inconsistency.

It did not come late in the process. We have been working with mayors and we have several former mayors who were cosponsors. That was S. 1822. So this is S. 652, which is, of course, over a year subsequent thereto.

Is it the language that is inconsistent with this subsection? Is that the bothersome part? It sort of bothers this Senator. I think if you are going to violate your authority with respect to being neutral and nondiscriminatory and you have to have somewhere this authority, in the entity of the FCC, to do it rather than the courts, each with a plethora of different interpretations and law, I would think if we could take that, maybe that would satisfy the distinguished Senator from California and the Senator from Idaho.

I yield the floor. I make that as a suggestion.

Mr. KEMPTHORNE addressed the Chair.

The PRESIDING OFFICER. The Senator from Idaho.

Mr. KEMPTHORNE. Mr. President, I appreciate the good efforts of the Senator from South Carolina, because I have always found him to be a gentleman whom I can work with and we can find areas on which we can see some common ground.

With regard to my comment that it came late in the process, this may be a concept that had been discussed quite a bit, but the mayors that the Senator from South Carolina referenced, it was local officials who told me that this particular language of (d) was not in the draft bill's language, it was not part of the draft bill when it came out. And it was really after Senator HUTCHISON from Texas, who raised this issue, had section (c) added that (d) then came back.

I do not know, it may have been something that has been discussed for some months, but as far as putting it in the bill, it was not there.

The other point then about how do we deal with this, again, Senator FEINSTEIN and I are in absolute agreement that with respect to this whole issue of removal of barriers to entry, if there are problems, if a cable company is getting a bad deal and being put off by a local government, they can go to court, but they go to court in that area, they do not have to come to Washington, DC.

The avenue for remedy already exists, so why do we then say, again, everyone must come to Washington, DC?

That is expensive. I think it is unnecessary and these cable companies, if there had been particular problems and there is a trend, they can establish a precedence in the court, and I think the local communities are going to realize if there is something wrong, they will not do it again because they will lose in court. I think the spirit in which Senator FEINSTEIN and I have joined in this is on behalf of State and local governments, that they are going to own up to their responsibilities. Let us not make them come to Washington, DC, and not make every one of them subject to the FCC in Washington, DC.

I yield the floor.

Mr. PRESSLER addressed the Chair.

The PRESIDING OFFICER. The Senator from South Dakota.

Mr. PRESSLER. Mr. President, I wanted to speak very briefly on this. I know our whip is here with some business.

First of all, I think we have to put this in context. As Senator HOLLINGS has pointed out, this section has been the result of hours and days of negotiations with city officials. It was in S. 1822 last year, and it is here. I think we have to take a step back and look at some of the cable deals and problems that have occurred in our cities. The cities have granted exclusive franchises in some cases and are not allowing competition. They have required certain programming be put on and other requirements on those companies.

Our States have granted, in the telephone area, certain exclusive franchises, not allowing competition. And the point is, if we are having deregulation here, removal of barriers to entry, we have to take this step. I think that is very important for us to considerate this point.

Now, section 254 goes to the very heart of this bill, because removal of barriers to entry is what we are trying to accomplish with this bill. We preempt any State or local regulation or statute or State or local legal requirement that may prohibit or have the effect of prohibiting the ability of any entity to provide telecommunications services.

The authority granted to the FCC in subsection (d) is critical if we are going to open those markets, because a lot of States and cities and local governments may well engage in certain practices that encourage a monopoly or that demand certain things from the business trying to do business. That would not be in the public interest.

At the same time, make no mistake about it, Mr. President, the authority granted in subsection (b) and (c) to the State and local authorities, respectively, are more than sufficient to deal in a fairhanded and balanced manner with legitimate concerns of State and local authority. These were negotiated out with State and local authorities.

We have worked closely with Senator HUTCHISON and the city, county, and State officials to strike a balance. We have gone to great pains and length to deal with concerns of the cities, counties, and State governments that are legitimately raised. We dealt with the concerns in subsection (b) and (c), while at the same time setting up a procedure to preempt where local and State officials act in an anticompetitive way, by taking action which prohibits, or the effect of prohibiting, entry by new firms in providing telecommunications services.

Now, the real problem created by the amendment offered by my friends, Senators FEINSTEIN and KEMPTHORNE, is that the very certainty which we are trying to establish with this legislation is put at risk. Certainty. A company has to go out and wonder if that local city or State will put some requirement on it to provide some kind of programming, or even to do something in

the city to provide some service, or if it will grant an exclusive monopoly. What we are trying to get are barriers to entry, and we are reserving to the State and local governments certain authorities. So the certainty we are looking for we have taken away—no guarantee that entry barriers will be toppled and no guarantee of uniformity across the country.

The committee has dealt with federalism concerns throughout this legislation. Let me say that this debate goes to the heart of a technical detail of federalism and the Federal Government's relationship to State and local government. It is one of the most complicated areas of this bill. Believe me, it is hard to strike a balance. But if we strike this out, it gives every city in the country the right to put up barriers to entry. It lets every State have the right to have a monopoly unless they can extract something for the State in one way or another. I would not blame cities and States. If we do that, it goes to the very heart of this bill.

Now, I take a back seat to no one in advocating federalism principles. I like much power in the State and local government. It must be balanced with our other goal—removing the anticompetitive restrictions at the local level which restrict competition. Exclusive franchising in the cable and telephone markets is the very way that established monopolies in the past.

So, to conclude my statements on this, I understand that there may be a possible second-degree amendment to this tomorrow that would deal with the language on line 8 on page 55, ''preemption,'' which would deal with the words, or is consistent with. But I am not certain that that second degree will be offered.

In any event, to conclude, this particular section of the bill goes to the heart of dealing with the federalism issue. Are we going to allow the cities and the State to put up barriers of entry to telecommunications firms? In the past, we have done so, with cable television. We have allowed cities not only to add a franchise fee, but also to require certain programming, and sometimes the companies do something else for the city as an incentive.

In telephones, we have allowed our States to set up a monopoly in the State and sometimes to collect certain things or to put certain requirements on. In this bill, S. 652, we are trying to deregulate, open up markets, and we are trying to let that fresh air of competition come forward. If our companies and our investors have the uncertainty of not knowing what every city will do, of not knowing what every State will do and each State legislature and each city council may change, the companies will be in the position of having to endlessly lobby city officials and State officials on these issues—not only that, at any time certainty is taken out.

This bill, S. 652—if we pass it—will provide a clear roadmap with certainty for competition. It will create an explosion of a new investment in telecommunications and new jobs and new techniques. And it will help consumers with lower telephone rates and lower cable rates. It has been carefully crafted and worked out in close to 90 nights of meetings, and on Saturdays and Sundays, plus last year, a whole year, plus a lot of Senators' input. I know it sounds good to give the power to the city and the State, and I am usually for that. In this case, we reserve powers to the city and State, but we very firmly say that the barrier to entry must be removed.

Mr. President, I wish to point out that I think there may be a second-degree amendment to this tomorrow at some point. I want to give Senators notice of that. There may not be. But I rise in opposition to the amendment.

Mr. LOTT. Mr. President, I do have some business to conduct, including the closing statement. At this juncture, I would like to do a couple of things, and if the Senator from Nebraska wants to make a statement, I will withhold on the closing unanimous consent.

CLOTURE MOTION

Mr. LOTT. Mr. President, I send a cloture motion to the desk.

The PRESIDING OFFICER. The cloture motion having been presented under rule XXII, the Chair directs the clerk to read the motion.

The assistant legislative clerk read as follows:

CLOTURE MOTION

We the undersigned Senators, in accordance with the provisions of rule XXII of the Standing Rules of the Senate, do hereby move to bring to a close debate on S. 652, the Telecommunications Competition and Deregulation Act:

Trent Lott, Larry Pressler, Judd Gregg, Don Nickles, Rod Grams, Rick Santorum, Craig Thomas, Spencer Abraham, J. James Exon, Bob Dole, Ted Stevens, Larry E. Craig, Mike DeWine, John Ashcroft, Robert F. Bennett, Hank Brown, Conrad R. Burns.

The PRESIDING OFFICER. The acting majority leader.

REMOVAL OF INJUNCTION OF SECRECY—EXTRADITION TREATY WITH BELGIUM (TREATY DOCUMENT NO. 104–7); SUPPLEMENTARY EXTRADITION TREATY WITH BELGIUM TO PROMOTE THE REPRESSION OF TERRORISM (TREATY DOCUMENT NO. 104–8); AND EXTRADITION TREATY WITH SWITZERLAND (TREATY DOCUMENT NO. 104–9)

Mr. LOTT. Mr. President on behalf of the leader, as in executive session. I ask unanimous consent that the injunction of secrecy be removed from the following three treaties transmitted to the Senate on June 9, 1995, by the President of the United States:

Extradition Treaty with Belgium (Treaty Document No. 104–7);

Supplementary Extradition Treaty with Belgium to Promote the Repression of Terrorism (Treaty Document No. 104–8); and

Extradition Treaty with Switzerland (Treaty Document No. 104–9).

I further ask that the treaties be considered as having been read the first time; that they be referred, with accompanying papers, to the Committee on Foreign Relations and ordered to be printed; and that the President's messages be printed in the RECORD.

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

The messages of the President are as follows:

To the Senate of the United States:

With a view to receiving the advice and consent of the Senate to ratification, I transmit herewith the Extradition Treaty Between the United States of America and the Kingdom of Belgium signed at Brussels on April 27, 1987. Also transmitted for the information of the Senate is the report of the Department of State with respect to the Treaty.

This Treaty is designed to update and standardize the conditions and procedures for extradition between the United States and Belgium. Most significantly, it substitutes a dual-criminality clause for the current list of extraditable offenses, thereby expanding the number of crimes for which extradition can be granted. The Treaty also provides a legal basis for temporarily surrendering prisoners to stand trial for crimes against the laws of the Requesting State.

The provisions in this Treaty follow generally the form and content of extradition treaties recently concluded by the United States. Upon entry into force, it will supersede the Treaty for the Mutual Extradition of Fugitives from Justice Between the United States and the Kingdom of Belgium, signed at Washington on October 26, 1901, and the Supplementary Extradition Conventions to the Extradition Convention of October 26, 1901, signed at Washington on June 20, 1935, and at Brussels on November 14, 1963.

This Treaty will make a significant contribution to international cooperation in law enforcement. I recommend that the Senate give early and favorable consideration to the Treaty and give its advice and consent to ratification.

WILLIAM J. CLINTON.

THE WHITE HOUSE, *June 9, 1995.*

To the Senate of the United States:

With a view to receiving the advice and consent of the Senate to ratification, I transmit herewith the Supplementary Treaty on Extradition Between the United States of America and the Kingdom of Belgium to Promote the Repression of Terrorism, signed at Brussels on April 27, 1987 (the ''Supplementary Treaty''). Also transmitted for the information of the Senate is the report of the Department of State with respect to the Supplementary Treaty.

This Supplementary Treaty is designed to facilitate the extradition of terrorists, and is similar to the protocols to extradition treaties currently in force with other countries, including Australia, Canada, Spain, the Federal Republic of Germany, and the United Kingdom. Upon entry into force, the Supplementary Treaty will amend the Treaty for the Mutual Extradition of Fugitives from Justice, signed at Washington on October 26, 1901, as amended by the Supplementary Conventions, signed at Washington on June 20, 1935, at Brussels on November 14, 1963, if that Treaty is still in force, or the Extradition Treaty Between the United States and Belgium signed at Brussels on April 27, 1987.

I recommend that the Senate give early and favorable consideration to the Supplementary Treaty and give its advice and consent to ratification.

WILLIAM J. CLINTON.

THE WHITE HOUSE, *June 9, 1995.*

To the Senate of the United States:

With a view to receiving the advice and consent of the Senate to ratification, I transmit herewith the Extradition Treaty Between the Government of the United States of America and the Government of the Swiss Confederation, signed at Washington on November 14, 1990. Also transmitted for the information of the Senate is the report of the Department of State with respect to the Treaty.

The Treaty is designed to update and standardize the conditions and procedures for extradition between the United States and Switzerland. Most significantly, it substitutes a dual-criminality clause for a current list of extraditable offenses, so that the new Treaty will cover numerous offenses not now covered by our extradition treaty with Switzerland, including certain narcotics offenses, important forms of white collar crime, and parental child abduction. The Treaty also provides a legal basis for temporarily surrendering prisoners to stand trial for crimes against the laws of the Requesting State.

The Treaty further represents an important step in combatting terrorism by excluding from the scope of the political offense exception offenses typically committed by terrorists for which both the United States and Switzerland have an obligation under a multilateral international agreement to extradite or submit to their authorities for the purpose of prosecution. These offenses include aircraft hijacking, aircraft sabotage, crimes against internationally protected persons (including diplomats), and hostage-taking.

The provisions in this Treaty follow generally the form and content of extradition treaties recently concluded by the United States. Upon entry into force, it will supersede the Extradition Treaty of May 14, 1900, and the Supplementary Extradition Treaties of January 10, 1935, and January 31, 1940, Between the United States of America and the Swiss Confederation.

This Treaty will make a significant contribution to international cooperation in law enforcement. I recommend that the Senate give early and favorable consideration to the Treaty and give its advice and consent to ratification.

WILLIAM J. CLINTON.

THE WHITE HOUSE, *June 9, 1995.*

EXECUTIVE AND OTHER COMMUNICATIONS

The following communications were laid before the Senate, together with accompanying papers, reports, and documents, which were referred as indicated:

EC–955. A communication from the Secretary of Defense, transmitting, pursuant to law, the report on accounting for U.S. assistance under the Cooperative Threat Reduction Program; to the Committee on Armed Services.

EC–956. A communication from the Assistant Secretary of State (Legislative Affairs), transmitting, pursuant to law, the report on the extent of compliance of the independent states of the former Soviet Union with the Biological Weapons Conventions; to the Committee on Armed Services.

EC–957. A communication from the Secretary of Housing and Urban Development, transmitting, pursuant to law, the 1993 consolidated annual report on fair housing programs; to the Committee on Banking, Housing, and Urban Affairs.

EC–958. A communication from the Chairman of the Board of Governors of the Federal Reserve System, transmitting, pursuant to law, a report relative to intermarket coordination; to the Committee on Banking, Housing, and Urban Affairs.

EC–959. A communication from the Secretary of Housing, and Urban Development, transmitting, pursuant to law, a report relative to a collaboration between the National Science Foundation and the Department of Housing and Urban Development; to the Committee on Banking, Housing, and Urban Affairs.

EC–960. A communication from the General Counsel of the Department of Treasury and the General Counsel of the Department of Housing and Urban Development, transmitting a draft of proposed legislation entitled ''Federal Home Loan Bank System Restructuring and Modernization Act of 1995''; to the Committee on Banking, Housing, and Urban Affairs.

EC–961. A communication from the Secretary of Housing and Urban Development, transmitting, pursuant to law, a report relative to the availability of housing close to places of employment; to the Committee on Banking, Housing, and Urban Affairs.

EC–962. A communication from the Secretary of Housing and Urban Development, transmitting a draft of proposed legislation entitled ''American Community Partnerships Act''; to the Committee on Banking, Housing, and Urban Affairs.

EC–963. A communication from the Chairman of the Securities and Exchange Commission, transmitting, pursuant to law, the annual report of the Commission for fiscal year 1994; to the Committee on Banking, Housing, and Urban Affairs.

EC–964. A communication from the Secretary of the Treasury, transmitting, pursuant to law, a report relative to the exchange stabilization fund; to the Committee on Banking, Housing, and Urban Affairs.

EC–965. A communication from the Chairman of the Board of Governors of the Federal Reserve System, transmitting, pursuant to law, the annual report of the Board for calendar year 1994; to the Committee on Banking, Housing, and Urban Affairs.

EC–966. A communication from the President and Chairman of the Export-Import Bank, transmitting, pursuant to law, a report relative to U.S. transactions with the Philippines; to the Committee on Banking, Housing, and Urban Affairs.

EC–967. A communication from the Chairman of the Securities and Exchange Commission, transmitting, pursuant to law, a report relative to intermarket coordination; to the Committee on Banking, Housing, and Urban Affairs.

EC–968. A communication from the Executive Director of the Thrift Depositor Protection Oversight Board, transmitting, pursuant to law, a report relative to the number and condition of savings associations; to the Committee on Banking, Housing, and Urban Affairs.

REPORTS OF COMMITTEES

Under the authority of the order of the Senate of June 8, 1995, the following reports of committees were submitted on June 9, 1995:

By Mr. PACKWOOD, from the Committee on Finance, with an amendment in the nature of a substitute and an amendment to the title:

H.R. 4: A bill to restore the American family, reduce illegitimacy, control welfare spending and reduce welfare dependence (Rept. No. 104–96).

INTRODUCTION OF BILLS AND JOINT RESOLUTIONS

The following bills and joint resolutions were introduced, read the first and second time by unanimous consent, and referred as indicated:

By Mr. HEFLIN (for himself and Mr. KYL):

S. 914. A bill to delineate acceptable drug testing methods, and for other purposes; to the Committee on the Judiciary.

By Mr. D'AMATO:

S. 915. A bill to govern relations between the United States and the Palestine Liberation Organization (PLO), to enforce compliance with standards of international conduct, and for other purposes; to the Committee on Foreign Relations.

By Mr. FRIST (for himself, Mrs. KASSEBAUM, Mr. JEFFORDS, Mr. COATS, Mr. DEWINE, Mr. KENNEDY, Mr. PELL, Mr. DODD, Mr. SIMON, and Mr. HARKIN):

S. 916. A bill to amend the Individuals with Disabilities Education Act to extend the Act, and for other purposes; to the Committee on Labor and Human Resources.

STATEMENTS ON INTRODUCED BILLS AND JOINT RESOLUTIONS

By Mr. HEFLIN (for himself and Mr. KYL):

S. 914. A bill to delineate acceptable drug testing methods, and for other purposes; to the Committee on the Judiciary.

DRUG TESTING LEGISLATION

Mr. HEFLIN. Mr. President, I rise today to introduce a bill which will allow law enforcement to choose from

a variety of drug testing processes. I believe that it is important to fight drug abuse and supply law enforcement agencies with all the available tools. By expanding the range of acceptable drug testing methods State and Federal agencies will be able to weigh the costs and benefits of the different processes to determine the one which best suits their needs. Congress should not enact legislation that limits drug testing alternatives but should let the agencies, with their expertise, make informed choices.

This bill will amend the recently passed Violent Crime Control and Law Enforcement Act of 1994 in three areas. The amendments would strike the references to urinalysis as the only drug testing method specifically listed pursuant to conditions of supervised release, conditions of parole, conditions of probation, and residential substance abuse treatment for prisoners. In its place it will include but not limit the choices of testing to: urine, hair, and blood testing. This will ensure that State and local agencies can make use of innovative technology.

When drug testing was first introduced, the methods available for testing provided only narrow windows of detection with limited accuracy. This bill will encourage law enforcement to incorporate new technology, such as hair analysis, into their current drug testing regimes.

Field studies conducted by the National Institute of Justice show that hair analysis is more effective than urine testing in detecting cocaine, PCP, and opiate users. Also, this innovative form of drug testing promises to be a less invasive, and potentially more revealing, alternative to urine screening. Finally the individual will probably find that snipping a lock of hair is far less offensive than asking for urine samples.

The bottom line is that drug use among prisoners on probation, parole, and early release is a constant concern of law enforcement. If there are means of testing which are reliable and detect abuse over greater time periods then those tests should be available and encouraged. The new drug testing technologies have such capability and this bill would simply add them to the list already set forth into law pursuant to enactment of the Violent Crime Control Act of 1994.

Mr. KYL. Mr. President, I am pleased to join Senator HEFLIN in introducing this bill on hair analysis. As noted in the January 1993, ''Research in Brief,'' published by the National Institute of Justice, ''Hair testing is relatively well established and * * * has several advantages over urine in testing for drugs.''

First, hair greatly expands the time window for detection of an illicit drug. Generally, urine tests determine if drugs have been used in the past 2 to 4 days, but hair provides a 90-day history of information.

Second, brief periods of abstinence from drugs will not significantly alter the outcome of hair analysis. Additionally, hair analysis cannot be evaded as in urinalysis, where drug users can substitute clean samples or tamper with specimens. Drug residues remain permanently embedded in hair. They cannot be washed or bleached out.

Third, hair is easy to handle, and requires no special storage facilities or conditions. Compared with urine samples, it presents fewer risks of disease transmission.

Fourth, because hair records drug use chronologically and in amounts proportional to those consumed, the pattern and quantity of drug abuse is also provided.

Fifth, collecting comparable samples for repeat testing is easier with hair than with urine; a cosmetically undetectable snip of hair is easily collected under close supervision without causing the embarrassment of providing a urine sample.

Sixth, contaminating or altering a sample to distort or manipulate test results is much more difficult with hair than with urine. Furthermore, if the results of the first test are challenged, a second, newly collected sample can be analyzed as a safety net. This is not possible with urine because the original 3-day surveillance window will have passed and the subject can merely abstain from drug use in the few days prior to submitting a new sample.

In sum, the availability of hair analysis will give law enforcement another tool for drug testing.

By Mr. D'AMATO:

S. 915. A bill to govern relations between the United States and the Palestine Liberation Organization (PLO), to enforce compliance with standards of international conduct, and for other purposes.

MIDDLE EAST PEACE COMPLIANCE ACT OF 1995

Mr. D'AMATO. Mr. President, I rise today to introduce the Middle East Peace Compliance Act of 1995.

The fact of the matter is simple. The PLO is not complying with its responsibilities. It has failed to restrain the radicals in Gaza; it has failed to change the PLO Covenant; and it has failed to come clean with the amount of its assets. Most importantly, the PLO's overwhelming failure to restrain the radical elements within its areas of control is an insult to Israel and everyone who had placed hope in Yasir Arafat's ability to deliver the peace. In return for all of this is the fact that the United States will be sending $100 million to the PLO and Palestinian authorities over the next year, if the administration is allowed to have its way.

Mr. President, while it is plain to see that the PLO has not lived up to its commitments, despite the State Department's protests to the contrary, one need only to look at the facts to understand the situation. Between September 13, 1993, the signing of the Declaration of Principles, and May 4, 1994, the beginning of Gaza-Jericho self-rule, there were 373 attacks, with 110 Israelis killed, 70 of them civilians. There are said to be thousands of illegal weapons in the Gaza-Jericho area, at least 26,000, according to the Israeli newspaper Maariv.

Furthermore, reports by independent peace monitors, the Judge Advocate General of the Israel Defense Forces [IDF] and the Congressional Peace Accords Monitoring [PAM] Group point to an additional and consistently widening pattern of PLO non-compliance that include:

Failure to preempt terrorism;

Failure to control the flow of illegal weapons into and inside of Gaza;

Failure to apprehend, prosecute and adequately punish individuals accused of criminal or terrorist acts against Israelis;

Failure to prevent the illegal diversion of international assistance to PLO activities;

Failure to restrict the growth of the Palestinian police force in Gaza which now is conservatively estimated to be 17,000 instead of the 9,000 permitted by agreement with Israel; and

Failure to confine Palestinian administrative offices to Gaza, while allowing them to proliferate, illegally, in Jerusalem.

It is said that there are networks of terrorist training camps in Gaza, and there is even film of recruits drilling chanting anti-Israeli slogans. Despite sweeping arrests in which the Palestinian authorities round up hundreds of Palestinians for questioning in relation to various bombings, attacks, and other violations, these demonstrations of supposed compliance with Israeli complaints amount to just public relations, in the words of Prime Minister Rabin, himself. Soon after, most of these mass arrests, the suspects are let go. Some system of justice.

As far as the covenant is concerned, the PLO shows no interest in abrogating those sections calling for the destruction of Israel. Despite promises to do so, the PLO has not even convened the Palestine National Council in order to amend the covenant. All the State Department can say is that they ''hope that Arafat will do so, and [we] have encouraged him to follow through with this,'' in reference to changing the Covenant. This does not exactly exude confidence or the ability to influence a change.

It is for this reason that I am introducing the Middle East Peace Compliance Act of 1995. This legislation places a series of requirements on the PLO before they can receive money from the United States. Briefly, the requirements are as follows:

Require that U.S. assistance may only be used for humanitarian projects for the benefit of Palestinians living under the Palestinian authority. All assistance must be channeled only through U.S. Government agencies or private voluntary organizations [PVO's];

Condition any U.S. assistance upon full financial and managerial accountability of the Palestinian authority;

Require the President to certify that no aid will go to individuals suspected of having harmed American citizens, while requiring that the PLO assist in the apprehension of and extradition to the United States of all such individuals now, or previously under its control;

Direct the President to provide specific counterterrorism technology and technical assistance to Israel; and

Require that the PLO pay compensation to U.S. victims of terrorism committed with PLO support and under its direction.

Mr. President, this bill is not the panacea. Nor is it the popular thing to do. It is however, the right thing to do. I want peace for Israel as much or more than anyone else does, but I don't want it on the wrong terms. Neville Chamberlain said that there would be peace ''in our time'' after Munich, and there wasn't. I want Israel to be safe and secure. I don't want Israel to become locked into an agreement with an organization that cannot deliver on its end of the bargain. I also do not want to have the U.S. taxpayers' money wasted. The issues are paramount.

This peace agreement is like a contract. When one side abides by the contract's terms and the other does not, then the deal has been broken. Now, I know that there will be some who will say that this aid should continue regardless, and that the violations are really not violations. Let me tell you, the violations of the PLO are real and they cannot be ignored or forgiven. They must be dealt with. If this is done, then there should be no problems. The terms for aid in this bill are not odious, they are not overreaching and they are not unreasonable. They are consistent with the requirements that our Government places upon all recipients of U.S. foreign assistance.

I urge my colleagues to support this important measure.

Mr. President, I ask unanimous consent that the text of the bill be included in the RECORD.

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

S. 915

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SEC. 1. SHORT TITLE.

This Act may be cited as the ''Middle East Peace Compliance Act of 1995''.

SEC. 2. DEFINITIONS.

For the purposes of this Act—

(1) the term ''Palestine Liberation Organization (PLO)'' shall be defined as a membership organization encompassing all constituent groups that belong to the Palestine National Council and all individuals that have or continue to publicly demonstrated their allegiance to the Palestine Liberation Organization, or receive funds, directly or indirectly from sources controlled by the PLO. Its legal status is defined by U.S. law pursuant to Title X of Public Law 102–204 section 1002;

(2) for the purpose of this section, the term ''foreign assistance'' shall be the same as that used under section 634(b) of the Foreign Assistance Act of 1961 (P.L. 87–195); and

(3) the term ''Palestinian Authority'' shall be defined as the administrative entity established in the self-rule areas of Gaza and the West Bank in accordance with the Declaration of Principles signed in Washington, D.C. September 13, 1993, between Israel and the Palestine Liberation Organization (PLO).

SEC. 3. POLICY.

It is the policy and interest of the United States—

(1) to contribute to the advancement of peace and security in the Middle East by supporting efforts by Israel and the Palestine Liberation Organization (PLO) to reach a non-violent resolution of their conflict under the terms of the Declaration of Principles on Interim Self-Government Arrangement signed in Washington, D.C., September 13, 1993;

(2) to ensure that both Israel and the PLO fully and meaningfully comply with the terms and conditions of all agreements made between them;

(3) to demonstrate firm, consistent and unambiguous opposition to terrorism by insisting that Israel and the Palestine Liberation Organization take significant, material and timely steps to preempt terrorist attacks;

(4) to ensure that the Palestinian Authority fully accounts for basic human needs and infrastructure development funds expended by the United States in Gaza and Jericho in accordance with standard commercial principles and practices;

(5) to ensure that Israel and the Palestine Liberation Organization cooperative fully with U.S. law enforcement agencies to apprehend, prosecute and convict all individuals involved in the criminal injury or death of United States citizens or the willful damaging of United States property;

(6) to hold the PLO and its administrative authority in Gaza and Jericho accountable for unlawful acts carried out within its jurisdiction or emanating from territory under its administrative control;

(7) to ensure that all recipients of U.S. foreign assistance evidence a clear commitment to democracy, justice and the rule of law and conform to established standards of financial management and accountability; and

(8) to contribute to the long-term security, stability and economic health of the State of Israel through the maintenance of close bilateral ties and, to the greatest extent possible, to provide such levels of assistance to Israel as are necessary and sufficient to achieve these objectives, irrespective of the success or failure of the agreements between Israel and the PLO.

SEC. 4. FINDINGS AND DETERMINATIONS.

(a) Pursuant to the commitments between Israel and the PLO described in section 6 of this Act, the Congress makes the following findings:

(1) After decades of conflict, Israel and the PLO have entered a new era which presents an historic opportunity for peaceful coexistence and a stable democratic future for themselves and the region;

(2) The basis for this new relationship between Israel and the PLO is the set of agreements to which both parties are signatories and which emanate from the Declaration of Principles of Interim Self-Government Arrangements, signed in Washington, D.C. on September 13, 1993;

(3) The United States agrees to serve as a partner in the effort to bring about a lasting reconciliation and understanding between Israel and the PLO;

(4) The United States recognizes all of the agreements referred to in section 6 of this Act are legally binding on Israel and the PLO, that they were entered into freely and in good faith and that Israel and the PLO are committed to their complete fulfillment;

(5) The United States is relying upon Israel and the PLO to honor their commitments to elected representatives and officials of the United States Government prior to and following the signing of the Declaration of Principles, including the promise of the PLO to halt terrorism emanating from areas under its control;

(6) The United States is committee to providing funding for infrastructure development and basic human needs in Gaza and Jericho, but not through any institution or entity of the PLO or the Palestinian Authority and only where Israel and the PLO have demonstrated that they have taken substantial, timely and meaningful steps toward full compliance under their respective agreements;

(7) The United States is resolute in its determination to ensure that in providing assistance to Palestinians living under the administrative control of the Palestinian Authority or elsewhere, the beneficiaries of such assistance shall be held to the same standard of financial accountability and management control as any other recipient of U.S. foreign assistance; and

(8) Since the signing of the Declaration of Principles, the United States has had sufficient time to evaluate the sincerity, commitment and effectiveness with which Israel and the PLO have complied with both the spirit and the letter of the joint agreements to which they are signatories.

(b) DETERMINATIONS.—Therefore, the Congress determines that:

(1) the PLO continues to demonstrate widespread and systematic disregard for both the spirit and the letter of the understandings reached in a succession of agreements between it and the State of Israel;

(2) information provided by the President on the compliance of the PLO with its agreements is often ambiguous, insufficient, at variance with the assessments of independent monitoring groups and falls short of the standards of accountability expected of other recipients of U.S. foreign assistance;

(3) the PLO specifically has failed to take substantial, timely and meaningful steps to fulfill its legal obligations in the following areas:

(A) AMENDING THE PLO COVENANT.—In violation of commitments made by the PLO in the letter of September 9, 1993 between the PLO leader and the Prime Minister of Israel, 1993, the PLO has failed to repeal the provisions of its Charter which declare Israel to be illegitimate and call for its elimination through armed struggle;

(B) PREVENTING TERRORISM.—In violation of the terms agreed to in the Gaza-Jericho Agreement, Annex III, article I, section 5 and the letters of September 9, 1993 between the PLO leader and the Prime Minister of Israel and between the PLO leader and the Foreign Minister of Norway, the PLO has not legally banned terrorist organizations such as Hamas and Islamic Jihad and has done little to discipline them. In the 19 months before the Declaration of Principles there were 318 casualties from terrorism in Israel and the territories (68 people were killed and 250 injured). This is in contrast to the 19 months following the signing of the Declaration of Principles, there were 651 casualties from terrorism in Israel and the territories (134 people were killed and 517 injured), an increase of nearly 100 percent;

(C) PROSECUTING TERRORISTS.—In violation of the terms agreed to in the Gaza-Jericho Agreement, Annex III, article I, section 5 and the letters of September 9, 1993 between the PLO leader and the Prime Minister of Israel

and between the PLO leader and the Foreign Minister of Norway, the PLO has failed to investigate terrorist incidents, prosecute terrorists according to the rule of law, or ensure that the sentences imposed for terrorist acts are more than perfunctory. The PLO repeatedly has declared that it considers terrorist organizations such as Hamas and Islamic Jihad as legitimate opposition groups with whom they are prepared to conduct a dialog. The PLO has not legally banned extremist organizations and instead, employs Hamas sympathizers in its administration in Gaza;

(D) PREVENTING INCITEMENT TO VIOLENCE.—In violation of the terms agreed to in the Gaza-Jericho Agreement, Article XII, paragraph 1 and the letters of September 9, 1993 between the PLO leader and the Prime Minister of Israel and between the PLO leader and the Foreign Minister of Norway, PLO officials continue to advocate holy war (jihad) against Israel, glorify suicide bombers, lend support and comfort to terrorist groups and issue propaganda delegitimizing Israeli sovereignty even within its pre-1967 borders;

(E) BARRING UNAUTHORIZED FORCES.—In violation of the terms agreed to in the Gaza-Jericho Agreement, Article IX, section 2, the PLO continues to permit illegal military and paramilitary groups to conduct terrorist operations against Israel from administrative areas under its control;

(F) CONFISCATING UNAUTHORIZED WEAPONS.—In violation of the terms agreed to in the Gaza-Jericho Agreement, Annex I, article VIII, sec. 8, the PLO has failed to fulfill its commitment made to the United States Vice President on March 24, 1995, to take significant steps to disarm military and paramilitary groups under its administrative control, to license weapons or to substantially enforce, by judicial means, individual violations;

(G) EXCLUDING TERRORISTS FROM SECURITY SERVICES.—In violation of the terms agreed to in the Gaza-Jericho agreement, Annex I, article III, sec. 4(b), the PLO continues to employ policemen who have been convicted of serious crimes;

(H) EXTRADITING TERRORISTS.—In violation of the terms agreed to in annex III, article II, sec. 7, the PLO consistently refuses to extradite individuals suspected of terrorist crimes against Israeli citizens and has not complied with earlier demands of the U.S. Government to extradite individuals suspected of crimes against Americans to the United States;

(I) PROHIBITING THE LOCATION OF INSTITUTIONS OF THE PALESTINIAN AUTHORITY OUTSIDE OF GAZA AND JERICHO.—Under Article V of the Gaza-Jericho Agreement, the Palestinian Authority is limited but has attempted to extend its authority beyond the boundaries of Gaza and Jericho. It has failed to live up to its commitment not to operate offices in Jerusalem and has opened at least 7 institutions in and around the city;

(J) FACILITATING THE RELEASE OF ISRAELI POWS/MIAS.—The PLO has failed to provide Israel with information it possesses on the condition and possible whereabouts of at least one Israeli MIA;

(K) AVOIDING AND PUNISHING THE ILLEGAL TRANSFER OF FUNDS.—In violation of the spirit of the Gaza-Jericho agreement and standard international principles and practices of financial accountability, administrative authorities in Gaza have diverted substantial amounts of development assistance to activities of the PLO both inside and outside of Gaza and Jericho; and

(L) PREVENTING INFILTRATIONS.—In violation of the term agreed to in the Gaza-Jericho Agreement, Article IV(2)(c), the Palestinian Police authorities has failed to halt infiltrations from Egypt to Gaza and from Gaza to Israel.

SEC. 5. GENERAL RESTRICTIONS ON ASSISTANCE.

Notwithstanding any other provision of law, the following restrictions shall apply with regard to all assistance provided by the United States and intended to benefit Palestinians living in areas controlled by the PLO or the Palestinian Authority:

(1) All funds made available to areas under the administrative control of the Palestinian Authority shall be provided only through agencies or entities of the United States Government or private voluntary organizations designated by the Secretary of State and registered in the United States. *Provided*, That no funds shall be obligated or expended for any projects or activities of the Palestinian Authority in Jerusalem or that benefit Palestinians living in Jerusalem;

(2) Under no circumstances and notwithstanding any other provision of law, none of the funds authorized or appropriated under this or any other Act shall be made available, directly or indirectly, to benefit the Palestine Liberation Organization (PLO), its agents, entities, projects, programs, institutions or activities under its control, or directly or indirectly, to benefit the operation of the Palestinian Authority in Gaza, Jericho or any other area it may control:

(3) Funds made authorized or appropriated under this or any other Act shall only be made available for humanitarian assistance, economic development and basic human needs infrastructure projects or activities which directly benefit Palestinians in areas under the administrative control of the Palestinian Authority;

(4) The total amount of United States Assistance benefitting the Palestinians resident in areas under the administrative control of the PLO and the Palestinian Authority for any single year shall not exceed the largest total contribution by a member of the Arab League to the Palestinian Authority in the previous full calendar year;

(5) None of the funds authorized or appropriated under this or any other Act shall be made available to benefit, directly or indirectly, Palestinians living under the administrative control of the Palestinian Authority until the PLO substantially, materially and in a timely fashion complies with the provisions of section 7 of this Act;

(6) No funds made available by this or any other Act and intended to benefit Palestinians living in areas controlled by the PLO or the Palestinian Authority shall be used for the purchase, lease, or acquisition by any means of lethal equipment, supplies or infrastructure to support that equipment or its use in military or paramilitary operations or training; and

(7) No funds shall be made available under this or any other Act to benefit Palestinians living in areas controlled by the PLO or the Palestinian Authority should be PLO conclude a formal or informal arrangement with Hamas, Islamic Jihad or any other group practicing or supporting terrorism under which the terrorist activities of these groups, either inside or outside of Gaza and Jericho, will be allowed to continue or be tolerated in any respect.

(8) As set forth in section 585 of the Foreign Operations, Export Financing, and Related Programs 1995 Appropriations and 1994 Supplemental Appropriations Act (Public Law 103–306):

(A) None of the funds made available under this or any other Act shall be obligated or expended to create in any part of Jerusalem a new office of any department or agency of the United States Government for the purpose of conducting official United States Government business with the Palestinian Authority over Gaza and Jericho or any successor Palestinian governing entity provided for in the Israel-PLO Declaration of Principles: *Provided*, That is restriction shall not apply to the acquisition of additional space for the existing Consulate General in Jerusalem.

(B) Meetings between officers and employees of the United States and officials of the Palestinian Authority, or any successor Palestinian governing entity provided for in the Israel-PLO Declaration of Principles, for the purpose of conducting official United States Government business with such authority should continue to take place in locations other than Jerusalem. As has been true in the past, officers and employees of the United States Government may continue to meet in Jerusalem on other subjects with Palestinians (including those who now occupy positions in the Palestinian Authority), have social contacts, and have incidental discussions.

(9) No funds made available under this or any other Act shall be used to benefit any individual who has directly participated in, or conspired in, or was an accessory to, the planning or execution of a terrorist activity which resulted in the death, injury or kidnapping of an American citizen.

SEC. 6. PLO-ISRAEL COMMITMENTS DESCRIBED.

The commitments referred to under this Act and recognized by the United States are the legally binding commitments made by the Palestine Liberation Organization and Israel in the following declarations:

(1) the PLO letter of September 9, 1993, to the Prime Minister of Israel;

(2) the PLO letter of September 9, 1993, to the Foreign Minister of Norway;

(3) the Declaration of Principles on Interim Self-Government Arrangements signed in Washington, D.C. on September 13, 1993;

(4) the Agreement between Israel and the PLO signed in Cairo on May 4, 1994; and

(5) the Joint Communiqúe between Israel and the PLO issued at Blair House; in Washington, D.C., February 12, 1995.

SEC. 7. REQUIREMENTS FOR THE TRANSFER OF FUNDS.

IN GENERAL.—Notwithstanding any other provision of law, none of the funds authorized or appropriated under this or any other Act shall be made available, directly or indirectly, to benefit Palestinians living under the administrative control of the PLO or the Palestinian Authority in Gaza, Jericho or any other area it may control, until the following requirements set forth in this section are fully met and certified to Congress by the President of the United States:

(1) SUBSTANTIAL, MATERIAL AND TIMELY COMPLIANCE.—That the PLO and the Palestinian Authority have made substantial, material and timely progress in meeting their legal obligations as set forth in the agreements between the PLO and Israel and as enumerated in section 6 of this Act. The President shall submit to the relevant congressional committees a quarterly report that:

(A) comprehensively evaluates the compliance record of the PLO according to each specific commitment set forth in its agreements with Israel and;

(B) establishes, as appropriate, both objective and subjective measures to assess PLO compliance; and

(C) measures PLO compliance against each previous quarterly assessment and demonstrates significant and continual improvement each quarter.

(2) FINANCIAL ACCOUNTABILITY.—Sixty days following the enactment of this Act and every 180 days thereafter, the President of the United States shall submit to the relevant congressional committees a financial audit carried out by the General Accounting Office (GAO), which provides a full accounting of all United States assistance which

benefits, directly or indirectly, the projects, programs or activities of the Palestinian Authority in Gaza, Jericho or any other area it may control, since September 13, 1993, including, but not limited to, the following:

(A) the obligation and disbursal of all funds, by project, activity, and date, as well as by prime contractor, all subcontractors, and their countr(ies) of origin;

(B) the organization(s) or individual(s) responsible for the receipt and obligation of U.S. assistance;

(C) the amount of both private and international donor funds that benefit the PLO or the Palestinian Authority in Gaza, Jericho or any other area it may control, and to which the United States may be a contributor;

(D) the ultimate beneficiaries of the assistance; and

(3) REPORT ON THE POSSIBLE MISUSE OF FUNDS.—Pursuant to section 7(a), the President shall also provide the relevant congressional committees with a comprehensive accounting of all United States and International donor funds, credits, guarantees, insurance, in-kind assistance and other resource transfers to the PLO, the Palestinian Authority or other associated entities under their control which the General Accounting Office believes may have been misused, diverted or illegally converted for purposes other than those originally intended by the donors and shall include a decision of—

(A) the possible reasons for the diversion of resources and the likely uses toward which they were put;

(B) the manner and mechanism(s) by which the resources were misdirected;

(C) the person(s) and institution likely responsible for the misdirection of the resources; and

(D) the efforts being made by the Palestinian Authority, the President and the international community to account for and recover the misdirected resources.

(4) PENALTIES AND DEDUCTIONS.—Not less than thirty (60) days following the issuance to Congress of the findings set forth in section 7(2) the President shall deduct one dollar from the amount of funds or other resources appropriated to benefit Palestinians living in areas controlled by the Palestinian Authority for each dollar which the General Accounting Office is able to demonstrate may have been diverted by Palestinians for purposes other than what they were originally intended.

(5) ACCOUNTABILITY FOR PAST TERRORISM.—The President shall certify to the relevant congressional committees that the Palestine Liberation Organization has taken substantial, material and timely steps to provide information to United States law enforcement agencies leading to the arrest and extradition to the United States for prosecution of individuals connected directly or indirectly with the Palestine Liberation Organization and alleged to have been responsible for terrorist attacks on American citizens or property since 1964 to include, but not be limited to, the kidnapping, or murders of:

(A) David Berger, In Munich, Germany, September, 1972;

(B) Cleo A. Noel, Jr., United States Ambassador to the Sudan, and G. Curtis Moore, U.S. Diplomat, in Khartoum, March 2, 1973;

(C) Gail Rubin, in Israel, March 11, 1978;

(D) Leon Klinghoffer on the cruise ship Achille Lauro, October 8, 1985; and

(E) Gail Klein, in Jerusalem, October 15, 1986.

(6) REPORT TO THE CONGRESS.—Pursuant to subsection (B) of this section, the President shall report to the relevant congressional committees, in both classified and unclassified form, no later than September 1, 1995, and every 180 days thereafter, on:

(A) the name, date, location, and circumstance of all Americans alleged to have been killed or injured, directly or indirectly, by members, agents, supporters or surrogates of the Palestine Liberation Organization from 1964 to the present;

(B) the name, date, precise location, and circumstances of all violent incidents against Israelis or others by any terrorist group, organization, entity or individual operating in Israel or the territories controlled by Israel or the PLO and to indicate—

(i) where the violent incident was planned, organized and launched;

(ii) how and through what means the violent incident was funded;

(iii) the source and type of any lethal equipment used in any violent incident; and

(iv) whether the United States has been able to independently confirm information provided by either Israel or the PLO regarding violent incidents reported under this subsection.

(C) the status of all warrants issued by U.S. law enforcement agencies, Interpol, or other international police authorities, for the arrest of members of the Palestine Liberation Organization, to include, but not be limited to, the name of the individual, the date and nature of the crime alleged to have been committed, the statute under which prosecution is being sought, and the level and nature of the cooperation provided by the Palestine Liberation Organization in the apprehension, prosecution and conviction of this individual(s);

(D) the disposition of all past and current investigations into the criminal activities of the Palestine Liberation Organization as well as the warrants for the arrest of alleged members of the Palestine Liberation Organization that have been revoked or suspended by agencies of entities of the United States Government since 1964 and reason for the revocation or suspension; and

(E) the name of any individual who currently serves as an official or agent of the Palestine Liberation Organization or the Palestinian Authority who at any time has been subject to a United States or international arrest warrant or has been placed on a U.S. Government ''watch list.''

(7) MATTERS TO BE CONSIDERED.—In determining whether to make the certification required by subsection (4) of this section with respect to the PLO, the President shall also consider and report, in both classified and unclassified form, to the relevant congressional committees the following:

(A) Have the actions of the PLO resulted in the maximum reductions in terrorism carried out by members or affiliates of the PLO? Has the PLO leadership publicly, in Arabic, English and Hebrew, and using all major print and electric media outlets, strongly condemned acts of terrorism against Israel and the West when they occur?

(B) Has the PLO taken legal and law enforcement measures to enforce in areas under its administrative control, to the maximum extent possible, the elimination of terrorist acts and the suppression of criminal elements responsible for terrorism as evidenced by the seizure of illegal weapons, the closure of offices and training areas belonging to terrorist organizations and the arrest and prosecution of violators involved in the incitement, recruitment, training, planning, or conduct of terrorist operations affecting the United States, Israel or other countries?

(C) Has the PLO taken the legal and law enforcement steps necessary to eliminate, to the maximum extent possible, the laundering of profits derived from smuggling, narcotics trafficking, illegal weapons transactions or other criminal activity as evidenced by the enactment and enforcement by the PLO of laws prohibiting such conduct?

(D) Has the PLO taken the legal and law enforcement steps necessary to eliminate, to the maximum extent possible, bribery and other forms of public corruption which facilitate the execution of terrorist acts or which discourage the investigation and prosecution of such acts, as evidenced by the enactment and enforcement of laws prohibiting such conduct?

(E) Has the PLO, as a matter of policy or practice, encouraged or facilitated the continued sponsorship of terrorist acts?

(F) Does any senior official of the PLO engage in, encourage, or facilitate the incitement, recruitment, training, planning, or conduct of terrorist operations affecting the United States, Israel or other states or condone other internationally recognized criminal activity?

(G) Has the PLO investigated aggressively all cases in which any citizen of the United States or member of the United States Government has been the victim, since 1964, of acts or threats of violence, inflicted by or with the complicity of any agent of the PLO or any political subdivision or supporter thereof, and energetically sought to bring the perpetrators of such offense to justice?

(H) Having been requested to do so by the United States Government, does the PLO fail to provide reasonable cooperation to lawful activities of United States law enforcement agents, including the refusal of permission to such agents engaged in counter-terrorism to pursue suspected terrorists or other criminal elements that may support terrorist activities into areas or facilities it controls?

(I) Has the PLO or its administrative authority in Gaza and Jericho adopted legal codes in order to enable law enforcement officials to move more effectively against terrorists, the supporters of terrorism and other related criminal elements, such as effective conspiracy laws and asset seizure laws?

(J) Has the PLO expeditiously processed United States, Israeli, or other countries' extradition requests relating to terrorism, narcotics trafficking or other criminal offenses?

(K) Has the PLO refused to protect or given haven to any known terrorist, drug trafficker or other accused or convicted of a serious criminal offense, and has it expeditiously processed extradition requests relating to acts of terrorism or narcotics trafficking made by other countries?

(L) Has the PLO cooperated, both publicly and privately, with efforts undertaken by the President of the United States to end the Arab League boycott of Israel and if so, to what extent and to what practical effect?

(8) VICTIMS OF TERRORISM COMPENSATION.—Pursuant to section 5570 of P.L. 99–399 no funds shall be made available to benefit the PLO, the Palestinian Authority or any person or entity under its control until the President certifies to the relevant congressional committees that full and fair compensation is provided by the Palestine Liberation Organization to United States victims of PLO terrorism after adjudication in a United Court of law.

(9) PREEMPTION OF TERRORISM.—The President shall make available to Israel, equipment for the state-of-the-art security examination of cargo containers and vehicles: *Provided,* That this equipment shall include automated, non-intrusive inspection technology, or technologies, for the direct detection and chemical elemental identification of contraband: *Provided further,* That some of this equipment may be in the form of technology in the advanced stages of development and suitable for field testing and evaluation: *Provided further,* That not less than $40,000,000 is authorized to be appropriated in Fiscal Year 1996 for the purposes set forth in this section from the funds made available by the United States to support the agreements between Israel and the PLO: *Provided*

further, That the President shall negotiate the transfer of this technology no later than September 30, 1995, and prior to the obligation of not more than $50,000,000 in United States funds to benefit Palestinians living in Gaza, Jericho or any additional territories which might be administered by the PLO: *Provided further*, That it is the purpose of this section to enable the United States to support efforts by both Israel and the PLO to meet their compliance obligations and—

(A) to assist them in combating terrorism;

(B) to assist them in combating narcotics smuggling and other contraband smuggling; and

(C) to assist them in ensuring proper manifesting and customs regulation compliance and revenue collection.

(10) REVIEW OF LEGISLATION.—Prior to the disbursement of any funds authorized under this or any other Act for the benefit of the PLO, the Palestinian Authority or any of its constituencies, activities or projects, the President shall carry out, and report to the relevant congressional committees, a thorough review of pertinent legislation affecting the status of the PLO to include, but not be limited to, Title X of Public Law 100–204 and shall recommend to Congress modifications consistent with U.S. policy toward countering terrorism and promoting peace in the Middle East.

(11) PRESIDENTIAL DISCLOSURE.—No later than 60 days following the enactment of this Act, the President shall disclose in a classified manner to the relevant congressional committees, the substance of any secret agreements, understandings, or promises, either formal or informal, between the United States and Israel, and the United States and the PLO, connected with the implementation of the Declaration of Principles, that—

(A) commits the United States to any course of action in its foreign, diplomatic or security policies;

(B) commits the United States to provide funds or other forms of assistance for particular projects or activities;

(C) provides assurances to particular individuals who may or may not be targets of a U.S. or international criminal investigation; and

(D) extends to particular individuals the promise of protection or safety should future circumstances warrant it.

(12) PROVISIONS THAT MAY BE SUSPENDED.—Subject to the requirements of section 7 and the prior approval of the Chairmen of the relevant committees of the Congress of the United States the President may suspend only the following provisions of law for a period not to extend beyond May 31, 1996—

(A) Section 307 of the Foreign Assistance Act of 1961 (22 U.S.C. 2227) as it applies with respect to the Palestine Liberation Organization or entities associated with it.

(B) Section 114 of the Department of State Authorization Act, Fiscal Years 1984 and 1985 (22 U.S.C. 287e note) as it applies with respect to the Palestine Liberation Organization or entities associated with it.

(C) Section 1003 of the Foreign Relations Authorization Act, fiscal years 1988 and 1989 (22 U.S.C. 5202).

(D) Section 37 of the Bretton Woods Agreement Act (22 U.S.C. 286w) as it applies to the granting to the Palestine Liberation Organization of observer status or other official status at any meeting sponsored by or associated with the International Monetary Fund. As used in this paragraph, the term ''other official status'' does not include membership in the International Monetary Fund.

SEC. 8. FINANCIAL DISCLOSURE.

(a) Within thirty (30) days of the enactment of this Act, the President shall request that both the Palestine Liberation Organization and the Palestine Authority provide to the United States, comprehensive financial statements of their assets and income for the prior year: *Provided*, That in addition to these statements, the President shall certify to the Congress that:

(1) the United States Government has no knowledge of information as to other further assets or income of the Palestine Liberation Organization or Palestinian Authority; and

(2) the Palestine Liberation Organization and Palestinian Authority are spending and investing substantially all of their respective assets and income for the welfare and benefit of the Palestinian people in the areas administered by the Palestinian Authority and for purposes related exclusively to the duties and functions of the Palestinian Authority as authorized under agreements between Israel and the PLO.

(b) No funds shall be obligated or expended for the benefit of the Palestinian people in areas administered by the Palestinian Authority until the President has delivered to the relevant congressional committees the information required in section 8(a).

(c) President shall report to the relevant congressional committees, in both classified and unclassified form, no later than September 1, 1995, and every 180 days thereafter, on all the assistance provided by the international community to the PLO and the Palestinian Authority, or any affiliated organization or entity, both directly and indirectly, to include:

(1) the amount of such assistance, by project, and whether the assistance is provided in cash or in kind;

(2) the organization or entity through which the international assistance is disbursed;

(3) the use(s), by project, to which the international assistance is being put; and

(4) the ultimate beneficiaries of the assistance.

SEC. 9. PROHIBITION ON FORMAL DIPLOMATIC REPRESENTATION.

Notwithstanding any other provision of law, the President of the United States shall make no commitments and shall provide no funds for the obligation or expenditure, for any activity leading to the establishment, on either a temporary or permanent basis, of any United States diplomatic post, to include an embassy, consulate or interest section in any territory under the administrative control of the PLO or the Palestinian Authority.

SEC. 10. RELEVANT CONGRESSIONAL COMMITTEES DEFINED.

As used in this Act, the term ''relevant congressional committees'' means—

(1) the Committee on International Relations, the Committee on Banking and Financial Services, and the Committee on Appropriations of the House of Representatives; and

(2) the Committee on Foreign Relations, the Committee on Appropriations, and the Committee on Banking, Housing, and Urban Affairs of the Senate.

SEC. 11. TERM OF THIS ACT.

This Act shall become effective upon the day of enactment and expire no earlier than May 31, 1996 unless amended.

By Mr. FRIST (for himself, Mrs. KASSEBAUM, Mr. JEFFORDS, Mr. COATS, Mr. DEWINE, Mr. KENNEDY, Mr. PELL, Mr. DODD, Mr. SIMON, and Mr. HARKIN):

S. 916. A bill to amend the Individuals With Disabilities Education Act to extend the act, and for other purposes; to the Committee on Labor and Human Resources.

INDIVIDUALS WITH DISABILITIES EDUCATION EXTENSION ACT

Mr. FRIST. Mr. President, as a strong supporter of appropriate education programs for individuals with disabilities, I am today, along with nine of my colleagues, introducing a bill that will amend the Individuals with Disabilities Education Act. The bill cited as the ''Individuals With Disabilities Education Act Amendments of 1995,'' will extend 15 discretionary grant programs that support early intervention and special education research, demonstrations, technical assistance, and personal preparation through fiscal year 1996.

The IDEA is the principal Federal law that funds early intervention and special education programs for infants, toddlers, children, and youth with disabilities. Currently IDEA authorizes 3 formula grant programs and 15 discretionary grant programs. These discretionary grant programs expire September 30, 1995.

This legislation will send an important signal to family members of infants, toddlers, children, and youth with disabilities that Congress intends to continue supporting and funding these important programs. Part H of this legislation serves more than 76,000 infants and toddlers with disabilities. This extension also serves as a signal to States that part H and the other discretionary programs are important programs addressing the education needs of individuals with disabilities. Further, this bill lets our colleagues on the Senate Appropriations Committee know of our intent to reauthorize these programs, so that they will appropriate funds for these programs in fiscal year 1996.

This legislation extends the 15 discretionary programs under IDEA through September 30, 1996. This bill contains no substantive amendments to IDEA, and is a temporary measure allowing us additional time to develop a comprehensive reauthorization of IDEA. It is our intent to complete a comprehensive reauthorization bill in the early fall of 1995. When the comprehensive reauthorization is passed, it will repeal the extension.

The following colleagues from the Committee on Labor and Human Resources have joined me as cosponsors of this bill: Senator NANCY LANDON KASSEBAUM, Senator JAMES M. JEFFORDS, Senator DAN COATS, Senator MIKE DEWINE, Senator EDWARD M. KENNEDY, Senator CLAIBORNE PELL, Senator CHRISTOPHER J. DODD, Senator PAUL SIMON, and Senator TOM HARKIN.

ADDITIONAL COSPONSORS

S. 25

At the request of Mr. HELMS, the name of the Senator from Mississippi [Mr. LOTT] was added as a cosponsor of

S. 25, a bill to stop the waste of taxpayer funds on activities by Government agencies to encourage its employees or officials to accept homosexuality as a legitimate or normal lifestyle.

S. 304

At the request of Mr. SANTORUM, the name of the Senator from Montana [Mr. BURNS] was added as a cosponsor of S. 304, a bill to amend the Internal Revenue Code of 1986 to repeal the transportation fuels tax applicable to commercial aviation.

S. 327

At the request of Mr. HATCH, the names of the Senator from Minnesota [Mr. GRAMS] and the Senator from New Hampshire [Mr. SMITH] were added as cosponsors of S. 327, a bill to amend the Internal Revenue Code of 1986 to provide clarification for the deductibility of expenses incurred by a taxpayer in connection with the business use of the home.

S. 539

At the request of Mr. COCHRAN, the name of the Senator from Louisiana [Mr. BREAUX] was added as a cosponsor of S. 539, a bill to amend the Internal Revenue Code of 1986 to provide a tax exemption for health risk pools.

S. 673

At the request of Mrs. KASSEBAUM, the names of the Senator from Indiana [Mr. COATS] and the Senator from Pennsylvania [Mr. SANTORUM] were added as cosponsors of S. 673, a bill to establish a youth development grant program, and for other purposes.

S. 684

At the request of Mr. HATFIELD, the name of the Senator from Tennessee [Mr. FRIST] was added as a cosponsor of S. 684, a bill to amend the Public Health Service Act to provide for programs of research regarding Parkinson's disease, and for other purposes.

S. 715

At the request of Mr. D'AMATO, the name of the Senator from Pennsylvania [Mr. SANTORUM] was added as a cosponsor of S. 715, a bill to provide for portability of health insurance, guaranteed renewability, high risk pools, medical care savings accounts, and for other purposes.

AMENDMENT NO. 1265

At the request of Mr. THURMOND the names of the Senator from North Dakota [Mr. DORGAN], the Senator from Wisconsin [Mr. KOHL], and the Senator from Nebraska [Mr. KERREY] were added as cosponsors of amendment No. 1265 proposed to S. 652, an original bill to provide for a pro-competitive, deregulatory national policy framework designed to accelerate rapidly private sector deployment of advanced telecommunications and information technologies and services to all Americans by opening all telecommunications markets to competition, and for other purposes.

At the request of Mr. LEAHY his name was added as a cosponsor of amendment No. 1265 proposed to S. 652, supra.

AMENDMENTS SUBMITTED

TELECOMMUNICATIONS COMPETITION AND DEREGULATION ACT OF 1995

FEINSTEIN (AND OTHERS) AMENDMENT NO. 1269

Mrs. FEINSTEIN (for herself and Mr. LOTT) proposed an amendment to the bill (S. 652) to provide for a procompetitive, deregulatory national policy framework designed to accelerate rapidly private sector deployment of advanced telecommunications and information technologies and services to all Americans by opening all telecommunications markets to competition, and for other purposes; as follows:

On page 145, below line 23, add the following:

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

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

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

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

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

(c) DEFINITION.—As used is this section, the term ''scramble'' means to rearrange the content of the signal of the programming so that audio and video portion of the programming cannot be received by persons unauthorized to receive the programming.''

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall take effect 30 days after the date of the enactment of this Act.

FEINSTEIN (AND KEMPTHORNE) AMENDMENT NO. 1270

Mrs. FEINSTEIN (for herself and Mr. KEMPTHORNE) proposed an amendment to the bill, S. 652, supra; as follows:

On page 55, strike out line 4 and all that follows through page 55, line 12.

ROBB AMENDMENT NO. 1271

(Ordered to lie on the table.)

Mr. ROBB submitted an amendment intended to be proposed by him to the bill, S. 652, supra; as follows:

On page 146, below line 14, add the following:

SEC. 409. SENSE OF CONGRESS ON RESTRICTIONS ON ACCESS BY CHILDREN TO OBSCENE AND INDECENT MATERIAL ON ELECTRONIC INFORMATION NETWORKS OPEN TO THE PUBLIC.

(a) SENSE OF CONGRESS.—It is the sense of Congress—

(1) to encourage the voluntary use of tags in the names, addresses, or text of electronic files containing obscene, indecent, or mature text or graphics that are made available to the public through public information networks in order to ensure the ready identification of files containing such text or graphics;

(2) to encourage developers of computer software that provides access to or interface with a public information network to develop software that permits users of such software to block access to or interface with text or graphics identified by such tags; and

(3) to encourage the telecommunications industry and the providers and users of public information networks to take practical actions (including the establishment of a board consisting of appropriate members of such industry, providers, and users) to develop a highly effective means of preventing the access of children through public information networks to electronic files that contain such text or graphics.

(b) OUTREACH.—The Secretary of Commerce shall take appropriate steps to make information on the tags established and utilized in voluntary compliance with subsection (a) available to the public through public information networks.

(c) REPORT.—Not later than 1 year after the date of the enactment of this Act, the Comptroller General shall submit to Congress a report on the tags established and utilized in voluntary compliance with this section. The report shall—

(1) describe the tags so established and utilized;

(2) assess the effectiveness of such tags in preventing the access of children to electronic files that contain obscene, indecent, or mature text or graphics through public information networks; and

(3) provide recommendations for additional means of preventing such access.

(d) DEFINITIONS.—In this section:

(1) The term ''public information network'' means the Internet, electronic bulletin boards, and other electronic information networks that are open to the public.

(2) The term ''tag'' means a part or segment of the name, address, or text of an electronic file.

ADDITIONAL STATEMENTS

SMALL BUSINESS TAX ISSUES

• Mr. BOND. Mr. President, a few weeks ago the Senate made good on its historic opportunity to balance our Nation's budget, and we voted to save our children and tomorrow's children from a burden that they did not cause and do not deserve. The American people made their position on this issue crystal clear—a balanced budget is their top priority.

Even many of those who have longstanding interests in tax relief, including the small business owners that I hear from as chairman of the Committee on Small Business, do not want tax cuts at the expense of a balanced budget. One poll conducted by a nationwide organization representing over 600,000

small businesses showed that 95 percent favored a constitutional amendment requiring the Federal Government to balance the budget and that 88 percent believed Congress should focus its attention primarily on deficit reduction.

The Senate listened to the American people on this issue. We worked hard, debated earnestly, made difficult decisions, and fulfilled our obligation by voting to bring the budget into balance by the year 2002. The result of that work is not only a better financial legacy for America, but the production of an economic dividend of approximately $170 billion over the next 7 years.

When the opportunity for tax cuts arrives as a result of our control over budget deficits, Congress should view the economic dividend as a young, growing business would view a small influx of cash. It should be invested very carefully. I strongly believe that some tax relief needs to go to families with children. I also believe, however, that we should use a portion of the dividend in a way that will create jobs and stimulate investment and growth in our economy by providing tax cuts for small businesses.

Year after year small businesses generate a significant number of new jobs, even while corporate America downsizes. In fact, according to the Small Business Administration, small businesses provided 100 percent of the net new jobs from 1987 to 1992. By targeting some of the tax cuts toward small business we will not be spending the dividend but rather reinvesting it in our economy. That way, all Americans will benefit through an improved standard of living. Small businesses need cash to meet payroll, pay their day-to-day bills and to invest in capital improvements. In a recent study, small business owners identified tax burdens as their No. 1 problem. The economic dividend provides us with an opportunity to rectify the single most important concern of that portion of our economy that can contribute to America's economic growth.

When the Committee on Finance is determining what tax cuts should be enacted as a result of the budget resolution and the economic dividend, I strongly encourage the members to include on the priority list at least the following four targeted tax cuts to promote economic growth and job creation by American small business.

First, increase the small business expensing provision. Allowing a current deduction for newly purchased assets improves the cash flow of a small business. It also would encourage a small business to invest in new equipment which in turn helps manufacturing and related industries. This is a formula for maintaining and enhancing job growth.

Second, provide a 100-percent deduction for the health insurance costs of the self-employed. With the passage of H.R. 831 earlier this year, we gave the self-employed a permanent but only a partial deduction for health insurance. Corporate employers already are able to deduct the full cost of health insurance. This disparity in treatment continues to put the entrepreneurs of America at a disadvantage—23 percent of the self-employed are uninsured today. About 4 million of the uninsured are in families headed by a self-employed worker. A 100-percent deduction will make their insurance more affordable and help these families purchase the health insurance coverage they need and deserve.

Third, estate tax relief targeted specifically for small business. Generally, this would be a tax deferral for a family owned and operated business that is passed to heirs who continue to own and operate the business. As you know, this is a vital change because some owners of a small family businesses find they cannot afford to pass the business on to their children simply because they cannot afford to pay the estate taxes. A recent survey of family businesses showed that a mere 57 percent of owners planned on keeping the business in the family; taxes were cited as one of the prime reasons for their plans to sell out. Unfortunately, our system of taxation is working against us here. Rather than promoting and stimulating business growth, the law is forcing people to make decisions to sell or close what otherwise could be a viable enterprise.

Fourth, cut the capital gains tax rate and index it for inflation. In order to unlock built up asset values. Entrepreneurs that have become successful might repeat their job-creating activities in a new company if it were not for the disincentive in the tax laws against realizing and reinvesting these gains. The effect of permitting all capital gains to be reinvested more freely would be to give our economy a boost that it otherwise would not enjoy, and much of this reinvestment likely will be directed at small business. Simply said, a reduction in the capital gains rate will expand economic activity so all Americans will be able to reap the benefit of that growth by additional jobs and an improved standard of living.

As chairman of the Committee on Small Business, I urge my colleagues to look at tax-cutting opportunities as a way to make an intelligent, long-term investment in our small business sector but will benefit the entire economy.●

HARRY ZIMMERMAN MEMORIAL AWARD TO LEONARD FLORENCE

● Mr. KERRY. Mr. Present, this is the 10th anniversary of the Mary and Harry Zimmerman Memorial Dinner to benefit the Muscular Dystrophy Association. The city of Nashville and the Service Merchandise Co. host this event and I am proud to say that this year the prestigious Harry Zimmerman Award, named for the founder of the company, is being presented to a constituent of mine, Leonard Florence, for his philanthropic efforts and dedication to the cause of the mentally challenged.

Mr. Florence has served on the board of trustees of the Cardinal Cushing School and Training Center for exceptional Children of All Faiths since 1967 and has been instrumental in raising over $10 million for the school. The Charlotte and Leonard Florence Dental Clinic and Auditorium at Tufts University Dental School and the Charlotte and Leonard Florence Courtyard in the nursery school at Temple Mishkan Tefila also testify to his generosity.

In 1993, Pope John Paul II appointed Mr. Florence a Knight of the Order of Saint Gregory the Great. This is the highest award granted by the Pope and is awarded to persons of conspicuous virtue and notable accomplishment on behalf of society regardless of their religious belief.

Leonard Florence is an outstanding citizen who has given freely of his time and talents to the Commonwealth of Massachusetts and the Nation. I congratulate him on this richly deserved award.●

NGA GROCERS CARE AWARDS

●Mr. NICKLES. Mr. President, I wish to bring to the attention of the Senate the community contribution of the American independent retail grocers and their wholesalers.

In the past years, through the celebration of National Grocers Week, the House and Senate have recognized the important role these businesses play in our economy. The week of June 11–17, 1995, commemorates the ninth year that National Grocers Week has been observed by the industry to encourage and recognize grocers' leadership in private sector initiatives. Across the Nation, community grocers, through environmental initiatives, political involvement, and charitable support, demonstrate and build on the cornerstone of this great country—the entrepreneurial spirit.

In this annual celebration, the National Grocers Association (N.G.A.) and the Nation honor outstanding independent retail and wholesale grocers, State associations and food industry manufacturers for their community leadership with N.G.A.'s Grocers Care initiatives.

Grocers Care recognizes the involvement of the entire food industry in community, civic, and environmental programs, including support for private charities, education, and the performing arts, and community efforts to shelter and feed the homeless.

GROCERS CARE AWARD NOMINEES

Representatives from companies, organizations, and associations around the United States will be honored. The honorees include:

Alabama: John M. Wilson, Super Foods Supermarkets, Luverne; Peter V. Gregerson, Jr., Gregerson's Foods, Inc., Gadsden.

Arkansas: Steve Edwards, GES, Inc. dba Food Giant, Marianna.

California: John D. Denney, Denney's Market, Inc., Bakersfield; Donald W. Dill, Certified Grocers of CA Ltd., Los Angeles.

Colorado: Harold J. Kelloff, Kelloff's Food Market, Alamosa; John M. Todd, Toddy's Supermarkets, Greeley.

Florida: Lorena Jaeb, Pick Kwik Food Stores, Mango; Donald M. Kolvenbach, Affiliated of Florida, Tampa.

Georgia: Fred A. Ligon, Sr., Ligon Enterprises—Columbia, Decatur.

Idaho: William D. Long, Waremart, Inc., Boise; Ronald B. McIntire, Ron's Thrift Stores, Inc., Hayden Lake; Jack J. Strahan, Super 1 Foods, Hayden Lake.

Illinois: John B. Sullivan, J.B. Sullivan, Inc., Savanna.

Indiana: Larry D. Contos, Pay Less Super Markets, Inc., Anderson; William G. Reitz, Scott's Food Stores, Fort Wayne.

Iowa: Scott Havens, Plaza Food Center, Norwalk.

Kentucky: William R. Gore, G & J Market, Inc., Paducah; Thomas H. Litzler, Remke's Markets, Inc., Covington.

Louisiana: Ray Fremin, Jr., Fremin's of Lydia, Inc., New Iberia; Joseph H. Campbell, Jr., Associated Grocers, Inc., Baton Rouge; Barry Breaux, Breaux Mart Supermarkets, Inc., Metairie.

Maine: Richard A. Goodwin, Dick's Market, Clinton.

Michigan: Robert D. DeYoung, Sr., Fulton Heights Foods, Grand Rapids; Patrick M. Quinn, Spartan Stores, Inc., Grand Rapids; Parker T. Feldpausch, Felpausch Food Centers, Hastings; Richard Glidden, R.P. Glidden, Inc., Kalamazoo; Mary Dechow, Spartan Stores, Inc., Grand Rapids; Richard DeYoung, Fulton Heights Foods, Grand Rapids.

Minnesota: Cheryl J. Wall, Soderquist's Newmarket, Soderville; Stephen B. Barlow, Miracle Mart, Inc., Prior Lake; Daniel G. Coborn, Coborn's, Inc., St. Cloud; Christopher Coborn, Coborn's, Inc., St. Cloud; Gordon B. Anderson, Gordy's, Inc., Worthington; Walter B. Sentyrz, Sentyrz Supermarket, Minneapolis, MN; William E. Farmer, Fairway Foods, Inc., Minneapolis; Alfred N. Flaten, Nash Finch Company, Minneapolis.

North Dakota: John N. Leevers, Leevers Supermarkets, Inc., Devils Lake; Dalles E. Krause, Krause, Inc., Hazen; William Pauling, Bill's Fairway, Dickinson; Wallace Joersz, Bill's Super Valu, Mandan; Richard Bronson, Bronson's Super Valu, Inc., Beulah.

Nebraska: John F. Hanson, Sixth Street Food Stores, North Platte.

New Hampshire: Charles P. Butson, Butson's Supermarkets, Woodsville; Martin Kashulines, The Cracker Barrel, Hopkinton.

New Jersey: William Noto, Wakefern Food Corporation, Edison; David Sylvester, Wakefern Food Corporation, Edison; Catherine Frank-White, Wakefern Food Corporation, Edison; Robert Gal, Wakefern Food Corporation, Elizabeth; William Sumas, Village Supermarkets, Inc., Springfield; Mark K. Laurenti, Shop-Rite of Pennington, Trenton;.

New Mexico: Glen Holt, Thriftway Super Market, Ruidoso; Martin G. Romine, California Super Market, Gallup.

New York: Jerome F. Pawlak, Bells Food Center, Albion.

Ohio: Walter A. Churchill, Sr., Churchill's Super Markets, Inc, Sylvania; Ronald C. Graff, Columbiana Foods, Inc., Boardman; James A. Stoll, Bag-N-Save Foods, Inc., Dover; Cynthia L. Stoll, Bag-N-Save Foods, Inc., Dover; Joseph J. McAndrew, Columbiana Foods, Inc., Boardman; Robert Graff, Columbiana Foods, Inc., Boardman; Joseph McAndrew, Jr., Columbiana Foods, Inc., Boardman.

Oklahoma: Jack V. Buchanan, Buchanan Food Mart, Inc., Oklahoma City; Bill G. Johnson, Johnson Foods, Inc., Muskogee; Gary Nichols, Nichols SuperThrift, Checotah; Maurice D. Box, Box Food Stores, Tahlequah; R.C. Pruett, Pruett's Food, Inc., Antlers; John Redwine II, John's IGA, Inc., Spiro; Darold Anderson, Affiliated Food Stores, Tulsa; Thomas D. Goodner, Goodner's Supermarket, Duncan; Donald M. Wigley, Valu-Foods, Inc., Oklahoma City.

Oregon: Ross Dwinell, United Grocers, Inc., Milwaukee.

Pennsylvania: David L. McCorkle, Pennsylvania Food Merchants, Camp Hill; Christy Spoa, Sr., Save-A-Lot, Ellwood City; Alfred L. Krout, Clemens Markets, Inc., Kulpsville.

South Dakota: John Clarke, County Fair Food Store, Mitchell.

Tennessee: H. Dean Dickey, Giant Foods, Inc., Columbia; Michael S. Dickey, Giant Foods, Inc., Columbia; D. Edward McMillan, K–VA–T Food Stores, Inc., Knoxville.

Texas: R.A. Brookshire, Brookshire Brothers, Inc., Lufkin; Tim Hale, Brookshire Brothers, Inc., Lufkin; Benny R. Cooper, Affiliated Foods, Inc., Amarillo; George Lankford, Affiliated Foods, Inc., Amarillo.

Utah: G. Steven Allen, Allen's Super Save Markets, Orem; Keith S. Barrett, Barrett's Foodtown, Inc., Salina; Richard A. Parkinson, Associated Food Stores, Salt Lake City.

Virginia: Gene Bayne, Gene's Super Market, Richmond; Eugene Walters, Farm Fresh, Inc., Norfolk; Steven C. Smith, K–VA–T Food Stores, Inc., Abingdon.

Vermont: Douglas A. Tschorn, The Wayside Country Store, Arlington;

Washington: Steve Herbison, U.R.M. Stores, Inc., Spokane; Craig Cole, Brown & Cole, Inc, Ferndale.

Wisconsin: Jerome Baryenbruch, Hometown Supermarket, Spring Green; Dean M. Erickson, Erickson's Diversified Corp., Hudson; Richard L. Lambrecht, Mega Foods, Eau Claire; Chip Courtney, Medford Co-Op, Medford; Robert D. Ranus, Roundy's, Inc., Milwaukee; Fred H. Lange, Lange's Sentry Foods, Madison.

West Virginia: David G. Milne, Morgan's Clover Farm Mkt., Inc., Kingwood.

The following State associations are instrumental in coordinating information relative to the community service activities of their members: California Grocers Association, Rocky Mountain Food Dealers, Connecticut Food Association, Georgia Food Industry Association, Retail Grocers Association of Kansas City, Kentucky Grocers Association, Louisiana Retailers Association, Maine Grocers Association, Michigan Grocers Association, Minnesota Grocers Association, Missouri Grocers Association, New Hampshire Retail Grocers Association, North Carolina Food Dealers, North Dakota Grocers Association, New Mexico Grocers Association, Food Industry Assn Executives, Ohio Grocers Association, Youngstown Area Grocers Association, Cleveland Food Dealers Association, Oklahoma Grocers Association, Tennessee Grocers Association, Utah Food Industry Association, Vermont Grocers Association, Wisconsin Grocers Association, West Virginia Association of Retail Grocers.

Manufacturers: American Forest & Paper Association; Berkel Inc. Borden, Inc.; Campbell Soup Co.; Discover Card/NOVUS Services; General Mills, Inc.; Georgia-Pacific Corp.; Gerber Products Co.; Kellogg USA Inc.; Kraft Foods; Lever Brothers Co.; Louisiana Lottery Corp.; McCormick & Co., Inc.; Nabisco, Inc.; Paramount Foods, Inc.; Procter & Gamble Co.; RJ Reynolds Tobacco Co.; Thomas J. Lipton Co.; and VISA U.S.A.●

RHODE ISLAND'S HOPE DAY

● Mr. PELL. Mr. President, on May 29 the State of Rhode Island and Providence Plantations observed not only Memorial Day but also Hope Day, commemorating the 205th anniversary of the State's ratification of the U.S. Constitution.

It was at 5:20 in the afternoon of May 29, 1790, we are told, that the final vote was taken at a convention of delegates from all parts of the State, giving Rhode Island's belated and somewhat grudging approval to the new Federal Constitution. The vote was 34 to 32, making the smallest of the Thirteen Original Colonies to join the new union of States which had come into being the previous year.

The word ''Hope'', which the State took as its motto in 1875, in recent years has become associated with the anniversary of the date of Rhode Island's ratification, signifying the high expectations of that occasion.

This year, the Hope Day commemoration, under the chairmanship of G. Brian Sullivan of Newport, included an invitation to all churches in the State and all vessels in Narragansett Bay to sound their bells and horns at 5:20 p.m. in a reenactment of the ''Great

Tintinnabulation'' of May 29, 1790, when church bells throughout the State heralded the outcome of the vote on ratification.

Mr. President, I ask to have reprinted in the RECORD proclamations of Hope Day 1995 by Gov. Lincoln Almond and David F. Roderick, Jr., mayor of Newport.

The proclamation follows:

THE GOVERNOR OF THE STATE OF RHODE ISLAND—PROCLAMATION

Whereas, on May 29, 1790, Rhode Island became our country's thirteenth state, fulfilling the hope of our nation's forefathers who sought unity and upheld the motto ''E Pluribus Unum''—''One Composed of Many''; and

Whereas, while Rhode Island led the thirteen original colonies in rebelling against the tyrannical rule of England with the destruction of the British revenue sloop ''Liberty'' in 1769 and the burning of the schooner ''Gaspee'' in 1772, it would not seek democracy and its status as an independent state until May 29, 1790; and

Whereas, while Rhode Island was the last of the original thirteen colonies to ratify the federal constitution, our founding fathers—Dr. John Clarke and Roger Williams—were instrumental in creating the Great Charter granted by King Charles II on July 8, 1663, assuring Rhode Island's complete religious freedom, an antecedent to the Bill of Rights; and

Whereas, on this fourteenth commemoration of ''Hope Day,'' all of Rhode Island should stand proud in recognizing that on this great day back in 1790, federal unification became complete and the thirteen original colonies had become one nation;

Now, therefore, I Lincoln Almond, Governor of the State of Rhode Island and Providence Plantations, Do Hereby Proclaim, May 29, 1995 as Hope Day.

MAYOR OF THE CITY OF NEWPORT—PROCLAMATION

Whereas, in May of 1776, Rhode Island became the first of the thirteen original colonies to rebel against the tyranny of King George III, by declaring its independence from the Crown on May 4, 1776; and

Whereas, with the Revolutionary War won, it was not until fourteen years later, on May 29, 1790 that Rhode Island signed the Constitution, making it the official document of law in the land; and

Whereas, in recognition of the Ratification of the Constitution, church bells rang out through the State of Rhode Island and Providence Plantations; and

Whereas, in recognition of that day, the fourteenth annual commemoration of Hope Day and in celebration of USA Day in Newport, Now therefore be it

Resolved, That I, David F. Roderick, Jr., Mayor of the City of Newport in the State of Rhode Island and Providence Plantations, do hereby proclaim May 29, 1995, during the Memorial Day observance, to be Hope Day & U.S.A. Day in the City of Newport, and invite all cities and towns in the State of Rhode Island and Providence Plantations to join with us in celebrating the 205th birthday of the Constitution of the United States.●

CELEBRATING THE 1965 ALUMNI CLASS OF CHARLES SUMNER HIGH SCHOOL 30-YEAR CLASS REUNION

● Mr. BOND. Mr. President, I would like to take a few moments to recognize the 1965 alumni class of Charles Sumner High School on their 30-year class reunion. Charles Sumner High School, located in St. Louis, MO, is one of the oldest high schools west of the Mississippi River founded in 1875.

Sumner High has been one of the most prestigious schools in the Midwest, concentrating on educating students for a college curriculum. The alumni of Sumner high are very proud and distinguished people. It is with fond memories that the Class of 1965 recognize and remember their Alma Mater as ''No Substitute for Excellence.''

Mr. President, the 1965 alumni class of Charles Sumner High will be celebrating their 30-year class reunion on June 16–18. I would like to extend my sincere congratulations and best wishes to the Class of 1965, and hopes for continued success in the future.●

KID'S APPRECIATION DAY

● Mr. PRYOR. Mr. President, I rise today to speak on the importance of establishing a Kid's Appreciation Day to pay tribute to the children of this Nation. The question that is on the lips of children is ''If there's a Mother's Day and a Father's Day, why isn't there a Kid's Day?'' This is met with the standard response ''Because every day is Kid's Day.'' Well, Mr. President, nothing could be further from the truth.

The children today deal with problems that were unfathomable when we were growing up. When I was young, one of my biggest worries was making it home to dinner on time. In many places today, kids worry more about dodging bullets, drug dealers, and whether they will live to see adulthood. Some children rarely see their parents who must hold two jobs in order to put food on the table.

There is nothing as valuable on this Earth than our children. We are handing these children the impossible task of dealing with problems that we have failed to solve. I know that having a Kid's Day won't solve these problems. But it would show our chidren that we appreciate them. I know the children of Arkansas want to be appreciated. A fine young lady named Vivian Rose has taken it upon herself to lead the children of my State toward this goal. She has presented this idea to Gov. Jim Guy Tucker who gives it his full support. I praise both of them for their efforts and commend them on their leadership in Kid's Appreciation Day.

Children are our most valuable asset and deserve to be valued on a special day. A Kid's Day would not only show our appreciation and gratitude but would instill in them a sense of comfort that they would hold dear. It would make children feel important and wanted instead of neglected. This holiday would give kids a chance to spend time with their parents. Time that they don't normally have. There could be free admission for museums and amusement parks. Local parks and swimming pools could be open to the public. It would be a day for parents to let their kids know that they care about them and this would help our children overcome the obstacles that they face to become the future leaders of tomorrow.

Mr. President, nations around the globe have Kid's Days. In fact, I'm told that the Kiwanis Club also sponsors a Kid's Day. They have parades, games, races, and give awards to celebrate children. I strongly recommend that we follow the lead of the Kiwanis Club, Governor Tucker, and Vivian Rose by making Kid's Day a reality nationwide. Children that feel wanted and appreciated are a strong defense against the violence these kids encounter in their neighborhoods. It is our responsibility as adults and role models to guide them toward the correct path of purpose. This holiday would place a smile on the faces of our kids and would put comfort in our hearts knowing that they are facing the world with added strength and resilience. Mr. President, Kid's Appreciation Day is a noble cause and I urge you to join me and my State in its support.●

Mr. LOTT. Mr. President, I do have some closing unanimous-consent requests, but I would withhold if the distinguished Senator from Nebraska has some comments he would like to make.

Mr. KERREY. I thank the Senator from Mississippi.

Mr. President, I rise but will withhold most of my comments. The Senator from South Dakota and I will have an opportunity to go round and round again on the DOJ rule amendment tomorrow.

I would point out for those few who are still remaining and listening to this, that this amendment illustrates why colleagues should be paying attention to this piece of legislation.

I, myself, support this particular section, this preemption by the Federal Government. But it is a significant preemption. Any time we see language that says, ''We hereby preempt State and local laws'' around here, you only get 90 votes against it.

Lately, the mood is shifting, and I think quite correctly so. The Supreme Court is shifting right along with it to an argument that cedes more and more power to the State government, whether it is welfare reform, health care, or whatever it is.

We are block granting after block granting after block granting more authority back to the State law. As I said, the Supreme Court is increasingly challenging our authority to intervene at all at the local level, the State level. Intervening with State laws at all gets to be a difficult business.

This piece of legislation preempts not just State laws but preempts local laws, I think quite repeatedly so. If we want a competitive environment, these airwaves, these cables, these lines, do not stop at a border.

It is, it seems to me, an interstate commerce issue. Nonetheless, it will

feel very much local when we are dealing with local cable or local telephone. The citizens are not likely to think of it as an interstate issue as much as we are, who are trying to create some uniformity.

I think the Senator from South Dakota is quite right. This does get to the heart of the bill. It is an effort to preempt and create uniformity in the country and create certainty in the country so investment can be made and all the things that need to occur, if we are going to see this legislation produce the desired effect and benefits, for example, reduced prices for consumers, for cable.

My belief is that in short order, people are going to be buying video, dial tone, text, in a package form, but if they get a reduced price for that and they get improvement in quality and service, we have to take this action and come in and preempt the way the States can regulate.

This legislation, by this section here, not only removes the barrier, but it sets up the title 3 section which moves to pricing flexibility, not just allowing States, but requiring the States to end a rate-based rate of return system of regulation.

In this legislation, we are accelerating the number of States that have adopted alternative regulatory regimes. We are saying that we will not wait for State legislatures to take action or public service commissions to take action.

We will preempt their authority and say we they will end rate-based pricing and go to a price cap system and try to give these companies that are selling telecommunications service more flexibility. I think that has merit, frankly.

This idea of preemption, I think, is a very important idea as part of this legislation, but I believe that it illustrates why colleagues need to be alert to the reaction that this will produce after this legislation is enacted. With the filing of cloture, that the distinguished Senator from Mississippi just did, this bill is coming to a vote relatively soon.

Unless I have this thing figured out wrong, it is likely there will be a majority of Senators voting for it. I hope my colleagues understand this is not likely to be the last situation but the first situation of many, many, where we need to understand where it is we are going in order to be able to answer a citizen that will say, ''Wait a minute. This is big change.'' Yes, it is, American citizen. This legislation represents significant change in the way that we regulate and the way the Federal Government establishes its presence at the local level and at the State level.

I see ways to interpret the amendment that the Senators from California and Idaho have presented, striking this particular language. Part of this language does appear to be a bit vague to me, as well. No matter how we do it, if they want to strike the section, we are still left with significant preemption in the overall title.

I yield the floor.

Mr. HATFIELD. Mr. President, the legislation now before the Senate attempts to bring the 1934 Communications Act up to date with our Nation's current telecommunications needs. Telecommunications reform has been the subject of a great deal of debate in previous years and it is widely acknowledged that reform is necessary. However, as with any measure addressing such a broad segment of our national economy, there are many differing opinions regarding how best to proceed.

The telecommunications industry has expanded rapidly in recent years due to significant advances in technology and increasing consumer demands. A large portion of the evolution in this industry can be attributed to increased competition. Daily, millions of Americans at work, in school, and at home rely on telecommunications networks for communication, information, and entertainment. There is an enormous interest in the final outcome of this debate because enactment of a revised telecommunications law will affect virtually every American.

The underlying goal of telecommunications reform must be to do what is best for consumers. There may come a time in the future when the Federal Government can remove itself from any involvement in this industry, but we have not reached that point. I believe it is necessary for government to continue to play a role in telecommunications oversight to protect the American consumer.

The Telecommunications Competition and Deregulation Act of 1995 attempts to deregulate this industry and largely allow market forces to structure the industry. I support the free market ideals of this legislation. However, we must recognize that deregulation is not always synonymous with fair competition. Due to the fact that a small group of companies control most of our nation's telecommunication networks, there are many concerns about the potential abuse of this advantage. In order to ensure the American people are the ultimate beneficiary's of these services, we must provide adequate safeguards to accompany these deregulatory efforts.

There are presently a number of government entities with responsibility for the oversight and regulation of the telecommunications industry. Not only are many of these roles duplicative, but they are also extremely cumbersome for consumers and the companies providing the services.

One historical example of these overlapping functions is the break-up of the AT&T telephone monopoly. The Department of Justice initiated this action by determining that AT&T was in violation of Federal anti-trust laws. The courts followed by establishing the modified final judgement which created the seven Regional Bell Operating Companies. Currently, the Federal Communications Commission, the Department of Justice, State and local governments, and the courts each oversee segments of the long distance and local telephone services in this country. The break-up of AT&T was a necessary development, but the final results continue to confuse and alienate consumers to this day.

The legislation we are debating today addresses almost every aspect of the telecommunications industry in some capacity. Additionally, it allows Congress to re-establish its responsibility for setting policy in this area. For the past 6 years the Congress has attempted to address this issue. Though these efforts have largely been unsuccessful, we all recognize this area needs reform and that action is past due. The House and Senate have each crafted bills to revise current telecommunication laws this year and the congressional leadership has also made their strong commitment to passing a telecommunications reform bill very clear. This will not be an easy endeavor, but I remain hopeful that Congress will move forward on this important matter in this Congress.

During this important debate, we have heard a great deal about how this legislation will impact the telecommunications industry. However, Mr. President, it is also the Federal Government's rightful role to help our citizens receive access to advanced technologies and not just reserve this privilege to those who can afford it. The provision included in this bill by Senators SNOWE and ROCKEFELLER will allow rural health care facilities, public schools, and libraries to receive telecommunication services at a discounted rate. The Snowe-Rockefeller language, which I support, will provide telecommunications access to numerous needy institutions throughout our country. For example, the Portals Project in Oregon, which electronically links several learning institutions, will be a beneficiary of this amendment.

Mr. President the reform of this industry is a huge effort and I commend the chairman of the Senate Commerce Committee, Senator PRESSLER, and the panel's ranking minority member, Senator HOLLINGS, for their leadership on this important matter. They have both worked long and hard on this contentious issue to establish a foundation for the future of our telecommunications needs.

I continue to have several concerns with the Pressler-Hollings bill, which I hope will be addressed through the amendment process. However, I also believe they have crafted a bill that takes a comprehensive step toward addressing the needs of the American consumer and the telecommunications industry as we move further into the Information Age of the twenty-first century.

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—

said, after 3 months, we have no objection. It still took them 7 months to issue it. And the amendment proposes to add this bureaucracy to the present FCC review. That would lead to costs and delays. It has in the past.

As I stated before, the court suggested 30 days and it has taken an average of 2½ years. In the example I just cited there was no controversy. After 3 months, AT&T said it had no objection. It still took the Department of Justice 7 months to issue that. It is tortuously slow, and businessmen waiting for that paperwork have been torturously treated, because they sit there with that investment ready to go, there is no objection, and they wait and wait. This huge bureaucracy with all these brilliant lawyers cannot produce the paper.

The second generic request, which consolidated 23 then-pending waivers, covered interLATA wire services such as cellular phones, two-way paging, and vehicle locators. It, too, was filed in December 1991. It then languished before the Department for 3 years before finally being submitted to this court. Now, 4 years after it was originally filed, the waiver is still pending; 4 years, a simple waiver in that Department of Justice—the same department that the Assistant Attorney General for Antitrust is asking this body to give an additional review—that would simply hold things up. I think that would be a very great mistake.

The period for public comment and investigation spent in connection with the generic wireless waiver request alone is more than three times as long as the period allowed by the court for public comment and review of the entire decree in 1982.

It is also eight times longer than it took for AT&T to get a factually and theoretically correct request processed. When AT&T sought relief in connection with the cellular properties in McCaw Communications, it was able to file its requests directly with the court and obtain a decision in just 7 months. During those 7 months, however, the BOC's motion for generic wireless relief continued to languish before the Department, just as it had for the 3 years before. This is 3 years waiting for one simple piece of paper.

Surely the referral procedures were not intended to bring about such disparate treatment of the BOC and AT&T when they made similar requests. The remaining BOC generic requests have followed the same path of delay upon delay.

The third request covering delivery of information services across LATA boundaries was submitted in June 1993 and, now, 20 months later, still awaits Department action.

So I will go on to a fourth. The fourth, covering interexchange services provided outside of SBC's region, was filed in July 1994 and was fully briefed before the Department by September 27, 1994. The blame for these delays simply cannot be laid at the BOC's feet. The number of requests filed with the Department held steady at roughly 20 to 30 per year from 1987 through 1991 and dropped sharply thereafter. More important, none of these requests have been frivolous and virtually every one of them has been granted.

I have identified 266 waiver applications that have been presented to the court either directly or in the form of a consolidated generic waiver. Of these, the court has approved 249 in their entirety and 5 in part. The court has denied only six, and another six remain pending.

So, while the record is clear about the failure of the Justice Department to act in a timely manner, the Department of Justice is here now, on the Hill, lobbying for still more power and authority and an unprecedented decisionmaking role. Whatever the excuses one may offer as to why delay has taken place, the facts are undeniable. Referral to the Department of Justice precludes timely resolution because the Department does not take timely action, even if ordered to do so.

Now my friends who are offering this amendment tomorrow, which will be voted on, and I think it is one of the key votes of this session, glibly say we have a requirement that everything has to be offered and dealt with within 90 days. Well, the district court had a requirement that they be dealt with within 30 days. This is notwithstanding all the efforts to speed them up.

I think Senator EXON of Nebraska has eloquently explained that Congress has passed many deregulation measures—for airlines, trucking, railroads, buses, natural gas, banking and finance. None of those measures, according to Senator EXON, give an executive branch department coequal status as regulators. What Justice is seeking here is essentially a front-line role with ad hoc veto power. Justice would be converting from a law enforcement to a regulatory agency. It would end up focusing chiefly on just this sector of the economy.

Why does Justice want to do this? They have their Assistant Attorney General for Antitrust lobbying, so I am told, calling Senators, and urging that this be so.

Why do they wish this? It is very unusual, because the Justice Department has the Sherman and the Clayton Acts oversight. They have the Hart-Scott-Rodino preapproval on antitrust. They have plenty to do. In fact, I have the statistics that they are way behind on a lot of their other work. The Justice Department is not supposed to be a regulatory agency. It is supposed to be a law enforcement, antitrust enforcement agency. But they have gotten into this habit because of the district court action in 1982. They have a bunch of lawyers and staff over there, who are regulators. That is what the FCC is for.

So we just do not need to create the equivalent of a whole new regulatory agency just for telecommunications. It is just not needed. The sort of extraordinary power is just not needed here.

Let us look. There are nearly two dozen existing safeguards that are already contemplated and required by this bill. There is a comprehensive, competitive checklist of 14 separate compliance points—unbundling, portability, the requirement for State regulator compliance, the requirement that the Federal Communications Commission make an affirmative public interest finding, the requirement that Bell companies comply with separate subsidiary requirements, the requirement that the FCC allow whole public comment and participation, including full participation by the antitrust division in all its various proceedings, the requirement that Bell companies comply with all the existing FCC rules and regulations that are already on the books, including an annual attestation, very rigorous audits, elaborate cost accounting manuals and procedures, computer assisted reporting and analysis systems such as the FCC's new automated regulatory and management information systems, and all the existing tariff and pricing rules, full application of the Sherman Antitrust and Clayton act, and full application of the Hart-Scott-Rodino Premerger Notification Act requiring Justice clearance in most acquisitions.

I think our present Attorney General, and the Assistant Attorney General for Antitrust, have done a good job in many of the Hart-Scott-Rodino areas that I have observed. That is what the Justice Department is supposed to do, and not worry about creating a bureaucracy and keeping several hundred lawyers employed over there.

There is also the full application of the Hobbs Civil Appeals Act, Section 402(a) of the Communications Act which makes the Antitrust Division automatically an independent party in every FCC common carrier and rulemaking appeal.

Finally, a consensus approach in this bill has been hammered out in the most bipartisan way possible. It has strong support on both sides of the aisle.

We are all aware that several States have moved in the direction of deregulating telecommunications. I know that Nebraska, Illinois, Tennessee, North Carolina, Florida, New Jersey, Pennsylvania, California, Wisconsin, Michigan—none of those States has given their Governors or attorneys general the kind of extraordinary new powers which this Dorgan-Thurmond amendment would create here at the Federal level for the U.S. Department of Justice.

There are plenty of safeguards in this bill and existing law already. If any competitive challenges arise because the Antitrust Division is not allowed to convert itself into a telecommunications regulatory agency, Congress can revisit the issue. Justice already has adequate statutory powers. This amendment represents the sort of undesirable approach toward regulation that the American public rejected last

fall and which we as a country cannot afford. The Justice Department already has a big role in telecommunications regardless of whether this amendment is adopted. The Department enforces the Sherman and Clayton antimerger laws, and they certainly apply to telecommunications.

The Department has been an active participant in dozens of Federal Communications Commission proceedings over the years, and it will remain an active participant. Under section 402(a) of the 1934 Communications Act, moreover, the Antitrust Division has special status in every FCC common carrier and rulemaking appeal. They are what is called a statutory respondent, which means they are automatically an independent party in all of those appeals in court actions.

So what we are really talking about here is whether to give the Antitrust Division even more of a role than they will have, and will continue to have. And, frankly, I would like to know why we need to have this enormous amount of overlapping and duplicative effort focused on telecommunications. I do not think the case has been made that existing law is inadequate. In fact, I think it would be almost impossible to do so because, it seems to me, Justice has all the enforcement tools it needs without additional surplus legislation.

I expect what all this boils down to is the Justice Department has about 50 people spending $2 or $3 million a year trying to operate like a telephone regulatory agency, a telephone regulatory agency, and they like their jobs. They are up here telling us, if we do not adopt this amendment, all sorts of bad things are going to happen.

They simply do not need this amendment if they want to stick to their traditional role of being an antitrust enforcement agency.

When this bill was introduced before the Commerce Committee, my distinguished colleague, the Senator from Arizona, noted that with more of the little provisions we added the more jobs we were creating for the Federal bureaucracy. That is exactly what we have here, the functional equivalent of a jobs bill for the bureaucracy which we just do not need.

The historic role of the Antitrust Division of the U.S. Department of Justice has been to operate as a law enforcement agency, not a regulator deciding which company can or cannot get into the market. That kind of market entry decisionmaking has not been one of the Justice's roles until very recently—indeed, not until they drafted the AT&T antitrust consent decree.

I do not agree that the Justice Department and the executive branch should be placed in this kind of industrial policymaking role. The Department should remain a law enforcement agency. I simply do not agree that it should transform itself into the functional equivalent of a regulatory agency.

I am also a bit concerned about what the long-run effect of this kind of institutional transformation might be. On April 2, the Associated Press reported that the total dollar volume of corporate mergers and acquisitions reached a record $135.2 billion worldwide during just the first quarter of 1995. Last year, there were an all-time record number of these megamergers totaling some $339.4 billion. That was up to 43 percent compared with 1992.

At the same time this tremendous number of mergers and acquisitions is taking place the Antitrust Division seems to be focusing upon becoming a telephone regulatory agency. I agree that telecommunications is critically important. But we have the Federal Communications Commission. We have the Public Service Commissions in all 50 States plus the District of Columbia. I do not think the taxpayers should be forced to pay to create and then support yet another telecommunications regulatory agency, namely the Antitrust Division. The Antitrust Division should concentrate on its traditional role of enforcing the antitrust laws. They should be examining all those massive mergers and acquisitions that are taking place. They should not be spending all of this time and effort focusing on duplicating what the FCC and the State commissions are perfectly capable of handling.

Mr. President, I have pointed out before how slow the Justice Department is. We all know that my friends in the long distance industry, some of them, are pushing for this amendment. They see it as another promising way to game the process. They want to game the process rather than deregulate, to use the Federal Government to block additional competition. And remember, delay in this area has genuine cash value.

I am very concerned that we take a look at some of the hopes of some of these companies. I consider them my friends, but I think that they are acting against consumers here. We really need to pass this bill. This bill sets up a system for competition.

So, Mr. President, this bill represents the work of a bipartisan group of Senators who started work in November. This telecommunications bill received a vote of 17 to 2 coming out of the Commerce Committee with all the Democrats on the committee. There is a wide range of ideological spectrum there among the 9 Democrats and 10 Republicans, but it happened to receive all the votes of the Democratic Senators. Now the White House is raising questions. My friend from Nebraska is raising questions. But we included them in our process. We did our best to get a bipartisan bill.

It is going to be tough to pass this bill because in telecommunications legislating, as we found last year and over the decades, each group can be a checkmate. Any one of the economic apartheid groups in telecommunications can checkmate at any point in the process. It is like playing chess with several people and anybody can checkmate.

What has happened since the 1934 Communications Act is an economic apartheid has sprung up and companies have done very well with this company doing local service, this area doing long distance service, this area doing cable TV, this area doing broadcasting, and utilities prohibited from participating in all of this. This is a massive bill that brings everybody into competition. It is procompetitive, deregulatory if we can keep it that way.

What is happening, however, is that each day and each month that this bill has moved forward, a lot of companies have said, wait a minute, when we said deregulation we meant deregulation of for me, not the other guy. When we presented them a fair playing field, they said, wait a minute, we want a fair playing field with just a slight advantage. And virtually every lobbyist in America has been working on this bill in one form or another.

We have held off granting certain special deals to certain groups in this Senate bill. For example, the newspaper publishers group sought special treatment for their electronic subsidiaries, and in the Senate we said, no, everybody has to compete. Now, they have obtained that special treatment in the House bill.

Who knows, I may well be outvoted on that. But that is an example of how we have tried to hold the line on competition. We have tried to make it a procompetitive bill.

Now, in our history, in terms of telecommunications, this bill will take us into the wireless age, which I think is about 10 or 15 years away. Some people think it is only 5 years away. But that will be an age when wires may be obsolete, and we are a ways away from that. But we need this bill as a road map to get everybody into everybody else's business.

Right now, regional Bells have to invest abroad if they want to manufacture because they are restricted from doing so here at home. Other companies have this line of business or that line of business restriction on them. This will let everybody into everybody else's business. It will allow a great deal of competition.

Now, some will say, that will just result in a group of monopolies. It will not, because we have the antitrust laws. But also let us look back to that day in 1982 when the Justice Department made two decisions on the same day. The Justice Department decided to allow IBM and the computer industry to go into the marketplace and to let there be winners and losers. It decided to place the MFJ ruling under Judge Greene on the telecommunications companies and break up into regional Bells under heavy government regulation.

Now, you can argue this forever. This will be argued forever in industrial history. But what happened in the computer area has been magnificent. We

have new technology and product cycle every 18 months. The turnover is so great. There are not Government standards. There have been winners and losers, some big winners and some big losers, some have gone out of business, some have become the Bill Gateses of this world. It has been truly amazing to compare the two tracks: one a highly regulated area and the other deregulated. And we will have that sort of an industrial argument.

Now we have come to a point in our history when we need another industrial restructuring, and this one should be done by Congress. Congress should assert its responsibility for a change. The reason the courts acted regarding the telecommunications area was because Congress could not, because it is so politically sensitive. It is going to be tough to get through conference. It is going to be tough to get it through the House. It is going to be tough to get it signed because we have some indications that the President might not be willing to sign it. I hope he is because I think it is the best bipartisan bill that we will be able to get.

So I am going to step back to my charts once more and explain exactly what the bill is one final time.

The Telecommunications Competition and Deregulation Act of 1995 is designed to get everybody into everybody else's business in telecommunications. It is a massive bill. What does it do? First of all, in order to get into other businesses in telecommunications, they would first comply with State market opening requirements.

Second, they would go to the FCC where there are two tests. The first one is the standard of public interest, convenience and necessity test that has been going on for years and years.

Third of all is the FCC would certify compliance with the 14-point checklist. That is the checklist that I will explain here in just a minute.

The regional Bell telephone companies would have to comply with the separate subsidiary requirement, the nondiscrimination requirement, and cross-subsidization ban.

The fifth step would be the Federal Communications Commission would allow the DOJ full participation in all its proceedings.

Now, the Bells must comply with existing FCC rules in rigorous annual audits, elaborate cost accounting, computer-assisted reporting, and special pricing rules. So there are a lot of requirements here that will force the Bell operating companies to open up their businesses, to unbundle, and to interconnect so that people can form a local telephone service and be successful with it.

Meanwhile, the full application of the Sherman Antitrust Act would continue with the Justice Department, and the Clayton Act, and the Hart-Scott-Rodino Act. The Hobbs Civil Appeals Act involving DOJ as an independent party and all FCC appeals would continue, so the Justice Department is already involved. What we would create through the Dorgan-Thurmond amendment is just another layer of bureaucracy.

The competitive checklist has been distributed to all Senators. This checklist was developed as a compromise to the VIII(c) test to determine when companies should be deemed eligible to enter the market, when they have opened up their local markets.

The problem with competition in telecommunications is that you have to use somebody else's wires to get where you are going. There have to be some ground rules. So we came up with this checklist that the FCC would use, in addition to the public interest standard.

The first one is access to network functions and services. That is an interconnection. I went over to visit the Bell Atlantic facility here, and I've seen what interconnection and unbundling actually is.

Next is capability to exchange telecommunications between Bell customers and competitors' customers.

Next, access to poles, ducts, conduits, and rights of way.

Next, local loop transmission unbundled from switching. There are three points on unbundling the system so other people can get into it and market things through the Bell company's system and wires.

Next, local transport from trunk side unbundled from switch.

Next, local switching unbundled.

Next is access to 911 and enhanced 911—which for emergency you might push one button—directory assistance and operator call completion services.

Next, white pages directory listing available at a reasonable price.

Next, access to telephone number assignment.

Next, access to databases and network signaling.

Next, interim number portability.

Next, local dialing parity.

Next, reciprocal compensation.

And last, resale of local service to competitors.

So there we have the measures to assure the breakup of local Bell monopolies. Now the big question is, will the regional Bell companies let competition in? Well, if they do not, under S. 652 they will pay immense financial penalties.

This checklist was agreed to. We had night after night of meetings in January and February. We first wrestled with the VIII(c) test. Other Senators wanted a LeMans start. We came up with this checklist on a bipartisan basis, and I think it is the thing that will move us towards competition.

I have already talked a little bit about the problem with the amendment tomorrow. I wanted to just point out again the average length of time that some of these waivers require. This first chart shows the number of days from zero to 1,200, starting in 1984, how the length of time has expanded for the average age of waivers pending before the Department of Justice at year end.

What has happened is the Department of Justice has gotten slower and slower and slower. As the court has told it to go faster and faster, it has arrogantly gone slower and slower. What is going on? Can someone give me an explanation?

How can it be in 1993 it averaged nearly 1,200 days to get an answer, a piece of paper, out of the Department of Justice?

What the Dorgan-Thurmond amendment is suggesting is that we finish all the checklist, all the public interest requirements, all the other requirements and all the other safeguards, then we go to the Justice Department. My friends say, ''That will only take 90 days,'' but look at the record, look at the videotape, as they say in reporting sports.

On this chart it illustrates the number of requests with the Department of Justice and how frustrated industry has become. They start out about at 86, shortly after that they were hopeful, up to 80. It dropped way down in 1992 and 1993. It is not because there are too many requests filed. People are just giving up. There is a lot of business not being done. That is what we mean by drying up enterprise, discouraging competition. Imagine how it is when a business faces 3 years of delays and 3 years of hiring lawyers and 3 years of having nothing but uncertainty to offer investors. Imagine asking your investment people to wait 3 years just for a decision. You do not get competition that way, and that is what the anticompetitive forces are looking to. They want to use Government to keep other people out of their business. They want to use Government regulation to stop competition.

I say let us deregulate, let us be procompetitive and not go on with practices such as waiting 1,200 days for a piece of paper that the district court thought could be issued in 30 days.

Mr. President, we have before us a procompetitive deregulatory bill. Everybody says they want to deregulate. AL GORE has a commission for privatizing and deregulating and cutting Government. This bill before us will reduce the size of Government, it will protect those people who are applying, but it will not allow this sort of thing—1,200 days waiting for a piece of paper.

This bill will also provide, for the first time, a number of market openings: Utilities will be able to get into telecommunications with safeguards, the subsidiary safeguard; the cable companies in this country will move towards deregulation and will be deregulated when 15 percent of their market has direct broadcast satellite or video dial competition. With the Dole, Pressler, Hollings, Daschle amendments there is further deregulation for small cable; the newspaper publishers will be in the electronics subdivision though there is a difference in the

House and Senate versions; the broadcasters will get further deregulation because they are facing more competition, radio with satellites, so forth.

The giant regional Bell companies will be forced to open up their markets to competition. They will be allowed to manufacture in this country. A long distance company will be able to get into the local markets.

So this is a vast, vast bill. If we do not pass this bill this year, it will be 1997 before we can try it again. We tried it last year. Senator HOLLINGS did a terrific job, so did other Senators, Republicans and Democrats. But as I said, this sort of bill can be checkmated even at the last minute by any one of the interest groups.

I compare passing a telecommunications bill and some of the problems like being in a room with a giant buffet table stacked high with food and people gathering about it ready to eat, but no one starts to eat because they want to be guaranteed that no body else is going to be getting an extra carrot. The fact is, there is plenty for all.

I have never seen companies and groups so nervous, so anxious to get one final slight advantage. This bill affects the burglar alarm business because they have to go on to using other companies' wires. Tomorrow there is going to be an amendment offered to give the burglar alarm companies 6 years protection before they have to compete. In the bill as it stands the burglar alarm companies get 3 years protection. That is more than most others get. But now there is going to be an amendment to give them 6 years of protection.

So every group wants to delay their entry into competition 3 to 6 years. They are trying to figure out ways to get amendments. I say for the American consumer that that is not right. The American consumer wants all these companies to compete, they want new small businesses to be able to be formed to get into telecommunications. Today nobody but the monopolies can get into local telephone service in this country, but if this bill passes, two people can go out and form a local telephone company.

This bill was not drafted by industry, as some may suggest. There has seldom been more of a bipartisan effort in this Senate. When we finished the first draft, I walked a copy of this bill to every Democratic Senator on the Commerce Committee, of whom there are nine, and put it into the Senator's hand. I said I wanted their staffs there. We sent a memo around to everybody, saying, if you want to get involved in meetings at night and Saturdays and Sundays, come on around. I commend my friend from Nebraska, because he sent a very able staffer who helped write much of it. We are very glad for that assistance. We worked on this bill in a bipartisan way.

I said earlier this year that I felt if we did not get legislation out of the Senate by June, it is going to be tough going. I thank the leadership on both sides. My colleague Senator DASCHLE has been very helpful, Senator DOLE has been extraordinary, and Senator LOTT, too—all of the leadership. My colleague here, Senator HOLLINGS, has done a great job on the Democratic side. But if we do not get this bill through conference and to the President's desk and signed this year, it is not going to happen next year.

I say to all those legions of lobbyists and others who are calling in and doing their jobs—this is a democracy and people can petition their Government—I say to them that whatever their interest is, they have an interest in this bill passing because it is procompetitive and deregulatory.

People who want to work and compete will do well under this bill. I think we should all remember that, because this bill is, in my opinion, the most important bill in terms of creating jobs for the next 10 or 15 years. This bill will cause an explosion of new investment, it will cause an explosion of new jobs, the kind of jobs we want in this country.

Now, Mr. President, I have cited frequently that our regional Bell companies, and others, frequently are investing overseas. For example, England has deregulated its telecommunications. Many years ago, when I was a student there, they were a socialistic economy. Now they have privatized, deregulated, de-nationalized. England is, at last, coming out of its long recession as it deregulates. They have deregulated their telecommunications area, and our people can go there and build cable systems, as NYNEX and U.S. West, I believe, are doing. Our investors can go over there and participate. If they keep deregulating, they are going to have a booming economy. You can mark my word on that. They are on the way back. They figured it out that socialism was not beneficial.

We are doing somewhat the same thing in our telecommunications area. Our telecommunications industry has not moved forward as fast as our computer industry has. There are all these companies which want to keep regulation to keep others out. They want Government-set standards, so that the private standards cannot leap forward. They want another review at the Justice Department after they have gone through two reviews. This is inside-the-beltway thinking. The further west I get in this country the more agreement I find that we should deregulate and privatize wherever possible.

So in conclusion, Mr. President, I may have some more remarks later. But I think the Telecommunications Competition and Deregulation Act of 1995 will be a signal point in our Nation's history if we pass it. If we do not, we will remain locked up in economic apartheid—each sector protected from the other, kept from getting into the other's business. We will see more of our jobs going overseas and more and more of our manufacturing and innovation going overseas, American workers not getting the new kinds of jobs we need.

Many of our industries are aging industries, and we read in the paper about this many people being laid off here and that many being laid off there. This is one of the great jobs bills ever to come before Congress. I remember being in the House and we used to debate the Humphrey-Hawkins job creation bill—whether or not the Government could create jobs through the Federal Government paying people to do make-work types of things. I opposed it many years ago in the 1970's when I was in the House of Representatives.

But S. 652 is a jobs creation bill that does not cost the Government anything. In fact, the government costs will be reduced. There will be less in regulation than there is now, provided we do not adopt the Dorgan amendment tomorrow, which would add another layer of regulation.

Mr. President, I yield the floor. I may have some more remarks to make later.

Mr. KERREY. Mr. President, I do not know how long I am going to respond, but we will have time tomorrow to discuss this.

In my judgment, the Senator from South Dakota just misdescribed both our amendment and what the Department of Justice is doing and why the people of the United States of America should want this amendment adopted.

He repeatedly comes to the floor and says that this is ''another layer of bureaucracy,'' and describes himself as being beleaguered with opponents who are trying to prevent something from happening, that we are deregulating, and we ought not interfere with this process.

I say again for emphasis, Mr. President, that nobody in my campaign in 1994 came to me and said, gee, I hope you deregulate the telephone companies. I am an advocate of doing this. But the Senator from South Dakota says, gee, this was not written by industry. It may not have been written specifically by industry, although I daresay you would have to struggle long and hard to find a Member of this Congress that could come up with that 14-point checklist. That is a technical checklist that does not look like it is in the language that at least I hear us using as we describe telecommunications.

It may not have been written by industry, but American industry is asking for this legislation. It allows them to do things they are currently prohibited from doing. I am an advocate of allowing them doing some things they are prohibited from doing. I favor deregulation. I am tired of hearing the straw man set up time after time that somehow you are either for deregulation and therefore against this amendment, or you are against deregulation and, therefore, you support the amendment. That is a nonsense straw man argument.

The questions for consumers, for citizens to ask is, what is this thing all about? What do you mean, Senator KERREY, that these companies want to do something they cannot currently do? The long distance companies want to come in and sell us local telephone service. So there is a section in here that tells them not only how they get in the business but how others can get in the business.

Section 251 is a pretty darn good section. Section 255 is the one that is in question now, which is the local companies saying we want to provide long distance service. We want to enter the long distance service market. By the way, I heard the Senator from South Dakota talking about the Humphrey-Hawkins Act and full employment. The companies that are arguing the loudest and strongest for this legislation have reduced their employment. They have reduced their employment in the decade of the 1980's, since divestiture occurred. Do we have more jobs in computers? No. We have 150,000 fewer. Do we have more jobs in local telephone companies? No, smaller employment. Do we have more jobs at AT&T long distance? No, smaller employment.

I would be, as a Member of this body, real careful not to promise that somehow when I deregulate and say to a company, you can start pricing at cost, that that is going to result in an increase in employment. I will bet you this results in additional downsizing of businesses. This promise of jobs is going to taste real bitter to the families who get laid off. You can say, well, Senator, but there are going to be jobs created in other sectors. I think that is likely to be the case. It is likely to be the case.

The Senator from South Dakota asks why would I want the Department of Justice role, and says, look at the lousy job they have done. Those charts misrepresent what the Department of Justice has done. They are the competition agency, not the Congress. This Congress did not have the guts to stand up to the AT&T monopoly in 1982. It did not have the guts to stand up to them. Who filed the consent decree? Who sued the AT&T monopoly? Who led to this competitive environment in long distance? Was it the people's Congress, out of concern for the citizens and the rates they were paying? No, siree, it was not. It was the Justice Department suing on our behalf.

Because we did not have the guts to take them on. That is what happened.

So citizens say, why do I want the Justice Department to be involved? The answer, plain and simple, is when it comes time to go after a monopoly who is preventing competition, they are the ones that have done it. They are the ones that have done it.

The second reason we want them involved, I would argue, is they are the ones, for a relatively small amount of money, that are likely to make the tough calls.

I am not going to get into a great discussion about this here this evening, but there was a newspaper article this morning in the New York Times. It talked about whether or not the Federal Communications Commission, the agency that has all the responsibility here, is doing a very good job.

I have not up until now, and indeed even now I will not say as the Senator from South Dakota just said, ''I suspect that the reason Senator KERREY wants a DOJ rule is there are a few lawyers that want to keep their job.'' What baloney. Leave that argument off the floor. That is baloney. That is not what is going on.

Go back to airline deregulation. When we passed deregulation for the airline industry, we said precisely what we are saying in this bill. We said we are not going to give the Department any role beyond consultation.

Guess what happened when TWA proposed to acquire Ozark, when Northwest Airlines proposed to acquire Republic? What happened? The Department opposed it, objected to it, offered strenuous objections, but they had no ability to say no. They had no legal authority.

We are trying to correct, based upon lessons of the past, mistakes of the past. That is what we are trying to do, on behalf of consumers. If we do not get a competitive environment, they will not get any advantages.

I bet, of the seven regional Bell operating companies, there is at least $1.5 billion cash flow average from these corporations. These are big corporations. These are big businesses. They are hungry to expand their business, and I want to allow them to expand their business.

Unless we get competition at the local level, we will end up having what we had with airline deregulation, when the Department, with only a consultative role, only could object to the mergers in question. And look what happened to St. Louis when TWA was allowed to come in and acquire Ozark. Look what happened in Minneapolis when Northwest proceeded without any obstacle being offered to the acquisition of Republic Airlines.

Mr. President, all the Dorgan-Thurmond amendment says is, do the citizens want the Department of Justice to be able to say yes or no? Do you want the Department to be able to say yes or no? All the presentations about the waiver requests that have been slowing up; the very people that filed the applications very often cause the cases to go slow because they make an overly broad application for waiver of the problems that the Department can say, we can, in an expeditious fashion, say no. Or we can sit with a company and try to work through this application that they know is too broad, that goes at the core of the restrictions under the modified final judgment.

I ask unanimous consent that the article that appeared in this morning's New York Times be printed in the RECORD.

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

[From the New York Times]

HAS THE F.C.C. BECOME OBSOLETE?

(By Edmund L. Andrews)

WASHINGTON, June 11—David Margolese is a bit player on the information highway, barely a footnote in the $700 billion communications industry. But his experience over the last five years provides a textbook example of why the Federal Communications Commission is under attack as never before.

Mr. Margolese, head of a tiny company called CD-Radio Inc., has gambled $15 million since 1990 to develop a satellite service that beams 30 channels of music to radios nationwide. He thinks it would fill a big gap, reaching rural hamlets and lonely stretches of interstate highway that ordinary radio stations do not reach.

There is a problem, though: the F.C.C. will not let him do it. Traditional radio broadcasters have adamantly fought satellite radio, fearing it as a competitor. Agency officials are torn. Having repeatedly inched forward and back, the agency plans to inch forward again as early as Monday by proposing rules about what kind of service a satellite radio company will be allowed to provide.

Mr. Margolese is fuming. ''All we want to do is give people a choice that they don't have now,'' he said. ''That's all we want to do—give consumers a chance to choose whether our idea is a better idea.''

Anti-government fever is a given in Newt Gingrich's Washington, and agencies ranging from the Food and Drug Administration to the Commerce Department are under sustained attack. But bureaucrat for bureaucrat, few agencies wield as much influence over industry and consumers as the F.C.C. Created during the Depression, when AM radio was king and government regulation was considered essential by many people, the F.C.C. was chartered as the guardian of the public airwaves, charged with insuring that they were used wisely.

''Do you or do you not want a consumer protection function in this arena?'' asked Reed E. Hundt, the commission's chairman. ''If you don't, where else would literally tens of thousands of complaints go?''

Today, the agency has an immense impact on almost every communications medium. It has opened the air-waves to cellular phones and direct-broadcast satellites. It parcels out billions of dollars worth of broadcast licenses, defining the terms of competition for television, radio, satellites and phone service.

But the word into which it was born has gone the way of Norman Rockwell, and critics abound. Conservatives argue that the commission does more harm than good, hindering competition and delaying valuable new services. Consumer advocates say it is often a captive of the industries it regulates. Little mentioned in all this is that the F.C.C.'s most-criticized restrictions have been initiated at the behest of business groups.

Mr. Gingrich has said he would like to abolish it entirely. Republicans on the House Commerce Committee, vowing to cut back its authority, held a series of closed-door meetings with industry executives and agency officials last week to explore ideas intended to curb the agency's powers.

Examples of gridlock are abundant. Nearly three years ago, the F.C.C. moved to promote competition in cable television by adopting rules to let telephone companies offer a rival service called video dial tone. But telephone companies saw their applications to offer the service languish as agency

officials insisted on changes in many plans. Today, only a handful of tiny experiments exist, and many telephone companies have decided to ask cities for traditional cable TV franchises.

If the agency and its video dial tone rules had never existed, economists say, telephone companies might have offered cable service two decades ago and perhaps have prevented cable television monopolies in local markets.

In the meantime, the F.C.C.'s efforts to regulate cable prices have been plagued by policy shifts and the complexity of its pricing rules. The first set of such rules, intended to carry out a law passed in 1992, inadvertently sent rates up rather than down for many customers.

A second effort early in 1994 pushed cable rates down 17 percent. But after incurring a storm of criticism from the industry and from conservatives in Congress, the agency has in recent months adopted still another series of rules that give breaks to small cable systems and to companies that add programming.

Today, some critics of the cable industry say the price regulations are more trouble than they are worth. ''The system is a brain-dead patient on life support,'' said Barry Orton, a professor of telecommunications at the University of Wisconsin and a consultant to many small towns that want to start regulating cable prices. ''The smaller towns and cities that I work with say that they've had it. It's too complicated, and it's too full of holes.''

But for all the complaints by businesses and their Congressional champions, it is business groups that typically have sought to have the agency umpire their disputes. Some of the most onerous and ridiculed F.C.C. rules are those resulting from intense industry lobbying.

For instance, Hollywood studios fought ferociously three years ago to keep television networks out of their business, until a Federal court overturned the F.C.C.'s rules. Local phone companies lobby fiercely to preserve universal service and to delay rules exposing them to new competition. Cable companies have filed more than 20,000 pages of briefs to block phone companies from providing TV programming.

But defenders of the commission, who argue that it is the crucial guardian of the public interest, note that it has consistently tried to promote market competition and move away from traditional regulation. And even the staunchest conservatives have praised one of the commission's initiatives—the auctioning of thousands of new licenses for wireless telephone and data services, a revolutionary departure that raised more than $9 billion in the last year and is expected to increase competition sharply in the cellular telephone market.

''Everybody agrees that you want competition,'' said Mr. Hundt, the F.C.C. chairman, who was appointed by President Clinton. ''But you have to have rules of fair competition if you want to have competitors to enter the market.'' He conceded that the agency had in the past been guilty of micromanagement, but passionately defended its charter to protect the public interest.

A schoolmate and soulmate of Vice President Al Gore, Mr. Hundt promotes a vision of linking all schools to advanced computer networks, and he has proposed rules to expand educational television programs for children. He also vigorously defends the commission's duty to protect consumers from overpricing and to open traditional monopolies in telephone and cable television.

Republican lawmakers agree on that point. They are seeking to pass a sweeping bill deregulating the telecommunications industry, in part by knocking down barriers that prevent cable television and phone companies from attacking each other's markets. The same bill asks the F.C.C. to start dozens of new proceedings, some to find ways of insuring affordable prices for rural areas and for the poor.

In addition to the flak it takes from Capitol Hill, the agency has its own civil strife. It never seemed more at war with itself than in its attempt to let telephone companies offer video dial tone services. The goal of the rules, adopted in 1992, was to break the monopolies enjoyed by most cable companies.

Yet the phone companies became bogged down, and F.C.C. officials complained that the companies were reserving too many channels for themselves and leaving too few for independent programmers. They argued about how the phone companies were allocating for construction costs and sought volumes of technical information.

''It makes no sense,'' said Peter W. Huber, a senior fellow at the Manhattan Institute. ''After 15 years of cable monopolies, almost anything would be an improvement. Even if the phone company keeps most of the channels for itself, you would at least have two competitors instead of only one.''

F.C.C. officials say they are not entirely to blame for the delays, noting that many phone companies had voluntarily withdrawn applications, citing technological uncertainties.

''At a minimum, there has got to be dramatic reform,'' said Representative Jack Fields of Texas, chairman of the House Commerce telecommunications subcommittee.

Business interests may turn out to be the agency's white knight. With competition heating up among industries, cable, phone and even satellite companies will all be looking to the agency for help in attacking each other's market while defending their own turf.

Some consumer advocates add that the agency has often provided crucial support for competition. Though it stalled MCI's effort to enter long-distance service in the 1970's, the F.C.C. later adopted a wide variety of rules that helped it compete with AT&T.

''What many critics fail to see are the tremendous benefits,'' said Gene Kimmelman, a lobbyist for Consumers Union. ''It's unlikely that MCI and Sprint would have been able to make it without regulatory protections designed to move the long-distance industry from monopoly to competition.''

Mr. KERREY. Mr. President, it is an interesting article for citizens saying what is going on here.

Will the consumer get a fair shake? Let me call your attention to the amendment that actually is in front of the Senate, which is the amendment of the Senator from California and from Idaho, on behalf of cities saying, ''Wait a minute.''

In the midst of all this talk, is it not part of the Republican Contract With America to shift more authority back to the States? Those engines of innovation. What happened to the engines of innovation argument? Forget that.

Thirty-some States that have deregulated from rate-based rate of return, we are saying, that is enough. We will preempt all and go to price caps. States do not have authority any longer in this regard. They have authority under price caps, or pricing regulation, but no longer do they have a choice.

If you are a State legislature or citizen out there wrestling with the early stages of debate, the Federal Government will decide it for you. Rate-based rate of return is out the window, and we are going to price caps.

The Senators from California and from Idaho point out not only that, but anything that local government does, if it interferes with a competitive environment, can be prohibited under reducing and eliminating the barriers to competition. This is a substantial move, I think a correct move, in general.

By the way, I am not trying to come to the floor and say I think the FCC is a lousy organization or I think there is a bunch of lobbyists trying to influence my vote or anybody else's vote.

I am trying to say on behalf of consumers based upon the experience both that created the breakup of AT&T in the first place and the airline deregulation case where the Department of Transportation now says they made a mistake not asking for more than merely a consultative role from the Department.

Mr. President, the story in the New York Times this morning is headlined ''Has the FCC Become Obsolete?'' I understand the Senator from South Dakota is basically saying let the FCC do it all, with only a nominal Department of Justice role. We will run this whole thing through the Federal Communications Commission. We do not want duplication of the bureaucracy. We know how the bureaucracies get. They tie things up.

Let me read things in this article. This touches the tip of the proverbial iceberg. CD Radio, Inc, that says, with $15 million since 1990 to develop a satellite service that beams 30 channels of music to radios, they think they fill a big need.

The FCC will not let them do it. Why? Because traditional radio broadcasters have adamantly fought satellite radio, fearing it as a competitor. The FCC is blocking competition in this case, not allowing it, nervous about it. Why? Because they are the most vulnerable to political pressure, frankly, Mr. President, a lot more vulnerable than the Department of Justice.

That has been the competitive agency, the one that has promoted the most competition between the FCC and the Department of Justice. I get a lot more citizens questioning the existence of the FCC than I get citizens coming to me saying, ''Why don't you abolish the Antitrust Division of the Department?''

I do not get people saying, ''I think the Antitrust Division overstepped its bounds. Why not get rid of them?'' But I am hearing complaints from people who question decisions of the Federal Communications Commission.

This agency, as I indicated, is an interesting agency. We will hear businesses complain about it an awful lot. ''They are slowing me down,'' and all the arguments that the Senator from South Dakota makes, ''Poor old businesses. They are making it difficult for

me to get the approval, my waiver, granted,'' and all that.

It says for all the complaints by businesses and their congressional champions, it is business groups that typically have sought to have the agency umpire their disputes. Some of the most ridiculed FCC rules are those resulting from intense, industry lobbying.

For instance, Hollywood studios fought ferociously to keep television networks out of their business, until a Federal court overturned the FCC's rules. Local telephone companies lobby fiercely to preserve universal service and to delay rules exposing them to new competition. Cable companies have filed more than 20,000 pages of briefs to block phone companies from providing TV programs.

Mr. President, I do not believe that the FCC intentionally is creating bottlenecks so as to employ themselves. I do not come down here to the floor saying I know why they are doing this.

There is nothing devious going on. The fact of the matter is our problem is we have a tough time making political decisions. I have a business come and say, ''I want to compete,'' and the next day someone says, ''I don't want to compete.'' It is tough to say you have to compete. That is what this legislation purportedly attempts to do.

The Department needs a role, Mr. President. The Department can, on behalf of consumers, say, not that you have a 14-point checklist. You could have the 14-point checklist and a consumer not have any choice. How do I know I have a choice with a 14-point checklist? I would rather abolish the checklist and have the DOJ with a role in this deal, if that is what the Senator from South Dakota wants to do, wants to get rid of some of the things the FCC does under this legislation, I am willing to do it.

I am willing to deregulate the companies, so you have less regulation for them. I am not an advocate of the status quo, of maintaining the status quo. But I want the agency that has had, I think, the best success, being able to say to the monopoly we are not going to allow you to prevent competition. I want that agency on behalf of consumers to make sure I do have competition. I do not want a bunch of mumbo-jumbo rules and regulations that everybody can cook and game and hire lawyers to try to figure out how to come out on the winning side. That, it seems to me, is what happens if you set up all these little rules and regulations and hoops you have to jump through, down at the FCC. I would sooner have the Department of Justice sitting there saying: We want competition at the local level. If we see competition at the local level we are going to allow you to go into long distance. I would much sooner have the Department of Justice be that arbiter—not regulator, but an arbiter of the question: Do we have competition? Yes or no? Is it competitive down there at the local level? Do we have the kind of competition that allows us, now, to run the risk—and it is a risk—of allowing the telephone companies to get into long distance?

I hope this amendment is accepted. I hope the Thurmond amendment is accepted, because I believe it is one of the few proconsumer things in this legislation. I think consumers will benefit enormously the quicker we get to competition, where true competition exists at the local level and across the range of telecommunications industries.

This bill does not get us there immediately. It sets a structure in place to move from a monopoly to a competitive environment. That is what it does. No one denies that. The idea that somehow we are deregulating these companies automatically—it is not true. We allow them to keep their monopoly in place. We phase it out. We set timetables in place. We have tests they have to meet and all that sort of thing. They are allowed to stay in a monopoly situation. The sooner you get to a competitive environment where the consumers are deciding what they want and what is best for them the sooner we are going to get rapid decreases in prices and rapid increases in quality.

I believe the Senator from South Dakota is well-intended with this legislation, as I have indicated before. I support large portions of this. I do not come down here and say this bill is anticompetitive or anticonsumer. But I do believe strongly that if we want the consumer to benefit from competition then we have to make sure the Department of Justice has a role in telling us when competition exists.

The PRESIDING OFFICER (Mr. BROWN). The Senator from South Dakota is recognized.

Mr. PRESSLER. Mr. President, I would like to say that, first of all, in the drafting of this bill, it was done by Senators and staff. But Republican and Democratic staff sat down together. I do not know if that has ever been done before with a bill. This bill was not drafted by industry. It was drafted by Senators and staff here in the Senate. They negotiated and worked, and met with Senators with the product of their work, and invited the input from other Senators, and came up with the competitive checklist, which was not proposed by industry. It was proposed by staff as a compromise between the ''actual and demonstrable'' and VIII(c) tests that had been used last year and the concept of a date certain standard which was utilized by my initial chairman's draft—to find a way in this complex telecommunications arena to have a test of when markets are open.

This has not been easy. For instance, let us say you are in the spaghetti business and you have to have somebody else deliver your spaghetti for you. Can you imagine what shape it is going to be in when it is delivered? Especially when the person delivering it is your competitor.

But in this telecommunications area it is so complicated to get competition in because you have to depend frequently on your competitors' wires to get to where you are going. That is why we still need some level of regulation. That is why we still need an FCC at this point. Although I hope in the very near future we can see the FCC reduced a great deal and ultimately whither away.

This bill was drafted with the public interest in mind. This bill continues to have universal service, which will assure that those high cost areas and regions of the country will have telecommunications. Our antitrust laws continue under this bill. In fact, the Justice Department has a major role.

But assigning a decisionmaking role, as the Dorgan-Thurmond amendment does, to the Justice Department, is unprecedented. The Department is always required to initiate a lawsuit in the event it concludes the antitrust laws were violated. It has no power to disapprove transactions or issue orders on its own, generally speaking.

Indeed, Judge Greene's court kept the power to make the decisions through all these years. The people who work there really work for him, or for his court. This would be the first time we are giving the Justice Department this kind of regulatory power—a decisionmaking role.

If you look at history, the law, regulation and history of railroads closely mirrors that of telephony. The Telecommunications Act of 1934 was modeled on the Interstate Commerce Act of 1887. The Federal Communications Commission was modeled on the Interstate Commerce Commission. Both industries involved common carriage, and the establishment of networks. Both industries have been required to provide essential service to rural areas. Both industries have been regarded as monopolies. They share issues related to captive customers, competitive access, the desire to enter related lines of business, and the loss of traffic to alternative carriers.

Congress has delegated exclusive Federal authority to the Interstate Commerce Commission to decide whether a railroad should be permitted to enter into new lines of business. The Department of Justice may file comments in the proceeding but is given no specific statutory role. Even in proceedings involving mergers, acquisitions and other transactions between two class I railroads, Justice has no specific statutory role. Although the Department can and usually does submit its views on the excessive effects of a proposed transaction, the ICC can approve a merger over the objections of Justice.

Indeed, the potential adverse effect of competition is only one of five factors considered by the ICC in its determination whether to permit a proposed merger or acquisition between the Nation's largest railroads. Congress has given the ICC a broader mandate than

simply competition. As the agency of expertise, Congress has directed it to balance transportation and employee interests, among others, with competitive concerns and to accord substantial weight—not to recommendations of Justice—but to any recommendation of the Secretary of Transportation. Justice is not even mentioned in the statutory mechanism.

I could go on through various other areas. But the point is, it is the intent of our structure that this be done at the FCC. What we in Congress want the FCC to do, if it is universal service or whatever it is, or if it is compensation or whatever is decided, the idea is that the representatives of the people are supposed to decide, not the courts. And if it is good or bad, Congress should be thrown out of office or held accountable for it.

Presently we have no one here who is accountable for what is happening in telecommunications because the courts have taken it over. And that is a major part of this bill, to put Congress back in charge of telecommunications and information policymaking and to let the people make judgments on us as they do in elections. That is the basis of democracy. That is what democracy is about.

So, the Federal Communications Commission regulates the communication industry. It should. The Department of Justice should enforce the antitrust laws. Or we can change the antitrust laws if we want. But to create a group of regulators over at the Department of Justice is not wise. Legislation pending before Congress supersedes the provisions of the modification of final judgment that governed Bell company entry into business now prohibited to them. Once legislation is signed into law, a continued Department of Justice role in telecommunications policy is no longer necessary except in the area of enforcing the law.

DOJ does not need an ongoing regulatory role as part of an update of our Nation's communications policy. Such a role would be duplicative of the FCC's authority. Actual regulatory oversight is not what DOJ is equipped to provide. DOJ's claim that it ''alone among Government agencies understands marketplace issues as opposed to regulatory issues'' is inaccurate. I agree with many of the objectives as my friend from Nebraska. Indeed, I think the Senator from Nebraska and I have the same objectives. But we have carefully crafted this bill over months of work, included universal service, included more competition, included more deregulation, included more freedom. It has been a very delicate balance.

Dual Department of Justice and FCC bureaucracies to regulate the communications industry delay the benefits competition brings consumers.

These benefits include lower prices, new services, and more choices for communications services. I have already gone through the length of time and the cost, and ultimately these costs are paid by consumers. You know you can do more for a senior citizen by helping them have lower gas prices to heat their home in the winter than you can by giving them a check, frequently. For example, when we deregulated natural gas in the late 1970's, early 1980's— I must say that it was a Democratic President who took the lead on that— and we followed through with a Republican President. But when that occurred I was over in the House and coming to the Senate. I heard all the speeches about how, if we deregulate natural gas prices will skyrocket, the companies will gouge the public, and senior citizens will need subsidies to pay their heating bills. Look at what has happened with natural gas prices. They collapsed. They have been low. They almost give the stuff away there is so much competition. Senior citizens have had cheaper gas bills, and farmers have had cheaper bills in drying corn.

Some people think you are compassionate if you give checks out to people, if the Federal Government gives a senior citizen a check every month. That is nice, if we can afford it, and it is needed in some cases. But I say that you do just as much for consumers in this country of providing competition for cheaper products and new innovations.

Let us take the computer industry. Forty percent of our homes have a personal computer. The price is dropping and dropping. There is new technology of every 18 months because there is not Government regulation, because there is competition. Some people would say the Government should set standards for computers or provide for regulation of the computer industry. Then it would take 10 years to get a new computer. Some people would say why not model the computer industry on the telecommunications model. But the fact is that prices are dropping, technological innovation flourishing and America's leading the world because of the fierce free market competition in the computer industry. So I say let us model the telecommunications sector on the computer model.

Let us look at cellular telephones, for example. That is one of the few parts of the information highway that we have. Everybody talks about the so-called information superhighway. What is it? It is cable TV, it is some cellular, and some computer Internet. But in reality we have not gotten much of it yet, whatever it is going to be. But it is going to be invented and sold when we have competition and deregulation. Cellular technology was invented in the late fifties. Then Government regulation took 30 years before it was approved for sale. Government regulation said it could only be sold in certain areas by certain people. It was not until the 1990's that we finally got full deregulation and competition in cellular phones. And within a few years, everybody is carrying a cellular phone. They are getting smaller and smaller. Government regulation is off. But it was delayed from the late 1950's until the late 1980's—30 years of delay because of Government regulation. We could have had this in the 1960's or the 1970's. It is estimated that that delay cost American consumers $89 billion. That stimulates our economy when people can communicate better, and do business deals faster. They can be safer. A senior citizen can push a button on an emergency communications device in their bathroom and have an emergency call placed. These things were not available. They were known since the 1950's but because of Government regulation they did not come into being until very recently.

So I could cite computers. I could cite cellular phones. I could go on and cite many other areas. But in this particular area of telecommunications we are going to see a boom of new devices, and a dropping of prices. We are going to see telephone prices drop substantially. We are going to see long distance rates drop. We are going to see cable television rates drop. Presently people are paying too much for telephone calls. As I have indicated in an earlier stage of this debate, based on the same ratio as how much computer prices have dropped and processing power increased, you should be paying only a few cents for most long distance calls and fewer cents for most local calls. That is the fact.

So we need competition and deregulation. This bill has it in it but it is being opposed. Talk about corporate interest, the companies who are supporting the DORGAN amendment have been running full-page ads in our newspapers. That is fine. They can do so. But this idea that one side is all corporate interests and the other side is not is not true. There are large corporations on both sides of this amendment. But the people supporting the DORGAN amendment have been spending millions on lobbyists and full-page ads just like the opposition has been.

So those people who cry corporate interests, pick up yesterday's newspapers and read the full-page ads. Both sides have done it. But lately, all the spending has been done by people who supported the Department of Justice role because they want to slow competition down and game the process.

So there is corporate interests on both sides of this. I do not like pontificating by either side. I hope I am not pontificating. But the point is, look at the newspapers of last week and see who was buying the full-page ads.

So, Mr. President, I conclude by saying that I think we have a good bill. I hope that we hold it together. I am confident we will pass this bill with overwhelming bipartisan support. I yield the floor.

Mr. KERREY. Mr. President, one very quick response. One of the rules of debate is say something over and over and over and pretty soon people begin to believe it is true. This amendment

does not give the Department of Justice a regulatory role. It gives them a responsibility to make a determination as to whether or not there is competition. That is what it does. It does not carve out some new area of the Department of Justice to regulate. Indeed, the legislation itself is as a consequence of our recognizing that there is too much confusion in current law; that there are too many bottlenecks in current law. That is what we are attempting to do about the underlying legislation, to come up with a simplified test in a simplified way for businesses to know what it is that they can do and try to remove the regulatory hurdles of entry into various markets. That is what we are trying to do.

This underlying amendment very simply says, first by Senator DORGAN and now by Senator THURMOND, merely that the Department of Justice should not just have a consultative role. ''Oh, by the way. What do you think?'' Instead, the Department would have a role based on section 7 of the Clayton Act in making a determination as to whether RBOC entry into interLATA services would substantially lessen competition or tend to create a monopoly. That is the idea.

I just appeal to the consumers out there trying to figure out which side to come down on. Look at that 14-point test. It all looks fine to me. They say, ''Well, this was put together by staff or it was put together by us here in Congress.'' It took me a long time to figure out what all 14 mean, and I am still am not sure what each one means. I do not know if they will produce competition.

I can imagine a scenario under which you get no competition with those 14 items. Competition again means the consumers have real choices. The Senator from South Dakota talks about the cellular industry being restricted. It was restricted by the monopoly of AT&T. The monopoly kept the technology from coming online. It was not Congress. Congress did not say in the 1970's we have this great new technology, cellular. So what we are going to do is take on the monopoly, and we do not care what AT&T says. We are going to disregard this influence on Congress and we will come down here and pass legislation that will break them up. That did not happen, I say to consumers now who have benefited from reduced rates for long distance and increased quality in long distance. The increase in quality and deployment of fiber occurred as a consequence of this competition. That benefit did not come as a result of Congress having the courage to take on the monopoly. It came as a consequence of the Department of Justice suing on behalf of the American consumer.

So this amendment is simply something that says to consumers you are going to have the Department of Justice who brought you competition in the long-distance arena, who objected to mergers that were allowed to go forward in airline deregulation which reduced competitive choice and increased prices, we are going to give this agency not a consultative role but the opportunity to say that there is or there is not competition.

If there is competition, have at it. It may be that they say it is a heck of a lot faster. Judging from the evidence at hand, it is likely they come at least as quick to the conclusion as to whether or not there is competition as the FCC looking at this 14-part test.

So we are going to have a vote on this tomorrow at 12:30. We will have an opportunity to debate it a little bit in the morning. I look forward to it, and I hope it will be that the amendment passes because I believe on behalf of American consumers it is going to ensure competition and only by ensuring competition are we going to get the benefits that both the Senator from South Dakota and I wish to see happen in the United States.

I yield the floor.

Mr. PRESSLER. Mr. President, I would disagree with my colleague on cellular. I do not think it was AT&T. It was Government regulation. Maybe AT&T went to the Government. Maybe AT&T used Government regulations. But cellular phones were held up by Government regulation, by all accounts. But that is the point. A lot of companies use Government regulation to hold up competition and to hold up deregulation.

Also, I would be in disagreement with my friend that the computer industry has lost 150,000 jobs. Maybe they have lost 150,000 but overall they have gained. One measure of the relative market growth is the number of employees. In 1980, there were a little more than 300,000 Americans employed in the computer industry while more than 1 million were engaged in the provision of telephone products. And our statistics show there has been a steady increase. There have been some jobs lost but overall there has been a substantial gain, and I shall put that into the RECORD.

By 1993, computer products and services accounted for more than 1.2 million jobs, a fourfold increase. At the same time, the number of telephone employees had dropped to less than 900,000. So unless those numbers are incorrect, I think we have to say that the computer industry has been an expansive industry operating largely without Government standards and regulation where there has been fierce, free market competition.

Indeed, I also serve on the Senate Finance Committee, and every 18 months the computer industry wants to get depreciation; that is, they want their schedule to be 2 or 3 years or less because product cycles change so quickly because there is rigorous competition.

This chart tells what we are trying to do with S. 652—The Telecommunications Competition and Deregulation Act of 1995. This is the most comprehensive deregulation of the telecommunications industry in history and it will promote international competitiveness, job growth, productivity, and a better quality of life. It provides open access to full competition. Interconnection and unbundling will put new competitors including cable and long distance on the same footing with former monopolies. Consumers will use the same phone number and dial the same number of digits no matter what local telecommunications companies they choose, and the competitive checklist for compliance with open access will assure certainty and simultaneity.

Let me also say that universal service is preserved. All providers contribute. We make subsidies explicit. There have been some people who have said, well, this is like a new tax. In fact, it has been reduced from $10 to $7 billion. But all on a bipartisan basis felt strongly that universal service should be preserved.

Removal of restrictions to competition in all markets. Telephone and cable firms are free to compete in each other's markets. For the first time we end this economic apartheid. We let them go into each other's markets and compete and some of them do not like that. But they will have to do it. This is transition to the wireless age, but we have to make them compete.

Utility companies free to enter telecommunications markets. And there are some safeguards here, but we need to unleash our utility companies so they will come into the other markets with a burst of energy and will create new jobs, new products, new service offerings.

The removal of long distance and manufacturing restrictions for Bell companies. Presently, the Bell companies cannot manufacture in this country, so they go abroad to do it. This will unleash new investment in this country, create jobs in this country, instead of having them send their money overseas. And they will be able to get into the long distance business if they wish.

Let me say that some people are worried that the Bell companies are going to become monopolies. We still have Hart-Scott-Rodino. We can change the antitrust laws.

That is something I should say here. Everybody has been saying what the Justice Department should and should not do. If we do not like the antitrust laws, we should change the antitrust laws. We should not create a group of bureaucrats over there who are regulators. Let us change the antitrust laws if we wish to. And I would say that regarding the airlines if necessary.

Market pricing, not Federal price controls for cable. And I predict that the same thing will happen to television in cable rates as happened in natural gas. We will have video dial tone from regional Bell or some other telephone companies. We will have other cable and video providers coming into the market, plus we will have

cable TV, plus we will have broadcast and more than one DBS operator—probably three or four. So you will be able to choose between seven or eight television services. When that happens, the prices are going to go down because there is real competition. But if we do not pass this bill, frequently the average consumer will only have one choice. And that is what competition and deregulation will do. The prices will drop, will just collapse when they have to compete, just as telephone prices will as well. When there are more providers, those telephone calls are only going to cost a few cents and long distance calls are only going to cost a few cents. That is all that they should be costing.

Next, rate of return regulations for large telcos eliminated.

New flexibilities for broadcasters who offer digital service.

End arbitrary limits on broadcast ownership because they are really out of date. And I know that we have increased to 35 percent the amount of the national audience one television broadcast group can have. I would like to raise it to 50 or 100 percent if I could do it. In my original chairman's mark, it did. There will be an effort tomorrow to lower it to 25 percent. I think the old line networks are trying to use Government regulation to avoid competition. They need to get in there and compete instead of coming to Washington to the FCC and to Congress for limits on what can be owned, and so forth, because it will take care of itself. Just as in computers we saw this immense resurgence and regurgitation and these bursts of energy from new companies, we will see the same thing in media and telecommunications.

Extend broadcast license term to 10 years with expedited renewal procedures. Most of the broadcast limitations, in my opinion, are obsolete and should be eliminated.

State and local barriers to market entry repealed. I hope we can hold on to that one tomorrow. We have another crucial vote tomorrow afternoon on preemption of local barriers to entry. Because we cannot allow States and cities to just grant monopoly franchises if we are going to have real competition.

Now, also we are working on investment and growth in the global markets.

We open U.S. telecommunications markets for more investment on a fair and reciprocal basis. A reciprocal basis. This is international law at its best. We will allow other countries to invest here on the same basis that they permit U.S. invest there.

U.S. comparative advantage in products, services, and software with no domestic content provision. That is a very significant change from last year.

Let me explain that. Some of our large unions want to have a domestic content provision but that is anticompetitive. Through GATT and these other international trade agreements we want international competition. We want deregulation and competition. And we did not put the domestic content provision in this year's bill. And that is what Mickey Kantor and members of the administration say they want—members of the administration should be supporting this bill. These are all things that, as I understood it, AL GORE and the administration are for. Mickey Kantor came up last fall and told us in the Commerce Committee that he did not like the bill last year because it had domestic content in it, and we took domestic content out this year. This is deregulatory. We are making some progress toward being an international competitor, and we cannot go on demanding domestic product content and say that we are for international trade.

Next we have sunset for regulation. Biennial review of all remaining Federal, State, and local rules, regulations and restrictions.

It is time we reduce the Federal bureaucracy. We are going to have systematic regulatory review and reform through S. 652. This means every 2 years after reviewing every regulation, we will do away with as many as we can. Inside the beltway, these agencies grow and grow, and they do not want to give up their turf. That is what we have, a turf battle. The Justice Department wants to do the same thing the FCC is doing, and some big companies say, ''That is good, because that will slow down competition.'' They are running full-page ads supporting that concept.

Next we have regulatory forbearance authority ordered, then deregulatory parity for telecommunications providers offering similar services, so that we can get them all competing.

So there it is. That is what we are trying to do. That is what is in this bill. It is not a perfect bill, but it passed the Commerce Committee 17 to 2. We had two Republicans who had some concerns. They wanted it to be more deregulatory, and I sympathize with them. Every Democrat on the committee voted for it. Now the White House says it has concerns. I took this draft over to Al Gore in January. I gave it to him and asked for his help.

We need the administration's help when we get into conference on this bill. It really delivers on all the reform ideas we hear them talk about all the time. This is what the President says he is for. This is what the Vice President says he is for. Let us pass it.

Tomorrow we have two crucial votes. We have to defeat the Dorgan amendment, which would add another level of bureaucracy. We also have to beat back the effort to erect new State and local barriers when we are tearing down Federal barriers.

So, Mr. President, I will conclude by thanking the Members of the Senate for the debate today. I have tried to accelerate the pace of this bill.

I do not see any other Senators who wish to speak.

RECESS UNTIL TOMORROW AT 9:15 A.M.

Mr. PRESSLER. Mr. President, I ask unanimous consent that the Senate stand in recess under the previous order.

There being no objection, the Senate, at 9:32 p.m., recessed until Tuesday, June 13, 1995, at 9:15 a.m.

EXTENSIONS OF REMARKS

SENATE COMMITTEE MEETINGS

Title IV of Senate Resolution 4, agreed to by the Senate on February 4, 1977, calls for establishment of a system for a computerized schedule of all meetings and hearings of Senate committees, subcommittees, joint committees, and committees of conference. This title requires all such committees to notify the Office of the Senate Daily Digest—designated by the Rules Committee—of the time, place, and purpose of the meetings, when scheduled, and any cancellations or changes in the meetings as they occur.

As an additional procedure along with the computerization of this information, the Office of the Senate Daily Digest will prepare this information for printing in the Extensions of Remarks section of the CONGRESSIONAL RECORD on Monday and Wednesday of each week.

Meetings scheduled for Tuesday, June 13, 1995, may be found in the Daily Digest of today's RECORD.

MEETINGS SCHEDULED

JUNE 14

9:00 a.m.
Agriculture, Nutrition, and Forestry
Business meeting, to mark up S. 904, to provide flexibility to States to administer, and control the cost of, the food stamp and child nutrition programs.
SR–332

9:30 a.m.
Energy and Natural Resources
Business meeting, to consider pending calendar business.
SD–366

Judiciary
Immigration Subcommittee
Business meeting, to resume markup of S. 269, to increase control over immigration to the United States by increasing border patrol and investigator personnel, improving the verification system for employer sanctions, increasing penalties for alien smuggling and for document fraud, reforming asylum, exclusion, and deportation law and procedures, instituting a land border user fee, and to reduce the use of welfare by aliens.
SD–226

Labor and Human Resources
Business meeting, to consider the nominations of Edmundo A. Gonzales, of Colorado, to be Chief Financial Officer, Department of Labor, John D. Kemp, of the District of Columbia, to be a member of the National Council on Disability, and Clifford Gregory Stewart, of New Jersey, to be General Counsel of the Equal Employment Opportunity Commission, and to mark up S. 143, to consolidate Federal employment training programs and create a new process and structure for funding the programs, and proposed legislation relating to health centers consolidation, and child abuse prevention and treatment.
SD–430

10:00 a.m.
Armed Services
To hold hearings on the situation in Bosnia.
SD–106

Banking, Housing, and Urban Affairs
To hold hearings on S. 648, to clarify treatment of certain claims and defenses against an insured depository institution under receivership by the Federal Deposit Insurance Corporation.
SD–538

10:30 a.m.
Foreign Relations
Western Hemisphere and Peace Corps Affairs Subcommittee
To resume hearings on S. 381, to strengthen international sanctions against the Castro government in Cuba to develop a plan to support a transition government leading to a democratically elected government in Cuba.
SD–419

2:00 p.m.
Foreign Relations
Western Hemisphere and Peace Corps Affairs Subcommittee
To continue hearings on S. 381, to strengthen international sanctions against the Castro government in Cuba to develop a plan to support a transition government leading to a democratically elected government in Cuba.
SD–419

Select on Intelligence
To hold hearings on the nomination of George J. Tenet, of Maryland, to be Deputy Director of Central Intelligence.
SD–562

JUNE 15

9:00 a.m.
Agriculture, Nutrition, and Forestry
Production and Price Competitiveness Subcommittee
To hold hearings on proposed legislation to strengthen and improve United States agricultural programs, focusing on commodity policy.
SR–328A

9:30 a.m.
Banking, Housing, and Urban Affairs
Housing Opportunity and Community Development Subcommittee
To hold hearings on the Administration's proposal to restore Section 8 rents to market rates on multifamily properties insured by the Federal Housing Administration.
SD–538

Energy and Natural Resources
To hold hearings on S. 871, to provide for the management and disposition of the Hanford Reservation, and to provide for environmental management activities at the Reservation.
SD–366

Judiciary
Terrorism, Technology, and Government Information Subcommittee
To hold hearings to examine the militia movement in the United States.
SH–216

Rules and Administration
To hold hearings on proposed legislation authorizing funds for programs of the Federal Election Commission.
SR–301

10:00 a.m.
Armed Services
To hold hearings on the current situation and U.S. policy options in Bosnia.
SD–106

2:00 p.m.
Labor and Human Resources
To hold hearings to examine affirmative action in employment, focusing on Federal contractor requirements.
SD–430

JUNE 19

2:00 p.m.
Governmental Affairs
Post Office and Civil Service Subcommittee
To resume hearings on proposals to reform the Federal pension system.
SD–342

JUNE 20

9:30 a.m.
Appropriations
Defense Subcommittee
To hold hearings on proposed budget estimates for fiscal year 1996 for the Department of Defense, focusing on counternarcotic programs.
SD–192

Energy and Natural Resources
To hold oversight hearings to review existing oil production at Prudhoe Bay, Alaska and opportunities for new production on the coastal plain of Arctic Alaska.
SD–366

JUNE 21

9:30 a.m.
Energy and Natural Resources
To hold hearings on the Secretary of Energy's strategic alignment and downsizing proposal and other alternatives to the existing structure of the Department of Energy.
SD–366

Labor and Human Resources
To hold oversight hearings on the Occupational Safety and Health Administration (OSHA).
SD–430

JUNE 22

9:30 a.m.
Energy and Natural Resources
Forests and Public Land Management Subcommittee
To hold hearings on S. 852, to provide for uniform management of livestock grazing on Federal land.
SD–366

Labor and Human Resources
To continue oversight hearings on the Occupational Safety and Health Administration (OSHA).
SD–430

Indian Affairs
To hold joint hearings with the House Committee on Resources Subcommittee on Native American and Insular Affairs on S. 487, to amend the Indian Gaming Regulatory Act.
SD–G50

● This "bullet" symbol identifies statements or insertions which are not spoken by a Member of the Senate on the floor.
Matter set in this typeface indicates words inserted or appended, rather than spoken, by a Member of the House on the floor.

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JUNE 23

9:30 a.m.
Labor and Human Resources
To hold hearings to examine issues relating to the Legal Services Corporation.
SD–430

JUNE 27

9:30 a.m.
Appropriations
Defense Subcommittee
To hold hearings on proposed budget estimates for fiscal year 1996 for the Department of Defense, focusing on ballistic missiles.
SD–192

JUNE 28

9:30 a.m.
Labor and Human Resources
Business meeting, to consider pending calendar business.
SD–430

Indian Affairs
To hold hearings on S. 814, to provide for the reorganization of the Bureau of Indian Affairs.
SR–485

JUNE 29

9:30 a.m.
Small Business
To hold hearings to examine the future of the Small Business Investment Company program.
Room to be announced

2:00 p.m.
Energy and Natural Resources
Parks, Historic Preservation and Recreation Subcommittee
To hold hearings on S. 594, to provide for the administration of certain Presidio properties at minimal cost to the Federal taxpayer.
SD–366

JULY 13

9:30 a.m.
Indian Affairs
To hold hearings on S. 479, to provide for administrative procedures to extend Federal recognition to certain Indian groups.
SR–485

Daily Digest

Senate

Chamber Action

Routine Proceedings, pages S8127–S8198

Measures Introduced: Three bills were introduced, as follows: S. 914–916. **Page S8177**

Measures Reported: Reports were made as follows:

Reported on Friday, June 9, 1995, pursuant to the order of Thursday, June 8, 1995:

H.R. 4, to restore the American family, reduce illegitimacy, control welfare spending and reduce welfare dependence, with an amendment in the nature of a substitute. (S. Rept. No. 104–96) **Page S8177**

Telecommunications Competition/Deregulation Act: Senate continued consideration of S. 652, to provide for a pro-competitive, de-regulatory national policy framework designed to accelerate rapidly private sector deployment of advanced telecommunications and information technologies and services to all Americans by opening all telecommunications markets to competition, taking action on amendments proposed thereto, as follows:

Pages S8134–76, S8188–98

Adopted:

By a unanimous vote of 91 yeas with one Senator voting present (Vote No. 249), Feinstein/Lott Amendment No. 1269, to provide for the full scrambling on multichannel video services of sexually explicit adult programming. **Pages S8166–69**

Pending:

(1) Dorgan Modified Amendment No. 1264, to require Department of Justice approval for Regional Bell Operating Company entry into long distance services, based on the VIII(c) standard. **Page S8134**

(2) Thurmond Modified Amendment No. 1265 (to Amendment No. 1264), to provide for the review by the Attorney General of the United States of the entry of the Bell operating companies into interexchange telecommunications and manufacturing markets. **Pages S8134–62**

Subsequently, the amendment was modified further. **Pages S8145–62**

(3) Feinstein/Kempthorne Amendment No. 1270, to strike the authority of the Federal Communications Commission to preempt State or local regulations that establish barriers to entry for interstate or intrastate telecommunications services.

Pages S8170–76

A unanimous-consent time agreement was reached providing for further consideration of the pending Dorgan Modified Amendment No. 1264 and the Thurmond Modified Amendment No. 1265 (to Amendment No. 1264) (both listed above), with a vote to occur on a motion to table the Dorgan Modified Amendment No. 1264 on Tuesday, June 13 at 12:30 p.m. **Pages S8162, S8164**

A motion was entered to close further debate on the bill, and in accordance with the provisions of Rule XXII of the Standing Rules of the Senate, a vote on the cloture motion will occur on Wednesday, June 14. **Page S8176**

Senate will resume consideration of the bill on Tuesday, June 13.

Removal of Injunction of Secrecy: The injunction of secrecy was removed from the following treaties:

Extradition Treaty with Belgium (Treaty Doc. No. 104–7);

Supplementary Extradition Treaty with Belgium to Promote the Repression of Terrorism (Treaty Doc. No. 104–8); and

Extradition Treaty with Switzerland (Treaty Doc. No. 104–9).

The treaties were transmitted to the Senate today, considered as having been read for the first time, and referred, with accompanying papers, to the Committee on Foreign Relations and ordered to be printed.

Pages S8176–77

Communications: **Page S8177**

Statements on Introduced Bills: **Pages S8177–82**

Additional Cosponsors: **Pages S8182–83**

Amendments Submitted: **Page S8183**

Additional Statements: **Pages S8183–87**

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Record Votes: One record vote was taken today. (Total—249) **Page S8169**

Recess: Senate convened at 12 noon, and recessed at 9:32 p.m., until 9:15 a.m., on Tuesday, June 13, 1995. (For Senate's program, see the remarks of the Acting Majority Leader in today's RECORD on page S8188.)

Committee Meetings

No committee meetings were held.

House of Representatives

Chamber Action

The House was not in session today. It will meet next at 10:30 a.m. on Tuesday, June 13.

Committee Meetings

COMPREHENSIVE ANTITERRORISM ACT

Committee on the Judiciary: Held a hearing on H.R. 1710, Comprehensive Antiterrorism Act of 1995. Testimony was heard from Representatives Bereuter and Skaggs; James S. Gorelick, Deputy Attorney General, Department of Justice; William P. Barr, former Attorney General, Department of Justice; Abraham Sofaer, former Legal Counsel, Department of State; and public witnesses.

Hearings continue tomorrow.

Joint Meetings

21ST CENTURY ECONOMY

Joint Economic Committee: Committee concluded hearings to examine the role of American government in utilizing new technologies to create economic opportunity and prosperity in the future, after receiving testimony from Jerry J. Jasinowski, National Association of Manufacturers, and Alvin Toffler, both of Washington, D.C.; Marc I. Holtzman, MeesPierson EuroAmerica, Budapest, Hungary; and Frederic L. Pryor, Swarthmore College, Swarthmore, Pennsylvania; and after receiving testimony via audio/video network from Representative Walker (from Ephrata, Pennsylvania); Joel Kotkin, Pepperdine University School of Business, Los Angeles, California; Steve Forbes, *Forbes* Magazine, New York, New York; Robert Genetski, Robert Genetski & Associates, Inc., Chicago, Illinois; Brenda French, French Rags, Los Angeles, California; and Paul Johnson, London, England.

COMMITTEE MEETINGS FOR TUESDAY, JUNE 13, 1995

(Committee meetings are open unless otherwise indicated)

Senate

No committee meetings are scheduled.

House

Committee on Agriculture, Subcommittee on General Farm Commodities, hearing on 1995 Farm Bill—Agricultural Trade Title, 9:30 a.m., 1300 Longworth.

Committee on Appropriations, to consider the following: Section 602(b) Allocations for fiscal year 1996; and Military Construction appropriations for fiscal year 1996, 4 p.m., 2360 Rayburn.

Subcommittee on Energy and Water Development, to mark up Energy and Water Development appropriations for fiscal year 1996, 9:30 a.m., 2362 Rayburn.

Committee on Banking and Financial Services, Subcommittee on Housing and Community Opportunity, hearing on ''Resolving the FHA Multifamily Portfolio: HUD's 'Market-to-Market' Proposal,'' 10 a.m., 2128 Rayburn.

Committee on Commerce, Subcommittee on Commerce, Trade, and Hazardous Materials, to mark up H.R. 1062, Financial Services Competitiveness Act of 1995, 2 p.m., 2123 Rayburn.

Subcommittee on Telecommunications and Finance, to mark up H.R. 1062, Financial Services Competitiveness Act of 1995, 9:30 a.m., 2123 Rayburn.

Committee on Economic and Educational Opportunities, Subcommittee on Early Childhood, Youth and Families, hearing on the Older Americans Act, 9:30 a.m., 2175 Rayburn.

Committee on Government Reform and Oversight, Subcommittee on Government Management, Information, and Technology, hearing on Streamlining Federal Field Structures, Part 1, 9 a.m., 2154 Rayburn.

Committee on International Relations, Subcommittee on International Economic Policy and Trade, hearing on U.S. Export Competitiveness in the Information Age: The Role of Government, 9:30 a.m., 2172 Rayburn.

Committee on the Judiciary, to continue hearings on H.R. 1710, Comprehensive Antiterrorism Act of 1995, 9:30 a.m., 2141 Rayburn.

Committee on Resources, Private Property Rights Task Force, oversight hearing on Private Property Rights, 9:30 a.m., 1324 Longworth.

Committee on Rules, hearing on H. Res. 161, amending clause 4 of rule XIII of the Rules of the House to abolish the Consent Calendar and to establish in its place a Corrections Calendar, 3:30 p.m., H–313 Capitol.

Committee on Standards of Official Conduct, executive, to consider pending business, 3 p.m., HT–2M Capitol.

Committee on Transportation and Infrastructure, Subcommittee on Water Resources and Environment, hearing on the reauthorization and Reform of the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (Superfund), 10 a.m., 2167 Rayburn.

Committee on Ways and Means, to mark up H.R. 1812, Expatriation Tax Act of 1995, 12 p.m., 1100 Longworth.

Subcommittee on Human Resources, hearing on Child Support Enforcement and Supplemental Security Income, 2 p.m., B–318 Rayburn.

Next Meeting of the SENATE

9:15 a.m., Tuesday, June 13

Senate Chamber

Program for Tuesday: After the transaction of any morning business (not to extend beyond 9:45 a.m.), Senate will continue consideration of S. 652, Telecommunications Competition/Deregulation Act, with a vote on a motion to table the Dorgan Modified Amendment No. 1264 to occur at 12:30 p.m.; following which, Senate will recess until 2:15 p.m. for their respective party conferences.

Next Meeting of the HOUSE OF REPRESENTATIVES

10:30 a.m., Tuesday, June 13

House Chamber

Program for Tuesday and the balance of the week: Consideration of H.R. 1530, National Defense Authorization Act (structured rule, two hours of general debate); and

H.R. _____, Military Construction Appropriations Act for fiscal year 1996 (subject to a rule being granted).

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