

he had a scheduling conflict. At that time, I remained hopeful that the dual review would enhance the process rather than detracting from it.

I have been pleased with the Department of Justice's role in these mergers. Although I may not agree with their substantive decisions in every respect, they have reviewed these mergers in a reasonable procedural manner under tight time deadlines. I think that their work has shown that Mr. CONYERS and I did the right thing in 1996 when we succeeded in getting these mergers into the Hart-Scott-Rodiono process.

The FCC's record on the other hand has been disappointing to say the least. On May 25, 1999, Chairman GEKAS's Subcommittee on Commercial and Administrative Law held an oversight hearing on that record entitled "Novel Procedures in FCC License Transfer Proceedings." Again, Chairman Kennard was invited to appear, but had a scheduling conflict. At that hearing, the Subcommittee heard disturbing testimony from Commissioner Harold Furchtgott-Roth about the utterly standardless decisionmaking process that the Commission employs in these matters. His testimony proved that the title of that hearing was instructive in at least two regards. First, as Commissioner Furchtgott-Roth testified, under current law, the FCC has authority to review license transfers—not mergers. Second, he told us that the FCC's procedures are novel indeed—they are not written down anywhere.

Let me address both these areas. On the substance of the review, I have not in the past opposed the FCC's consideration of competitive factors as part of its public interest review of license transfers. I thought that some additional competitive analysis might be helpful. Based on the experience of the last year, and particularly the experience of the SBC and Ameritech merger, however, I am now much more skeptical. Having reviewed the governing law and Commissioner Furchtgott-Roth's testimony, I have substantial doubts as to whether the FCC should be redoing the competitive analysis done under the Hart-Scott-Rodiono process. It appears to me that the license transfer authority was primarily intended to allow the Commission to determine whether the transferee is a responsible and qualified party—not to launch a full scale competitive analysis. At the least, the kind of far-flung proceeding that SBC and Ameritech have faced strikes me as beyond the intent of the statute.

For that reason, Section 2 of the bill would clarify that the FCC is not an antitrust enforcement agency. It removes language in the Clayton Act that currently appears to give the FCC concurrent authority to enforce the antitrust laws against telecommunications carriers. That authority has rarely been invoked in any formal manner, but I think that this change will help to clarify the appropriate role of the FCC in license transfer review and in other areas.

Second, we must address procedural fairness in license transfer proceedings. I do not think I can say it any better than Commissioner Furchtgott-Roth put it to the Subcommittee: "debates about process are not trivial debates. To the contrary, regularity and fairness of process are central to a governmental system based on the rule of law. As the law recognizes in many different areas, the denial of a procedural right can result in the abridgment of a substantive right."

What is wrong with the FCC's procedures? Let's consider SBC and Ameritech as a case study. First, the FCC simply does not have any rules for dealing with license transfer—none. As Commissioner Furchtgott-Roth testified, there simply is no place to go to look up the rules. Rather, in the case of SBC and Ameritech, the Commission has adopted a "make it up as you go" approach. Whenever the deal has neared the goalposts, the goalposts have been moved. That is confusing and costly for all concerned.

Second, because there are no clear rules, some license transfers are treated in one fashion and some in another. Thousands are dealt with in a perfunctory fashion, and a few are dealt with extensively. There is nothing inherently wrong with that, but it ought to be done according to some neutral principle. For example, without commenting on their substance, it is hard to see why the AT&T-TCI transaction was approved in less than six months and the SBC-Ameritech transaction still is not completed after more than a year. That necessarily affects competition between these companies. A fundamental principle of fairness is that similarly situated parties ought to be treated similarly. Moreover, government bureaucracies ought not to be dictating market outcomes.

Third, as I just pointed out, the SBC-Ameritech transaction has been pending for over a year. I have usually been circumspect in commenting on pending matters, but because of the extraordinary delay here, I wrote to Chairman Kennard on March 22, 1999 asking him to act expeditiously. A month later, he wrote back to me stating that the Commission had instituted a new round of procedures and that a decision was possible by the end of June. The end of June has come and gone. The Commission and the parties have reached a tentative agreement on 26 conditions for the merger, but the Commission has not voted on it. Again, without commenting on the substance of the merger, this level of delay is simply unacceptable. These companies are involved in fiercely competitive markets, and time is of the essence. Billions of dollars of commerce have been held hostage to bureaucratic delay.

Fourth, I am concerned about the conditional nature of this tentative approval as a procedural matter. The statutory basis for such conditional approvals in FCC license transfer proceedings is unclear at best. When the number of conditions rises to 26 and they are as extensive as those we see here, I have to question whether this is a public interest review or something else. These conditions may well be helpful as a policy matter, and I am at least pleased that this lengthy process is coming to an end. However, the legal and procedural basis for them is less than clear to me.

All of these examples show what is wrong procedurally with the consideration of license transfers at the FCC. Section 3 of our bill would amend the Administrative Procedure Act to require the FCC to write rules governing their license transfer proceedings. We do not try to dictate what those rules should be. We simply require that there must be neutral rules accessible to all in advance. That seems to me simple fairness. With such rules in place, all parties will have an equal chance in these proceedings. If the FCC fails to write such rules or it does not follow them, parties to license transfers can bring a court action to have their transfers deemed approved.

Mr. Speaker, I believe these simple changes will bring order and fairness to what has become a chaotic and unfair process. I urge my colleagues to join me, Chairman GEKAS, and Congressman GOODLATTE in passing this important legislation.

THE FINANCIAL SERVICES ACT OF  
1999

**HON. JOHN D. DINGELL**

OF MICHIGAN

IN THE HOUSE OF REPRESENTATIVES

*Thursday, July 15, 1999*

Mr. DINGELL. Mr. Speaker, as ranking member of the Committee on Commerce, which has jurisdiction over securities including the standards of financial accounting, and to whom was referred the bill H.R. 10, the Financial Services Act of 1999, I rise to clarify a matter involving the legislative history of this legislation. My remarks are an extension of remarks that I made during House consideration of H.R. 10 on amendment No. 8 offered by Mrs. ROUKEMA (July 1, 1999, CONGRESSIONAL RECORD at H5295 and H5299).

During House consideration of this amendment (July 1, 1999, CONGRESSIONAL RECORD at H5294-H5300), several Banking Committee Members were recognized for unanimous-consent requests to revise and extend their remarks on that amendment which related to the manner in which insured depository institutions or depository institution holding companies report loan loss reserves on their financial statements. Because the House adjourned following completion of H.R. 10 at midnight on July 1, 1999, until 12:30 p.m. on Monday, July 12, it was not possible to review the material inserted by these Members until after the Independence Day District Work Period.

In conducting that review, I have discovered nongermane and inaccurate remarks about an accounting practice known as "pooling." These remarks, which were not before the House when it voted on the Roukema amendment, assert that the Financial Accounting Standards Board (FASB or Board) "has not always sought adequate input from the accounting or banking communities on proposed changes in regulations"—a patently false statement when compared with both the public record and FASB's own procedures regarding due process—and asks the conference committee on H.R. 10 to "include language either in this bill or future legislation to ensure that this process is an open and fair one" (July 1, 1999, CONGRESSIONAL RECORD at H5296, bold type-face material, 2d column).

I have the following comments on that material which follows the statement that the gentleman from Alabama (Mr. BACHUS) actually delivered to the House:

Since 1996, FASB, the independent private sector organization that establishes and improves standards of financial accounting for the United States, has been publicly deliberating issues relating to the accounting treatment for business combinations.

Currently in the United States, companies can account for a business combination in one of two very different ways: the "purchase" method—in which one company is the buyer and records the company being acquired at the price it actually paid—and the "pooling-of-interests" method—in which two companies

merge and just add together the book values of their net assets.

The availability of two different accounting methods for business combinations is problematic for several reasons. First, it is difficult for investors to compare the financial statements of companies that use the different methods. The purchase method of accounting provides investors with different and much more useful financial information than does the pooling method—because the financial statements of the acquiring company in a purchase business combination reflect the investment it has made and provide feedback about the subsequent performance of that investment. Second, it affects competition in the mergers and acquisitions market (both domestically and internationally). Because companies that can use the pooling method do not report the cost of goodwill and other similar costs of the acquisition, they may be more willing to pay more than companies that must use the purchase method. This obviously can have a dramatic effect on shareholders. Third, the United States is out of step internationally—most other countries either prohibit the pooling method entirely or permit its use only as an exception.

Finally, since the current accounting standards for business combinations were issued in 1970, the FASB, the American Institute of Certified Public Accountants, the Emerging Issues Task Force, and the United States Securities and Exchange Commission (SEC) have all been inundated with issues resulting from companies' seeking to use the pooling methods. Numerous interpretations of the pooling method rules have been required to address those issues. The high degree of required maintenance of those rules has led many to conclude that the current accounting rules are broken.

After over a dozen public Board meetings, public meetings with the Financial Accounting Standards Advisory Council and the Business Combinations task force (both of which include preparers, users, and auditors), the issuance of two documents for public comment, and after carefully considering the input from all of its constituents, including the accounting and banking communities, the Board has tentatively decided that only one method, the purchase method, should be used to account for all business combinations.

The Board's tentative decision reflects the view that virtually every business combination represents the purchase of one company by another and that the purchase method is the most appropriate method of reporting the economics of those transactions to investors. By allowing only one method of accounting for all business combinations: The investment made in the purchase of the other company is always reflected; feedback about the performance of those investments is provided; and investors can more easily make comparisons between investment opportunities, both domestically and internationally.

As part of the FASB's extensive and open due process, the tentative decision regarding the methods of accounting for business combinations will be exposed for public comment later this summer as part of an Exposure Draft of a proposed new business combination accounting standard. In addition, early next year, the Board will hold public hearings to provide constituents an additional opportunity to directly discuss any concerns with the Board.

Comment letters received in response to the Exposure Draft and the public hearing testimony will be carefully and fully considered by the Board at public meetings prior to reaching any decisions on the content of a final standard on the accounting for business combinations. FASB has kept the Congress fully informed on these matters of substance and process through document submissions and staff briefings.

This accounting issue is controversial and will require extensive and careful review, realities that FASB fully recognizes and has taken steps to fully address. Legislation is not warranted. But I would like to point out that for some time, U.S. stock exchanges and many U.S.-based multinational companies have been pushing for adaption of international accounting standards. I find it ironic that some segments of the industry are now opposing the adoption of international standards in area where those standards are arguably tougher and more honest and accurate than the current U.S. standard.

The Securities Act of 1933, the Securities Exchange Act of 1934, and the Investment Company Act of 1940 are the basic laws that govern securities market regulation in the United States. Those laws, and related rules and regulations subsequently adopted by the SEC, establish the initial and continuing disclosure that companies must make if their securities are sold to or traded by the U.S. investing public. The goals of this disclosure system are to promote informed decisions by the investing public through full and fair disclosure, which includes preventing misleading or incomplete financial reporting. The success of this system has produced the world's most honest, fair, liquid, and efficient capital market. Financial statements are a cornerstone of this approach, and the quality and usefulness of those financial statements are directly dependent on the accounting principle used to prepare them.

While the federal securities laws grant the SEC the authority to establish U.S. generally accepted accounting principles of GAAP, the SEC historically has looked to the private sector, and has formerly endorsed FASB, for leadership in establishing and improving accounting principles to be used by public companies, while the SEC retains its statutory authority to supplement, override or otherwise amend private sector accounting standards in the rare occasions where such action may be necessary and appropriate. This partnership with the private sector facilities input into the accounting standard-setting process from all stakeholders in U.S. capitol markets, including financial statement preparers, auditors and issuers, as well as regulators.

This systems isn't broken and does not need to be fixed.

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#### CRESSY LEAVES A GREAT IMPRINT

#### HON. BARNEY FRANK

OF MASSACHUSETTS

IN THE HOUSE OF REPRESENTATIVES

Thursday, July 15, 1999

Mr. FRANK of Massachusetts. Mr. Speaker, the University of Massachusetts Dartmouth is an extremely valuable institution. It is an excellent educational facility, and it is a great ex-

ample of a public institution of higher education that not only seeks to provide a first rate education to its students, but cooperates indeed often takes a leadership role—in regional economic development.

One of the reasons this University has been such a valued part of Southeastern Massachusetts in recent years is the leadership of its Chancellor, Peter Cressy. On behalf of my colleague from Massachusetts (Mr. MCGOVERN) and myself, I want to insert here in the RECORD the editorial from the New Bedford Standard Times, on Wednesday, July 14, which pays a well deserved tribute to the high quality leadership Peter Cressy provided.

In several areas of great importance to Southeastern Massachusetts economically, particularly including textiles and fishing, Peter Cressy has done everything possible to make sure that the University provided significant help to the broader community, while at the same time fully maintaining the educational mission that is the primary justification of a college.

At a time when some question the value of publicly funded enterprises, Peter Cressy's leadership at the University of Massachusetts Dartmouth gave us an excellent example of how tax dollars can be put to excellent use for the broadest possible public benefit.

My colleague (Mr. MCGOVERN) and I will miss his leadership, his energy, and his enthusiasm at the head of this extremely important institution. And we ask that the editorial from the New Bedford Standard Times be printed here as one example of how excellent leadership can help us get the best of our public efforts.

#### CRESSY LEAVES A GREAT IMPRINT

When Dr. Peter H. Cressy jumped from the Massachusetts Maritime Academy in Bourne after two years to take over at the helm of UMass Dartmouth, there were those who suggested that this energetic and effective leader might not stay more than two or three years. I wasn't his style.

Dr. (former Rear Adm.) Cressy's career was marked by one success after another, though his Navy days and then on his own. He made his mark and moved on. He had turned Mass. Maritime around when some thought that to be impossible; he then plunged into his UMass Dartmouth job with energy and enthusiasm that were rarely witnessed before. Sometimes controversial but always self-assured and outgoing, Dr. Cressy set about to remake the university and to multiply its ties to the surrounding community.

He stayed for six years, putting the university on the national map, bringing it up to full membership in the UMass system, vastly improving its fund raising, and as he said in his unexpected resignation announcement on Monday, established the marine science and technology program, improved the budget process, improved admissions and retention, increased research, added a Ph.D. program, established centers for business and so on.

Dr. Cressy's methods were not to everyone's taste; that is not uncommon for a bright, visionary individual. But there is no doubt that SouthCoast Massachusetts would be far behind where it is today without his leadership and his initiatives. We wish him the best in his new career in Washington, D.C., as president and CEO of the Distilleries Council of the United States, and we hope to see him follow through on his promise to eventually retire to our part of the world. We would be happy to put him back to work.