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United States of America

Congressional Record

PROCEEDINGS AND DEBATES OF THE 104th CONGRESS, FIRST SESSION

Vol. 141 — WASHINGTON, FRIDAY, JUNE 9, 1995 — No. 94

Senate

(Legislative day of Monday, June 5, 1995)

The Senate met at 9:15 a.m., 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:

Gracious God, there are five vandalizing words that confuse, hurt, and deplete. We hear these words spoken carelessly; we have said or thought them ourselves. These five words, "It won't make any difference!" cause discouragement, cut the slender thread of hope, and give us that bottomless inner feeling of frustration.

And then we come to prayer and we hear Your voice sounding in our souls, encouraging us to believe that we can make a difference. Help us to realize that You have all power and are ready to use us in the challenging relationships and heavy responsibilities we carry in the work of government.

We thank You that You have given us work to do that can be an expression of our worship of You. We have the privilege of spending our working hours in crucial matters that will make a difference for the future of America. Our work is not wasted, insignificant, or useless.

Today, as another week draws to a close and weariness threatens to invade, awaken us to the privilege of a new day filled with opportunities to serve You in our work. The vital telecommunications legislation is before us. Thank You for the care of Senators and staffs in drafting it and for thoughtful discussion and debate of it. Give us a fresh burst of enthusiasm. Help us to make our motto today five words of determination, "We are making a difference!" In the Name of Him whose grace has made all the difference. Amen.

RECOGNITION OF THE ACTING MAJORITY LEADER

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

Mr. PRESSLER. Mr. President, for the information of my colleagues, this morning the Senate will immediately resume consideration of S. 652, the telecommunications bill.

Amendments are pending to the bill. Therefore, Senators should be aware that rollcall votes are expected throughout the day today and possibly as early as 10 a.m.

RESERVATION OF LEADER TIME

The PRESIDENT pro tempore. Under the previous order, the leadership time is reserved.

THE TELECOMMUNICATIONS COMPETITION AND DEREGULATION ACT

The PRESIDENT pro tempore. Under the previous order, the Senate will now resume consideration of S. 652, the telecommunications bill, which the clerk will report.

The assistant legislative clerk read as follows:

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

The Senate resumed consideration of the bill.

Pending:

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

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.

Hollings/Daschle amendment No. 1266, to clarify the requirements a Bell operating company must satisfy before being permitted to offer long distance services.

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

The PRESIDENT pro tempore. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

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

The PRESIDING OFFICER (Mr. THOMAS). Without objection, it is so ordered.

AMENDMENT NO. 1255, AS MODIFIED, TO AMENDMENT NO. 1294, AS MODIFIED

Mr. KERREY. Mr. President, we now resume the discussion of S. 652, in particular the amendment before us, which is, as I understand it, the second-degree amendment offered by the Senator from South Carolina to the amendment from the Senator from North Dakota; is that correct?

The PRESIDING OFFICER. The Senator is correct.

Mr. KERREY. I have not yet read, or we have not yet seen the amendment from the distinguished Senator from South Carolina. But I am going to make some presumptions here that I understand in general terms what it is about. I think in that amendment, there is a possibility of a compromise here, something that could satisfy both sides and get us to a point where we have a bill where we are going to get large numbers of people rather than a relatively smaller number of people supporting the legislation.

I believe that S. 652 in its current form, unamended, is not good for the American consumer. I will make it

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clear on that. I do not believe the American consumer will enjoy the full benefits of competition with S. 652 in its current form. The reason I believe that is that competition will not bring the kinds of benefits to the American consumer unless that competition comes from the bottom up, from entrepreneurs who have a chance to come to our households—100 million households total in the United States of America—and offer us packaged information services through two alternative lines coming into our home—a telephone line and a cable line.

If they have an opportunity to come into that environment and say, well, Mr. KERREY, we would like to sell you a packaged service of voice, video, or text; you are purchasing services today of $120 to $150 a month, and we can sell that to you for $75, $80, or $90 a month, in that kind of a competitive environment, the prices will come down and the quality is going to go up in the four big areas where households tend to see *services.*

No. 1, the price is going to go down for the switching services; that is, the movement of the bundled data from household to household or from household to business or vice versa.

We will see reductions in the cost of the manufactured hardware that is *used in the home, regardless of what* that hardware is, as the market tries to give better and better service.

We will see prices come down in the content—that package I described earlier—and we will see prices come down and quality come up in a range of services *that household services* buy.

My fear is that in a good faith effort to produce a means to replace the *VIII(c) test—I apologize for getting a* little technical—what the committee did in a good faith effort to replace the VIII(c), test which I believe 18 members of the committee last year voted for in S. 1822 that was tied up late last fall, to replace that test, the committee came up with 134 individual things that the ARBOC, the local telephone company, has to have before they are allowed into long distance service.

That is kind of a summary, I believe, the distinguished Senator from South Carolina last evening gave as to how those 14 items did, in fact, replace this old test that was S. 1822, a bill that was supported by 18 members of the Commerce Committee last year.

The reason I say with respect that I do not feel that is adequate is, again, the Justice Department has the expertise of managing unprecedented movements from a monopoly situation to a competitive situation. We need that. That is a service that the people of the United States of America need. That is what this whole bill is about.

If we look at the title, title I is "Transition to Competition"; title II, "Removal of Restrictions to Competition"; title III, "An End to Regulation."

Mr. President, the only people in the U.S. Capital, the people's Capital, with experience in all these three of those areas is the Antitrust Division of the Department, approximately 800 people. We will not fall into the illusion that this is an enormous bureaucracy over there just busting at the seams with all sorts of people. It is approximately 800 people that run the Antitrust Division at Justice, and they managed the movement from a monopoly, AT&T, to our current competitive environment we have in long distance.

We are talking about doing the same thing with local telephone service. It seems to me, Mr. President, for those who want to survive this vote, who want to not just get a pat on the back as we walk out of here on final passage from those folks in industry that are out there hoping we vote the right way, whichever way that is, if we hope to get a pat on the back by our consumers, by our citizens, by our voters—and I would argue that is, in the end, the ultimate test—then we need to go to that agency that has experience in managing an unprecedented event, a movement from a monopoly situation at the local telephone service to a com*petitive environment.*

This is going to be an extremely difficult thing to do. As I understand it, the distinguished Senator from South Carolina has proposed an amendment. I have not seen that amendment yet. He has proposed an amendment that might, in fact, solve problems that people have about having dual authority here. As I understand it, it may reduce the role of the FCC while giving the Department of Justice some additional authority. It seems to me that that is the right direction to go.

I want to walk through a little bit here this morning, and I will stop and yield afterward to anyone else that wants to talk on this issue.

There is, I think, legitimate concerns about what this will mean in terms of the time that is taken. In a time we are trying to get rid of regulation, which we are trying to do, we ought not have any unnecessary regulation.

I am prepared to support any person that has an amendment that says, here is something we will regulate that does not add any value at all; all it does is slow things down. I am prepared to vote for the elimination of any regulation that still is in the bill that might be unnecessary and that might add unnecessary costs.

The procedures for a Bell operating company entering into long distance—under the amendments proposed, the underlying Dorgan amendment, the Bell operating company would file an application to get into long distance. The Department of Justice and the Federal Communications Commission would review and proceed simultaneously. Their reviews go forward at the same time. We do not go to one and then to the other. We go to both simultaneously and each reviews something different. The Bell operating company has an answer within 90 days after application in accordance with a date certain established by Congress.

For Members that are wondering about how this will all work out and whether or not this is going to delay things, the language of the Dorgan amendment provides a date certain for an answer to be given by the Department of Justice to the Bell operating corporation applying for permission to get into long distance. The procedure is fast—90 days. It is fast.

We can set into the RECORD, with people who are experienced with how the courts work, if we need stronger colloquies filed so the courts understand that 90 days means 90 days, then we will do that and make certain that the time will be 90 days and that extensions are not granted for this particular procedure.

The standard for DOJ is clear, Mr. President. There is not ambiguity here. It is based on a well-established law applying both the Clayton Act and, by the way, the VIII(c) test under MFJ. The procedure will reduce litigation. Make no mistake about it. In my estimation, the existing law as written will encourage litigation and prolong the process. If Members believe it will do the opposite, come and say that it will do the opposite.

I am saying that my concern, as one Member that has one vote here, is that we come here and try to satisfy citizens—in this case, citizens as consumers—and I say that the existing law, in my judgment, will produce consumer confusion, it will produce consumer dissatisfaction, and it will produce problems that are going to cause Members who vote for it in its current form to say, well, I did not realize it would do that. Maybe we can come back in afterward and fix it with an amendment. Unfortunately, it is likely to be the very amendment we are considering today.

I said at the beginning that somewhere in the mix, somewhere in the mix, and I appreciate what we are basically doing is trying to figure out some *way to continue the work that the se*nior Senator from Nebraska came up with this compromise language in com*mittee. He is the one that has taken* the lead on this. I understand the committee had a difficult time balancing *and getting this stuff done.*

Somewhere in the mix is a way for Members to give DOJ a role, perhaps limit and reduce some of the regulation that is at the FCC, and give those Members who are concerned about how we will manage this transition from monopoly to competition, give those Members that have that kind of concern some satisfaction.

I yield the floor.

Mr. DOLE. Mr. President, I wanted to inquire, if the regular order is called for, it is my understanding that the amendment I offered would be pending; is that correct?

The PRESIDING OFFICER. The majority leader is correct.

Mr. DOLE. That would be subject to a second-degree amendment?

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The PRESIDING OFFICER. That is correct.

Mr. DOLE. I am not certain when we can agree on a vote. I know for the Senator from North Dakota, this is a central issue, the one we are debating now. I am not trying to crowd anyone. I want to try to make some headway this morning. If Members believe that Friday is Friday and we do not vote on Friday, nobody will ever be here on Friday.

We are going to have votes this morning, and I would like to accommodate everybody's request. I wonder if there is any objection—and I do not want to offend anyone—to calling for the regular order.

As I understand, the Senator from Pennsylvania has a second-degree amendment to my amendment. We are still trying to work out my amendment and the Daschle amendment, so we do not have one leader getting his adopted, the other not. We are trying to work that out.

Is there any objection if we proceed on that basis?

Mr. HOLLINGS. No objection.

Mr. DOLE. I ask unanimous consent to lay aside the pending amendment for Senator SANTORUM to offer an amendment.

Mr. KERREY. Reserving the right to object, I do not believe I intend to object. As I understand, the Senator is asking to proceed to the Santorum amendment with no agreement as to how long we will debate the Santorum amendment.

Mr. DOLE. Yes, we will lay aside the big amendment that the Senator is concerned about, Senator DORGAN's, and my amendment—just go ahead and offer it, period. That is all right.

Mr. DORGAN. Reserving the right to object. I would like to speak for a moment on the Department of Justice amendment, after which I have no objection to setting it aside and going to the Santorum amendment.

Mr. DOLE. I ask unanimous consent to lay aside the pending amendment for the Senator from Pennsylvania to offer an amendment with the understanding the Senator from North Dakota is going to be first recognized for a moment to make a statement.

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

The Senator from North Dakota is recognized for a moment.

Mr. DORGAN. Mr. President, the Senator from Nebraska, appropriately framed the issue of the role of the Department of Justice in the telecommunications legislation—or more appropriately put, the role the Department of Justice does not yet have in the telecommunications legislation and the reason many of us believe the legislation should be amended. For those who have not been involved in studying this legislation, I want to describe, again, why I think a role for the Justice Department is central to telecommunications legislation.

In 1934, when the Telecommunications Act was written originally, the issue was regulating a monopoly. Why must you regulate a monopoly? If you do not regulate a monopoly, a monopoly will do whatever it chooses to do to the American citizens and to the consumers. Regulating a monopoly was important in 1934.

Mr. President, we are rewriting that telecommunications law today in the Senate. The issue is no longer reregulating or regulating a monopoly; the issue is deregulation and competition. That requires a different legislative approach.

The breakup of AT&T into the regional Bell operating companies and the long distance companies, has created a substantially different kind of telecommunications network in our country.

In the long distance area we have robust, healthy, vibrant competition. Literally, hundreds of companies are involved in competitive efforts to market long distance services. These competitive efforts bring choice to consumers, generally at lower prices. We have seen a very substantial drop in charges for long distance services.

We have not seen similar circumstances in local service. This telecommunications bill must provide conditions under which local services will also have competition. The Bell operating companies are not now free to go out and compete with the long distance companies because they have a monopoly in most places in local service. It is not fair for the Bell operating companies to have a monopoly in local service, retain that monopoly and get involved in competitive circumstances in long distance service.

Most of the Bell companies want to get involved in the long distance business and this piece of legislation establishes the conditions under which that will occur.

The question before us is, When is competition in local service sufficient so that the Bell companies will be freed to provide long distance service? The piece of legislation before us establishes a role for the Federal Communications Commission to evaluate or to judge when that competition exists. Traditionally, that judgment role would be made at the Department of Justice. That is what the Justice Department does. That is their background and expertise. The Justice Department evaluates competition. It is the agency that deals with antitrust, monopoly, and competition issues.

The role of the Justice Department was, I assume, deliberately left out of this legislation for a number of reasons. I assume some people wanted there to be less aggressiveness in determining whether there is, in fact, real competition at the local level before the Bell operating companies are allowed to compete in the long distance area. One interesting point, last year, when the Senate Commerce Committee passed this legislation, and last year when the House of Representatives passed this legislation with 420 votes, a role for the Justice Department was in the telecommunications bill.

Last year the Justice Department was to have a full role in evaluating whether competition exists. This year, it does not. The question is, Why? What has changed? Nothing has changed. Consumers still need protection. Our responsibilities to make certain consumers are served the way they should be served has not changed. If we are moving from a period where we talked about regulated monopolies to a period where we are talking about deregulated competition, why should those who talked the loudest about deregulation not also be those who are most aggressive in making sure that competition really exists? Because competition, it seems to me, is the linchpin of a free market system.

If you have less competition, then your free market system does not work very well; it is not very free. If you have broader competition, robust, healthy competition, that is when the free market system works. In this legislation, the role of the Justice Department is to make sure that there is real competition before we release the Bell operating companies to get involved in long distance services.

I think a Department of Justice role is the most important issue we will deal with on the floor of the Senate in this legislation. It deals with literally hundreds of billions of dollars. The consumers are at substantial risk if we make the wrong decisions. I believe if we think our way through this issue as we construct this legislation on the floor of the Senate, we will reach the right result. And the right result clearly is for the Department of Justice to have a role.

The Senator from South Carolina believes it should happen. That is why he has offered an amendment. I believe it should happen that is why I offered an amendment. It is true we come at it in different ways, but they are, in many ways, not so far apart. And I am hoping in not too many hours we can reach some sort of common understanding between our amendments and resolve the differences we have. The technical difference is I am proposing what is called an VIII(c) standard, and he is dealing with a Clayton 7 standard. These standards are not so different. The best approach will be if we can, the Senator from South Carolina and others on both sides of this issue, find a way to merge these two approaches so the Justice Department retains a strong role in this legislation to protect the public interest. After all, protecting the public interest is what this legislation must do in the final analysis.

I appreciate very much the work and the words of my colleague from Nebraska, Senator KERREY.

I think the coalition of us, Senator KERREY, myself, Senator THURMOND, Senator LEAHY, Senator SIMON, and so many others, can amend this legislation before this debate is over.

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If we do that, I think the winner will be the American people and the free market system in our country that works only when there is healthy and robust competition.

So I know we are going to set this legislation aside and go to a Santorum amendment, after which we will come back to it. There are a number of Members who wish to come to the floor and speak on this issue—Senator SIMON, Senator LEAHY, and others. I hope at the end of the debate we will have succeeded in amending the telecommunications bill to include a Justice Department role. I think it is important for the American people.

Mr. President, I yield the floor.

Mr. SANTORUM addressed the Chair.

The PRESIDING OFFICER. The Senator from Pennsylvania.

Mr. SANTORUM. Mr. President, I ask unanimous consent to proceed as in morning business.

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

Mr. KERREY. Reserving the right to object. As in morning business? I thought the Senator was going to offer an amendment.

Mr. SANTORUM. I am still waiting to hear if there is an agreement on my offering the amendment. We are waiting to hear from Members on your side of the aisle.

Mr. KERREY. Did the majority leader not earlier ask? Is that what we are proceeding under? I thought we were going to—

Mr. DOLE. Mr. President, in response to the Senator from Nebraska, what we are trying to do is get an agreement on when we are going to vote, if we can get a 10:30 agreement to vote. Does anybody object to voting at 10:30? Otherwise, we will have a Sergeant at Arms vote. There is going to be a vote. Either vote on the amendment or have a live quorum and we will have a vote. It is up to the Senator from Nebraska.

Mr. KERREY. I just got this amendment. I am not going to agree to a time of 10:30 or any other time at the moment until I review this amendment.

Mr. DOLE. We had an agreement last night, I understand, with the Senator for 10 o'clock. He had the amendment in his hand last night.

Mr. KERREY. Mr. President, 10 o'clock—my understanding last night was we were going to take it up at 10 o'clock. I did not understand.

Mr. DOLE. Take it up at 9:15, vote at 10. Now we are going to take it up at 9:45, vote in 45 minutes. I understand it is a very technical amendment.

Mr. KERREY. Let me just continue what I am doing, which is reviewing the amendment which I am looking at now for the first time.

Mr. SANTORUM. Mr. President, I ask unanimous consent that I may proceed as in morning business.

The PRESIDING OFFICER. Is there objection? Without objection, it is so ordered.

The Senator from Pennsylvania.

Mr. SANTORUM. I thank the Chair.

LACK OF PRESIDENTIAL LEADERSHIP

Mr. SANTORUM. I rise to continue my vigil in pointing out the lack of leadership of the President in coming forward and offering a balanced budget resolution. I have been in the Chamber noting the days that have passed since the Republicans in the Senate brought to the floor a balanced budget resolution which lay out a chart, a plan in specific detail, of how we would achieve a balanced budget over the next 7 years. Since that time, the President has played coyly with this issue and unfortunately has not come to the table. In fact, he has done a whole lot of things that lead many of us to believe we are not so sure he is ever going to come to the table.

Mr. KERREY. Will the Senator yield for a question?

Mr. SANTORUM. I would be happy to yield for a question.

Mr. KERREY. Mr. President, I have not been in the Chamber before when the Senator brought this chart down. I am 51 years old, 51 years old. I spent 3 years in the world's largest, most powerful Navy. And I was taught, when I was in the Navy, the Commander in Chief, the President of the United States, deserved respect, and I never called the President of the United States by his first name in public, let alone on the floor of the Senate.

I just ask my colleague, do you feel this is respectful? You can disagree with the President, say you have something you do not like about what he is doing, but, for God sakes, "Where is Bill?" I ask my colleague——

Mr. SANTORUM. If I can reclaim my time, I would suggest to the Senator from Nebraska that the reason this chart was put forward really is as a response to some of the comments made by the Senator from Massachusetts about the previous President. You remember the famous statement repeated over and over and over again in the 1992 election, "Where is George?" How many times?

Mr. DORGAN. Mr. President, will the Senator yield?

Mr. SANTORUM. Excuse me. How many times did we hear that refrain throughout the course of the election? So I would just——

Mr. KERREY. Mr. President, will the Senator yield for a followup question on that?

Mr. SANTORUM. I would be happy to yield.

Mr. KERREY. Mr. President, is the Senator from Pennsylvania saying essentially then if somebody else does something that he finds objectionable, because the other person has done it, therefore it establishes a precedent and he does not mind doing it as well? Is the Senator from Pennsylvania saying he is following the example of the Senator from Massachusetts, that whenever the Senator from Massachusetts does something, even though he may object to it, he is going to cite it as a precedent? The question that I asked was, does he respect the Commander in Chief, the President of the United States, enough to call him by a name that is worthy of that respect, regardless of whether he disagrees? If you want to bring up these opinions, bring up these policies, bring up whatever you want to the floor——

Mr. SANTORUM. Mr. President, I would like to reclaim the floor.

The PRESIDING OFFICER. The Senator from Pennsylvania has the time.

Mr. SANTORUM. I think you will find the dialog that has occurred in charting the number of days that the President has refused to offer a budget has been very respectful of the President in referring to him as the President.

The point of the chart is apparent.

I find it ironic that when this was going on by the Senator from Massachusetts, I do not remember anybody coming to the well, much less the Senator from Nebraska coming to the well, defending President Bush from those similar attacks. So I think it——

Mr. DORGAN. Will the Senator yield for a moment?

Mr. SANTORUM. Depends on whose ox is being gored as to who is offended by the remarks. I can appreciate the constructive dialog, but I think it is a suitable poster and will continue with it.

Mr. DORGAN. I wonder if the Senator would yield for a moment.

Mr. SANTORUM. I would be happy to yield for a question.

Mr. DORGAN. I appreciate it very much. The Senator refers to the Senator from Massachusetts. My recollection of the dialog "Where's George?" was that it occurred at a political convention. Is the Senator from Pennsylvania equating the floor of the Senate with a political convention?

Mr. SANTORUM. I am not equating the floor of the Senate with a political convention, no.

Mr. PRESSLER. If my friend will yield.

Mr. SANTORUM. I would be happy to yield to the Senator from South Dakota.

Mr. PRESSLER. I think in American society we refer respectfully to our President. I have heard various Presidents referred to by their first name on the Senate floor. I do not want to start digging it out. We have a friendly society. We refer to our President by first name or last name. We have good, healthy debate. I think that this whole objection here is nonsense. And I urge——

Mr. KERREY addressed the Chair.

Mr. PRESSLER. I urge the Senator from Pennsylvania to proceed.

Mr. SANTORUM. I thank the Senator from South Dakota.

Mr. KERREY addressed the Chair.

The PRESIDING OFFICER. The Senator from Pennsylvania has the time.

Mr. KERREY. Parliamentary point.

The PRESIDING OFFICER. The Senator will state his point.

Mr. KERREY. I just heard my comment referred to as nonsense. Is that correct?

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Mr. PRESSLER. I did not refer to the Senator's comment as nonsense. I just said this whole debate I think——

Mr. KERREY. Mr. President, I believe you have to look long and hard to find a Member who comes here and refers to the President by his first name, whether it is President Clinton, President Bush, or President Reagan. You have to look long and hard to find it. I appreciate the Senator from Pennsylvania thinks it is humorous. I do not.

Mr. DORGAN. Parliamentary inquiry.

The PRESIDING OFFICER. The time belongs to the Senator from Pennsylvania.

Mr. SANTORUM. I thank the Chair. He has done an effective job in moving this debate along to a vote at 10:30, and I appreciate the opportunity to have this discourse.

I think it may indicate that there is a sensitivity of the members of the President's party about the President's lack of leadership. And I understand that sensitivity. I understand that there may be justifiably some embarrassment about the lack of leadership by this President and jumping into his defense on something other than the substance of what we are discussing here.

We are not discussing substance in this little interplay. We sort of got off the track. Let us talk about the substance. The substance is that I have to put—I did not get a chance to get to the floor yesterday, but I have to put now "22"—22 days with no proposal to balance the budget from the President.

I will show you the chart I had the other day that was in the Washington Times. And again I understand the embarrassment of the other side on this issue. I understand they are a little sensitive about this because I am sure it is something I would not be proud of if it was my President on the Republican side.

But here is what Michael McCurry in a dialog with the reporter from the Washington Times said about the balanced budget amendment and the President on Larry King earlier this week suggesting that he may have a balanced budget resolution. The question was:

Where does President Clinton stand on writing his own budget now?

The answer from the press secretary:

As he indicated last night in his television interview, he's prepared to contribute his ideas to the budget at the appropriate time.

Washington Times question:

What does that mean?

Michael McCurry, White House Press Secretary:

It means we're ducking the question for now.

"We're ducking the question for now." The President of the United States, who has the responsibility to lead this Nation, is ducking the question for now.

I understand the embarrassment. I understand the sensitivity that many Democrats in this Chamber have about a President who is ducking the question, who is ducking the issue, who is refusing to lead, who is taking a back seat to all domestic policy in this country as we work here in the Congress to get it done and work, as we see in this case, on a bipartisan basis to get it done, but again without the leadership of the White House. Here we are debating probably one of the most important pieces of legislation that we are going to get a chance to debate that is going to affect our economy for a long, long time. We have very important fiscal matters to be concerned with here in getting our budget in order and tax policy and other Government program policies like welfare. But when it comes to regulating the private sector, this bill is probably as important as ever and the President has not been offering his own telecommunications bill, not putting forward leadership on that area, basically standing back and sniping, saying, well, I do not like this or I do not like that.

But where is the leadership? Where is the leadership on welfare reform as he goes around the country talking about how the Republican plan is mean spirited and terrible, and yet he has offered no plan this year. The plan he offered last year was cast aside by his own Congress, the Democratic Congress, as a joke, as irrelevant, as a nonstarter, as not even meeting the straight-faced test of incremental reform.

And so we have a President on that major issue domestically, who has just taken a walk and now this week he trots out the veto pen, on what? On reducing the deficit. On reducing the deficit, on a bill that was bipartisan, that was signed. This bill was signed on by the ranking member of the Appropriations Committee on the Democratic side as well as on the Republican side and passed with over 60 votes in the Senate, and he vetoed it.

I have to quote the Senator from Oregon, Senator HATFIELD, who came to the floor during the debate and said in his tenure on the Appropriations Committee, which spans six Presidents—six Presidents—he has never been in a conference committee where the President of the United States did not send a representative to negotiate the conference report. Every President has always sent a member of his staff to sit in the conference committee when they are drafting the report, to negotiate the final deal so we could settle it. The President did not send anybody. He said that is the first time in his history on the Appropriations Committee.

Now, there is a complete abdication of leadership. And so after an honest bipartisan effort was put together in the conference report, voila, the President decides it is not good enough for him even though he had no input into the process. I think it just goes to show you that what we have is a President who has decided to start running for the 1996 election and forget about serving in the office of the President. The whole concept now is just simply to run for office, to run against the Congress, not to offer anything, because if you offer anything, then you can be held down to specifics and people can criticize you. If you just criticize the other side, well, then all you do is pander to the different groups that you have to get to get elected.

And that is what is going on here. There is no substance coming out of that White House whether it is telecommunications, whether it is welfare, whether it is rescissions, whether it is balancing the budget. It is a continuation of, as the majority leader so eloquently said, the a.w.o.l. strategy of the President, absence without leadership. I think we should demand better.

And so I have set myself on this mission of coming here. I try to get here every day, but sometimes because of the floor schedule and the business we have at hand, I have not had a chance to do it every day. But I get here just about every day and put up the chart and count. I have been informed by my staff that we have, I think it was, 135 days between the time——

Mr. DORGAN. Parliamentary inquiry, Mr. President. Is the morning business time requested 5 minutes?

The PRESIDING OFFICER (Mr. ABRAHAM). There was no limit placed on the morning business.

Mr. SANTORUM. Mr. President, so I will probably have to have another little doohickey over here so we can put the "1" here, because it will be 135 days where the President is not going to offer a bill.

Again, he made comments on the Larry King show earlier this week that he was going to come up with a plan. He had talked about a plan that was going to balance the budget. This was, I think, day 6. He talked about a plan that was going to balance the budget over 10 years. That was his mission; that he was going to come up with that.

I did a little homework and found out that the last plan that was around here to balance the budget in 10 years that was offered never actually came to the floor of the House, but it was put together. It was by the chairman of the Budget Committee at the time. The chairman of the Budget Committee at that time was Leon Panetta, now Chief of Staff at the White House. But at the time of putting this budget together in 1991, he was chairman of the Budget Committee. This was after the Bush budget battle of 1990, and he thought it would be responsible.

I give him credit for this, because I was on the Budget Committee at the time and worked very closely with then Chairman Panetta. I had the utmost respect for him and his ardor in putting forward plans to put this country back on sound fiscal footing. I was not always in agreement with how he did it, but I know then-Chairman Panetta really had a strong motivation to deal with these problems, face up and

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to do it in a way that was honest, no gimmicks. This was a legitimate attempt by then Chairman Panetta to deal with these issues.

I found it ironic that when he actually put the document together—it was in late 1991—he not only did not even bring it up in the Budget Committee, but he was roundly criticized by those on his side of the aisle, so he pulled it down.

I must tell you, it was a budget to balance the budget over 10 years. There were some interesting points in it. What you find is that, very much like the Republican budget that was put forward and passed by the Senate and the House, it called for reductions in growth in entitlement spending. It called for reductions in growth in Medicare. It called for reductions in growth in Medicaid. It called for reductions in growth in Federal retirement programs. If you go on down the list on what the Republicans are now being roundly criticized for, the Panetta budget in 1991 was very similar in respect, maybe not to degree, but certainly similar in the programs that it went after, the recognition of where the problem was, and focused on entitlements as the biggest area for resolution of that problem.

The other interesting thing is that only two-thirds of the deficit reduction was achieved as a result of spending reductions. Two-thirds were achieved through spending reductions. The other one-third of deficit reduction was achieved through a tax increase. A little over $400 billion in new taxes, not specified, but new taxes that were going to be placed on the American public.

Maybe it goes back to the reason why the President has been so shy about offering this or bringing to light this 10-year budget. I am of the opinion that maybe what the Chief of Staff of the White House did was rummage through some of his old budget files when he was Budget chairman or have someone dig up his 1991 proposed budget and offered that to the President: "See, Mr. President, we can do it."

I know again how concerned the Chief of Staff is about the budget deficit and how honest he was in dealing with that. I believe he has been a voice in the White House saying, "Let's be responsible. Let's go out and show how we are going to do it, and let's bite the bullet like the Republicans have in the Congress, and lead this country into the future. Mr. President, here was my plan to get there. You should look at it."

So what the President probably did was read it and probably voiced he has a plan he is looking at, a 10-year plan, to balance the budget. But it, unfortunately, contains another big tax increase. This tax increase would actually pale by comparison to what the President and the last Congress passed in 1993. This was, as I said before, close to $1½ trillion dollars in new taxes on the American public to solve this problem.

I think if you looked at the debate during consideration of the budget resolution, there certainly was not a fervor to go out and raise taxes. I know there were a couple of Members who voiced that concern, but frankly, that sentiment was roundly dismissed by both sides of the aisle as something that was not only not in the public's interest but certainly not in the interest of the economy.

If we look now at what is going on with the economy and the effect of the 1993 tax increase on the economy and the fact that we had the largest ever payment of taxes in April, the largest amount of money ever written to the Internal Revenue Service at tax time was this last April where they sent an enormous amount of money—I think the number is around $20 billion in tax payments paid over what the previous record was—some economists are suggesting that is one of the reasons we may be seeing the slowdown now, because that tax time and that tax increase drew so much money out of the economy that it had the dampening effect of reducing the rate of growth and possibly even spinning us into a recession.

So I think everyone realizes that tax increases are not the way to deal with the budget deficit. I think we saw from the debate just a few weeks ago—I do not remember an amendment that called for a tax increase—that in fact suggested we should solve the problem by instituting new taxes.

Mr. EXON. Will the Senator yield for a question?

Mr. SANTORUM. I will be happy to yield for a question.

Mr. EXON. My question of the Senator from Pennsylvania is simply that we have, as I understand it, very important business to transact. Can the Senator advise me as to how long he intends to hold the floor on the matter that we have heard from him on several occasions?

Mr. SANTORUM. I expect I will be talking for a few more minutes. I know the leader would like to get a vote and is seeking a unanimous consent agreement to get a vote on a——

Mr. EXON. If I might, I simply advise my colleague, as I understand it, the Republicans have a golf game this afternoon. I am sure that is a high-priority item. But this measure before us, which I would like to get to, is a very important piece of legislation for America.

Mr. SANTORUM. Mr. President, I reclaim the floor.

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

Mr. SANTORUM. I do not know anything about that. I have some very pressing business of my own which, hopefully, can wait. My wife is expecting our third child, and we are hoping that will come tomorrow. We are very anxious about that. Things are looking good. I would like to be home tomorrow. But if Senate business calls, Senate business calls, and I will be here if I need be.

I know what we would like to do is proceed on some of these amendments. I have these notes passed to me saying no one wants to agree to vote on anything; we want to stall and delay.

Mr. PRESSLER. If my friend will yield, I think what is going on, Senator DOLE is trying to get an agreement for a vote at 10:30 and has been unable to do so. But I say respectfully to everybody, when I was a lieutenant in the Army—a mere second lieutenant—LBJ was referred to affectionately, at least by my superiors, as "LBJ."

Also on this floor I heard the term "Reaganomics" used a great deal back at the point when it was thought not to be popular. I am very respectful, as I am sure my friend is, of the President of the United States.

Let me say, whether it is Ike, FDR, LBJ, Reaganomics, Bush-whack—I have heard all these terms around the Senate over the years. I just want to point that out because I am very respectful, as I am sure the Senator from Pennsylvania is.

Military service was mentioned. When I was a second lieutenant, we used to affectionately and supportively refer to LBJ as LBJ. Maybe we need a new form of rules because past Presidents have been referred to in a variety of ways on the Senate floor.

Mr. SANTORUM. I thank the Senator.

Mr. KERREY. Will the Senator yield for an explanation? I say to my colleague——

Mr. SANTORUM. I will not yield.

Mr. KERREY. The Senator brings an amendment to the floor and then stands up for a discussion. It should not be a surprise the amendment is being delayed.

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

Mr. SANTORUM. Thank you, Mr. President. I will quickly wrap up my remarks, and, hopefully, we can move to the vote soon.

In response to some of the comments, I know this amendment was made available last night, and it is really a minor, technical amendment. I hope that is something we can agree to down the road.

I think it is important. I understand telecommunications is important, and if we can get agreements, we can move forward on it. But this is also important. The role of the President in this country over the next 18 months, and whether he is going to be a leader of this country in moving forward on the domestic agenda, whether it is telecommunications or balanced budget or welfare reform, or a whole host of other areas, is important.

The Presidency—an office I respect—is important to this country. In fact, that is the reason I am here, because I think it is important. I think it is necessary for the President to step forward and offer suggestions, to lead the

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country. If I did not think it was important, if I did not think the President had a role, if I did not think the President was in fact the leader of the free world, then I probably would not be here. He would be like any other American who did not have to participate in the process.

Well, he was elected to participate in the process; he was elected to lead this country; he was elected to change this country. What he has done is elected not to participate. I think we need to point that out. We need to continue to point that out until he elects to participate.

So I will be back and I will talk about the number of days with no proposal to balance the budget from President Clinton.

QUORUM CALL

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

Mr. SANTORUM. Objection.

The PRESIDING OFFICER. Objection is heard.

The clerk will continue calling the roll.

The legislative clerk resumed the call of the roll and the following Senators entered the Chamber and answered to their names:

Abraham	Kerrey	Santorum
Hollings	Pressler	

The PRESIDING OFFICER. A quorum is not present.

The clerk will call the names of the absent Senators.

Mr. SANTORUM. Mr. President, I move to instruct the Sergeant at Arms to request the attendance of absent Senators, and I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second?

There is a sufficient second.

The yeas and nays were ordered.

The PRESIDING OFFICER. The question is on agreeing to the motion of the Senator from Pennsylvania. The yeas and nays were ordered, and the clerk will call the roll.

The legislative clerk called the roll.

Mr. LOTT. I announce that the Senator from Missouri [Mr. ASHCROFT], the Senator from Georgia [Mr. COVERDELL], the Senator from Texas [Mr. GRAMM], the Senator from North Carolina [Mr. HELMS], the Senator from Alabama [Mr. SHELBY], the Senator from Wyoming [Mr. SIMPSON], the Senator from Pennsylvania [Mr. SPECTER], and the Senator from Alaska [Mr. STEVENS] are necessarily absent.

I further announce that, if present and voting, the Senator from Wyoming [Mr. SIMPSON] would vote "yea."

Mr. FORD. I announce that the Senator from California [Mrs. BOXER], the Senator from Massachusetts [Mr. KENNEDY], and the Senator from Georgia [Mr. NUNN] are necessarily absent.

I also announce that the Senator from Delaware [Mr. BIDEN] is absent because of a funeral.

The PRESIDING OFFICER. Are there any other Senators in the Chamber desiring to vote?

The result was announced—yeas 80, nays 8, as follows:

[Rollcall Vote No. 246 Leg.]

YEAS—80

Abraham	Feingold	Lieberman
Akaka	Feinstein	Lott
Baucus	Ford	Lugar
Bingaman	Frist	McConnell
Bond	Glenn	Mikulski
Bradley	Gorton	Moseley-Braun
Brown	Graham	Moynihan
Bryan	Grassley	Murkowski
Bumpers	Gregg	Murray
Burns	Harkin	Packwood
Byrd	Hatch	Pell
Campbell	Hatfield	Pressler
Chafee	Heflin	Pryor
Coats	Hollings	Reid
Cochran	Hutchison	Robb
Cohen	Inhofe	Rockefeller
Conrad	Inouye	Roth
Craig	Jeffords	Santorum
D'Amato	Johnston	Sarbanes
Daschle	Kassebaum	Simon
DeWine	Kerrey	Snowe
Dodd	Kerry	Thomas
Dole	Kohl	Thompson
Domenici	Kyl	Thurmond
Dorgan	Lautenberg	Warner
Exon	Leahy	Wellstone
Faircloth	Levin	

NAYS—8

Bennett	Kempthorne	Nickles
Breaux	Mack	Smith
Grams	McCain	

NOT VOTING—12

Ashcroft	Gramm	Shelby
Biden	Helms	Simpson
Boxer	Kennedy	Specter
Coverdell	Nunn	Stevens

So the motion was agreed to.

The PRESIDING OFFICER. With the addition of Senators voting who did not answer the quorum call, a quorum is now present.

The Senate will come to order.

The majority leader.

THE TELECOMMUNICATIONS COMPETITION AND DEREGULATION ACT

The Senate continued with the consideration of the bill.

Mr. DOLE. Mr. President, let me indicate this is the first time we have had a vote like this all year. I do not like these kinds of votes because it punishes people who are not here for no good reason, but we could not get an agreement to vote on an amendment and, as I understand it, we are not going to get any time agreement on any amendment.

The managers have been doing an excellent job, I want to indicate, both to Senator PRESSLER and Senator HOLLINGS. I would like to complete action on this bill. It is a very important bill. No one is trying to rush it, but if we cannot get an agreement on a technical vote, I do not know what other recourse there is but sometime today to file cloture, have a pro forma session tomorrow, and then have a cloture vote on Monday around 5 o'clock to see if we cannot speed up movement of this bill.

If there is a willingness to agree to vote on the very important amendment offered by Senator DORGAN and Senator THURMOND from South Carolina, even at 5 o'clock on Monday, if we could agree to vote at 5 o'clock on Monday, agree to vote on the Santorum amendment here in the next 30 minutes? Failing that, we will have no recourse. Under the order, as I understand it, the Senator from Pennsylvania will be recognized to offer his amendment. We can have a vote, move to table the amendment, vote against tabling, and we can have another vote and another vote. But we do not make any progress.

But if the Senator from Nebraska is determined, as I believe he is, that we will not have any agreements or any votes, then we will just have to have some procedural votes between now and 2 o'clock.

If there is any inclination on anybody's part to make any kind of agreement, certainly I am prepared as the leader to try to accommodate all of my colleagues, many of whom are not here today, and many of whom would like not to be here today.

But, having said that, I yield the floor.

Several Senators addressed the Chair.

Mr. KERREY. Mr. President, if I may respond, what transpired here this morning was we were debating the second-degree amendment offered by the Senator from South Carolina to the underlying amendment offered last night by the Senator from North Dakota. We had a short period of debate last night. We came in here early this morning. We had just begun the debate and the Senator from Pennsylvania came to the floor, I understood with an amendment, and asked for unanimous consent to go into morning business.

I did not, in good conscience, in good faith to a colleague, ask for any time limitation.

Then the distinguished Senator from Pennsylvania came—and not for the purpose of talking for a short period of time and then going to his amendment—with a very provocative, very effective, but very provocative political appeal against the President of the United States, to which I responded; to which I was quite willing to respond at an even longer time and had no opportunity. I had a very short exchange with the Senator from Pennsylvania on that issue.

I laid his amendment aside, which I think is appropriate for me to do. He has provoked an argument not on his amendment but on another issue. I did not choose to do that. He chose to come to the floor and, instead of addressing his amendment, provoked a debate on another subject. I laid that amendment aside and began to prepare my remarks to address the subject that he chose.

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That is what happened here this morning. As to the underlying amendment, it is not that I am unwilling to set a time. I am not trying to filibuster this, I truly am not. I believe the differences between, in particular, Senator DORGAN and Senator THURMOND and myself, are not very far and there might be possibility for an agreement here on this particular proposal.

I heard the Senator from Arizona earlier, when he got up and made his opening remarks on this bill. He and I are not that far apart as to what we think the regulatory structure ought to be. I truly am trying to improve this bill. I am not trying to stop it. I am not trying to kill it. I am not trying to filibuster it indefinitely.

I would agree here this morning, if the Senator from Pennsylvania wants to lay his amendment down and you want to table it, I would like a short period of time at least to describe how I view this particular amendment in the brief period of time I have had to look at it.

Mr. DOLE. I certainly have no objection. I am not indicating any disagreement with the Senator from Nebraska. He has every right he wants, and has exercised his right.

I wonder if we might agree that there would be—the Senator does not want a vote up or down on the amendment, right? Will the Senator from Nebraska let us vote up or down on the amendment after 30 minutes of debate equally divided?

Mr. KERREY. What I am asking for, they came over to me earlier and said that the distinguished majority leader was going to table, and what I had asked for as opposed to putting us into a quorum call was just a little bit of time to offer some comments on the amendment itself. I do not want to agree to an up-or-down vote on it. I really have not had time to look at the amendment that carefully, but I was just with respect asking for a small period of time to make some comments on the amendment.

Mr. DOLE. I am not managing the bill, but I just suggest that maybe we vote at 11:30, and the Senator from Nebraska have half that time and the other half would be divided——

Mr. KERREY. I say to the majority leader, I would agree not to a time limit for an up-or-down vote, but I would definitely—I am asking if the Senator would agree to a unanimous consent that would give me 10 minutes to comment prior to a tabling motion.

Mr. DOLE. And then if the motion to table is not successful, would the Senator let us adopt the amendment?

Mr. KERREY. The answer is no. I say to the majority leader, I came—the distinguished Senator from Pennsylvania gave me his amendment. I was reading it over, and he got up and he provoked me. There is no other way to say it. So I took his amendment and put it in a little square thing over here called the trash can and started to make notes to respond to what he was arguing. He was not arguing his amendment.

Mr. DOLE. I do not know anything about that. If I could suggest this, that the Senator from Pennsylvania offer his amendment and after 20 minutes of debate, or 30 minutes of debate —the Senator from Nebraska 10 minutes, the managers or someone in opposition to the amendment, the Senator from Pennsylvania 10 minutes—that the Senator from South Dakota then be recognized to move to table the Santorum amendment.

Would that be satisfactory?

Mr. KERREY. That would be satisfactory.

Mr. DOLE. Is there any objection?

The PRESIDING OFFICER. Is there objection? Without objection, it is so ordered.

Mr. SANTORUM addressed the Chair.

The PRESIDING OFFICER. The Senator from Pennsylvania.

AMENDMENT NO. 1267

(Purpose: To permit the Bell operating companies to provide interLATA commercial mobile services)

Mr. SANTORUM. Mr. President, I send an amendment to the desk.

The PRESIDING OFFICER. The clerk will report the amendment.

The bill clerk read as follows:

The Senator from Pennsylvania [Mr. SANTORUM] proposes an amendment numbered 1267.

Mr. SANTORUM. 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 94, strike out line 24 and all that follows through page 97, line 22, and insert in lieu thereof the following:

"(C) providing a service that permits a customer that is located in one LATA to retrieve stored information from, or file information for storage in, information storage facilities of such company that are located in another LATA area, so long as the customer acts affirmatively to initiate the storage or retrieval of information, except that—

"(i) such service shall not cover any service that establishes a direct connection between end users or any real-time voice and data transmission,

"(ii) such service shall not include voice, data, or facsimile distribution services in which the Bell operating company or affiliate forwards customer-supplied information to customer- or carrier-selected recipients,

"(iii) such service shall not include any service in which the Bell operating company or affiliate searches for and connects with the intended recipient of information, or any service in which the Bell operating company or affiliate automatically forwards stored voicemail or other information to the intended recipient, and

"(iv) customers of such service shall not be billed a separate charge for the interLATA telecommunications furnished in conjunction with the provision of such service,

"(D) providing signaling information used in connection with the provision of telephone exchange service or exchange access service to another local exchange carrier; or

"(E) providing network control signaling information to, and receiving such signaling information from, interexchange carriers at any location within the area in which such company provides telephone exchange service or exchange access service.

"(2) LIMITATIONS.—The provisions of paragraph (1) are intended to be narrowly construed. The transmission facilities used by a Bell operating company or affiliate thereof to provide interLATA telecommunications under paragraph (1)(C) and subsection (f) shall be leased by that company from unaffiliated entities on terms and conditions (including price) no more favorable than those available to the competitors of that company until that Bell operating company receives authority to provide interLATA services under subsection (c). The interLATA services provided under paragraph (1)(A) are limited to those interLATA transmissions incidental to the provision by a Bell operating company or its affiliate of video, audio, and other programming services that the company or its affiliate is engaged in providing to the public. A Bell operating company may not provide telecommunications services not described in paragraph (1) without receiving the approvals required by subsection (c). The provision of services authorized under this subsection by a Bell operating company or its affiliate shall not adversely affect telephone exchange ratepayers or competition in any telecommunications market.

"(f) COMMERCIAL MOBILE SERVICE.—A Bell operating company may provide interLATA commercial mobile service except where such service is a replacement for land line telephone exchange service for a substantial portion of the land line telephone exchange service in a State in accordance with section 322(c) and with the regulations prescribed by the Commission.

"(g) DEFINITIONS.—As used in this section—

The PRESIDING OFFICER. The Senate will come to order. The Senator from Pennsylvania has the floor.

Mr. SANTORUM. I thank the Chair.

Mr. President, I rise today to offer an amendment which clarifies the intent of the current language in the bill regarding inter-LATA commercial mobile services. This amendment makes only a minor change to the bill, and my understanding is that the amendment is noncontroversial with respect to the managers of the bill. Both Senators PRESSLER and HOLLINGS see no problem with the amendment and we hope to get the support of the other Members of the Chamber.

Mr. President, as you know, the consent decree that broke up AT&T in 1984 divided up the territory served by the old Bell system into 160 LATA's, which are local access transport areas. The LATA boundaries were drawn based on the then existing wire-based telephone network. Since that time, these wireline LATA's have been applied to new wireless services offered by the Bell companies, services such as cellular telephone systems. This was done in spite of the fact that there is no particular relationship between the LATA's and the wireless area served.

As a result, the Bell operating companies have been placed at a competitive disadvantage vis-a-vis the other wireless communications services, because the other wireless providers are not required to adhere to these LATA boundary restrictions.

The current piece of legislation addresses this inequity in section 255, and I wish to commend the committee for doing so. Section 255 addresses when a

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Bell operating company may provide inter-LATA telecommunications services. Subsection (e) defines when a Bell operating company may provide inter-LATA services incidental to providing video and audio programming, storage and retrieval services, and commercial mobile services. The intent is to finally allow the Bell operating companies to provide these specific services free of inter-LATA restrictions.

However, Mr. President, I believe that with respect to commercial mobile services, the term "incidental" creates an unintended ambiguity. The non-Bell wireless providers that currently have advantage, as I said before, will argue down the road that the inter-LATA Bell services in any given case are not incidental to the commercial mobile services in question. As a result, the Bell operating companies are not guaranteed the full entry into the inter-LATA commercial mobile services that this bill intends to provide.

The problem is very simply in the processing of a cellular phone call, they use wire services, and so it is in fact integral to providing the wireless services that they use a wire communications network. So the term "incidental" can be used to say that they frankly cannot do it at all and then have to fall back into their LATA boundaries, which is not the intent of the bill.

My amendment clarifies the intent by doing two things. First, the amendment carves out commercial mobile services from the incidental services section.

Second, the amendment inserts this commercial mobile services paragraph into a new subsection, subsection (f), immediately following the incidental services section. By creating a new subsection, this amendment removes the ambiguity of the term "incidental" with respect to the commercial mobile services without affecting the other wireless service provisions in subsection (e). As a result, this amendment makes only a very slight change to current language, yet it guarantees a level playing field intended for the Bell operating companies' commercial mobile services and their competitors.

Wireless services are competitive today. There are two cellular carriers in every locale. The FCC has allotted additional spectrum for service providers which will compete with cellular carriers. Only Bell-affiliated wireless carriers are subject to the LATA constraints while all others can offer services in whatever way and configuration their customers want. The Bell companies' lack of a comparable freedom of flexibility puts them at this competitive disadvantage.

As I said before, the distinguished ranking member, the Senator from South Carolina, and the chairman of the Commerce Committee have agreed to this, and I commend their efforts in putting this provision in the bill in the first place. This is simply a technical correction to make the focus of the bill very clear and so it is not under litigation by competitors down the road.

I seek the support of the Senate on this amendment.

Mr. President, I reserve the remainder of my time.

The PRESIDING OFFICER. Who yields time?

The Senators from South Dakota and Nebraska control 10 minutes.

Mr. SANTORUM addressed the Chair.

The PRESIDING OFFICER. The Senator from Pennsylvania.

Mr. SANTORUM. Mr. President, I will be happy to yield to the Senator from South Dakota.

Mr. HOLLINGS. Mr. President, in just the minute yielded to me, we have reviewed the amendment and it is an incidental. The "incidental" amendment is incidental. It corrects a good part of it, and on this side we would approve the amendment.

Mr. SANTORUM. I thank the Senator from South Carolina.

The PRESIDING OFFICER. Who yields time?

Mr. PRESSLER. Mr. President, we also on this side of the aisle support this amendment, and we have no problem with it and look forward to working with the Senator from Pennsylvania.

The PRESIDING OFFICER. Who yields time? If nobody yields time, time will be subtracted equally from all three sides at this point.

Mr. PRESSLER. I suggest the absence of a quorum.

The PRESIDING OFFICER. The absence of a quorum has been suggested. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

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

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

Mr. KERREY. Mr. President, I have no problem, as I understand it, with this amendment. As I see it, the Senator from Pennsylvania is bringing a request from the Bell operating companies to clear up this language so that the Bell operating companies will know with certainty that their companies can get into long distance cellular service.

The "Dear Colleague" sent out by the Senator from Pennsylvania explains it so far as it goes, talking about the difficulty that the Bell operating companies are having as a consequence of an unusual situation where the Federal Communications Commission has drawn up LATA's that determine what the local area is. Excuse me, the Justice Department. And the Federal Communications Commission, when they did the cellular lotteries, used MSA's, mobile service areas.

But let us be clear on this. The idea that the Bell operating companies that the amendment will protect have been somehow abused in this deal is stretching it a little far, in my judgment. They were given this cellular franchise in the local areas. They were given it. Everyone else had to go through a lottery process, so they were given this license to begin with. In my judgment, what the Bell operating companies are asking the Senator from Pennsylvania to do with this amendment is, it seems to me, quite reasonable and I will not oppose it.

Mr. HOLLINGS. Will the Senator from Nebraska yield?

Could it be then at the conclusion of the time that we could just have an up-or-down vote on the amendment?

Mr. KERREY. I do not object to that.

Mr. President, I am prepared to yield back the remainder of my time.

Mr. SANTORUM. Mr. President, I yield back the remainder of my time.

The PRESIDING OFFICER (Mr. FRIST). The Senator from Pennsylvania yields back the remainder of his time.

Does the Senator seek to modify the previous consent agreement?

Mr. PRESSLER. Mr. President, I believe there are no more speakers.

I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

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

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

Mr. PRESSLER. Mr. President, I ask for the yeas and nays on the amendment before the Senate.

The PRESIDING OFFICER. Is there a sufficient second?

There is a sufficient second.

The yeas and nays were ordered.

The PRESIDING OFFICER. Does the Senator wish to vitiate the motion to table?

Mr. PRESSLER. Yes.

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

The PRESIDING OFFICER. All time is yielded back. The question is on agreeing to the amendment. The yeas and nays have been ordered. The clerk will call the roll.

The assistant legislative clerk called the roll.

Mr. LOTT. I announce that the Senator from Missouri [Mr. ASHCROFT], the Senator from Georgia [Mr. COVERDELL], the Senator from Texas [Mr. GRAMM], the Senator from North Carolina [Mr. HELMS], the Senator from Alabama [Mr. SHELBY], the Senator from Wyoming [Mr. SIMPSON], the Senator from Pennsylvania [Mr. SPECTER], the Senator from Alaska [Mr. STEVENS], and the Senator from Wyoming [Mr. THOMAS] are necessarily absent.

I further announce that, if present and voting, the Senator from Wyoming [Mr. SIMPSON] would vote "yea."

Mr. FORD. I announce that the Senator from California [Mrs. BOXER], the Senator from Massachusetts [Mr. KENNEDY], and the Senator from Georgia [Mr. NUNN] are necessarily absent.

I also announce that the Senator from Delaware [Mr. BIDEN] is absent because of a funeral.

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The PRESIDING OFFICER. Are there any other Senators in the Chamber desiring to vote?

The result was announced—yeas 83, nays 4, as follows:

[Rollcall Vote No. 247 Leg.]

YEAS—83

Abraham	Feingold	Lieberman
Akaka	Feinstein	Lott
Bancus	Ford	Lugar
Bennett	Frist	Mack
Bingaman	Glenn	McCain
Bond	Graham	McConnell
Bradley	Grams	Mikulski
Breaux	Grassley	Moseley-Braun
Brown	Gregg	Moynihan
Bryan	Harkin	Murkowski
Bumpers	Hatch	Nickles
Burns	Hatfield	Packwood
Campbell	Heflin	Pell
Chafee	Hollings	Pressler
Coats	Hutchison	Pryor
Cochran	Inhofe	Robb
Cohen	Inouye	Rockefeller
Conrad	Jeffords	Roth
Craig	Johnston	Santorum
D'Amato	Kassebaum	Sarbanes
Daschle	Kempthorne	Simon
DeWine	Kerrey	Smith
Dodd	Kerry	Snowe
Dole	Kohl	Thompson
Domenici	Kyl	Thurmond
Dorgan	Lautenberg	Warner
Exon	Leahy	Wellstone
Faircloth	Levin	

NAYS—4

Byrd	Murray
Gorton	Reid

NOT VOTING—13

Ashcroft	Helms	Specter
Biden	Kennedy	Stevens
Boxer	Nunn	Thomas
Coverdell	Shelby	
Gramm	Simpson	

So the amendment (No. 1267) was agreed to.

Mr. DOLE. Mr. President, I call for the regular order, thereby making the pending business amendment No. 1255.

The PRESIDING OFFICER. Regular order has been called.

AMENDMENT NO. 1255, AS MODIFIED

Mr. DOLE. I send a modification of my amendment to the desk. This has been agreed to by the Democratic leader and the managers.

The PRESIDING OFFICER. The Senator has the right to modify the amendment. The amendment will be so modified.

The amendment (No. 1255), as modified, is as follows:

On page 9, strike lines 4 through 12 and insert the following:

(c) TRANSFER OF MFJ.—After the date of enactment of this Act, the Commission shall administer any provision of the Modification of Final Judgment not overridden or superseded by this Act. The District Court for the District of Columbia shall have no further jurisdiction over any provision of the Modification of Final Judgment administered by the Commission under this Act or the Communications Act of 1934. The Commission may, consistent with this Act (and the amendments made by this Act), modify any provision of the Modification of Final Judgment that it administers.

(d) GTE CONSENT DECREE.—This Act shall supersede the provisions of the Final Judgment entered in United States v. GTE Corp., No. 83-1298 (D.C. D.C.), and such Final Judgment shall not be enforced after the effective date of this Act.

On page 40, line 9, strike "to enable them" and insert "which are determined by the Commission to be essential in order for Americans".

On page 40, beginning on line 11, strike "Nation. At a minimum, universal service shall include any telecommunications services that" and insert "Nation, and which".

On page 70, between lines 21 and 22, insert the following:

(b) GREATER DEREGULATION FOR SMALLER CABLE COMPANIES.—Section 623 (47 U.S.C. 543) is amended by adding at the end thereof the following:

"(m) SPECIAL RULES FOR SMALL COMPANIES.—

"(1) IN GENERAL.—Subsection 9a), (b), or (c) does not apply to a small cable operator with respect to—

"(A) cable programming services, or

"(B) a basic service tier that was the only service tier subject to regulation as of December 31, 1994,

in any franchise area in which that operator serves 35,000 or fewer subscribers.

"(2) DEFINITION OF SMALL CABLE OPERATOR.—For purposes of this subsection, the term 'small cable operator' means a cable operator that, directly or through an affiliate, serves in the aggregate fewer than 1 percent of all subscribers in the United States and does not, directly or through an affiliate, own or control a daily newspaper or a tier 1 local exchange carrier.".

On page 70, line 22, strike "(b)" and inset "(c)".

On page 71, line 3, strike "(c)" and insert "(d)".

On page 79, strike lines 7 through 11 and insert the following:

(1) IN GENERAL.—The Commission shall modify its rules for multiple ownership set forth in 47 CFR 73.3555 by—

(A) eliminating the restrictions on the number of television stations owned under subdivisions (e)(1)(ii) and (iii); and

(B) changing the percentage set forth in subdivision (e)(2)(ii) from 25 percent to 35 percent.

(2) RADIO OWNERSHIP.—The Commission shall modify its rules set forth in 47 CFR 73.3555 by eliminating any provision limiting the number of AM or FM broadcast stations which may be owned or controlled by one entity either nationally or in a particular market. The Commission may refuse to approve the transfer or issuance of an AM or FM broadcast license to a particular entity if it finds that the entity would thereby obtain an undue concentration of control or would thereby harm competition. Nothing in this section shall require or prevent the Commission from modifying its rules contained in 47 CFR 73.3555(c) governing the ownership of both a radio and television broadcast stations in the same market.

On page 79, line 12, strike "(2)" and insert "(3)".

On page 79, line 18, strike "(3)" and insert "(4)".

On page 79, line 21, strike "(4)" and insert "(5)".

On page 79, line 22, strike "modification required by paragraph (1)" and insert "modifications required by paragraphs (1) and (2)".

On page 117, line 22, strike "**REGULATIONS.**." and insert "**REGULATIONS; ELIMINATION OF UNNECESSARY REGULATIONS AND FUNCTIONS.**".

On page 117, line 23, strike "(a) BIENNIAL REVIEW.—" before "Part".

On page 118, between lines 20 and 21, insert the following:

(b) ELIMINATION OF UNNECESSARY COMMISSION REGULATIONS AND FUNCTIONS.

(1) REPEAL SETTING OF DEPRECIATION RATES.—The first sentence of section 220(b) (47 U.S.C. 220(b)) is amended by striking "shall prescribe for such carriers" and inserting "may prescribe, for such carriers as it determines to be appropriate,".

(2) USE OF INDEPENDENT AUDITORS.—Section 220(c) (47 U.S.C. 220(c)) is amended by adding at the end thereof the following: "The Commission may obtain the services of any person licensed to provide public accounting services under the law of any State to assist with, or conduct, audits under this section. While so employed or engaged in conducting an audit for the Commission under this section, any such person shall have the powers granted the Commission under this subsection and shall be subject to subsection (f) in the same manner as if that person were an employee of the Commission.".

(3) SIMPLIFICATION OF FEDERAL-STATE COORDINATION PROCESS.—The Commission shall simplify and expedite the Federal-State coordination process under section 410 of the Communications Act of 1934.

(4) PRIVATIZATION OF SHIP RADIO INSPECTIONS.—Section 385 (47 U.S.C. 385) is amended by adding at the end thereof the following: "In accordance with such other provisions of law as apply to government contracts, the Commission may enter into contracts with any person for the purpose of carrying out such inspections and certifying compliance with those requirements, and may, as part of any such contract, allow any such person to accept reimbursement from the license holder for travel and expense costs of any employee conducting an inspection or certification.".

(5) MODIFICATION OF CONSTRUCTION PERMIT REQUIREMENT.—Section 319(d) (47 U.S.C. 319(d)) is amended by striking the third sentence and inserting the following: "The Commission may waive the requirement for a construction permit with respect to a broadcasting station in circumstances in which it deems prior approval to be unnecessary. In those circumstances, a broadcaster shall file any related license application within 10 days after completing construction.".

(6) LIMITATION ON SILENT STATION AUTHORIZATIONS.—Section 312 (47 U.S.C. 312) is amended by adding at the end the following:

"(g) If a broadcasting station fails to transmit broadcast signals for any consecutive 12-month period, then the station license granted for the operation of that broadcast station expires at the end of that period, notwithstanding any provision, term, or condition of the license to the contrary.".

(7) EXPEDITING INSTRUCTIONAL TELEVISION FIXED SERVICE PROCESSING.—The Commission shall delegate, under section 5(c) of the Communications Act of 1934, the conduct of routine instructional television fixed service cases to its staff for consideration and final action.

(8) DELEGATION OF EQUIPMENT TESTING AND CERTIFICATION TO PRIVATE LABORATORIES.—Section 302 (47 U.S.C. 302) is amended by adding at the end the following:

"(e) The Commission may—

"(1) authorize the use of private organizations for testing and certifying the compliance of devices or home electronic equipment and systems with regulations promulgated under this section;

"(2) accept as prima facie evidence of such compliance the certification by any such organization; and

"(3) establish such qualifications and standards as it deems appropriate for such private organizations, testing, and certification.".

(9) MAKING LICENSE MODIFICATION UNIFORM.—Section 303(f) (47 U.S.C. 303(f)) is amended by striking "unless, after a public hearing," and inserting "unless".

(10) PERMIT OPERATION OF DOMESTIC SHIP AND AIRCRAFT RADIOS WITHOUT LICENSE.—Section 307(e) (47 U.S.C. 307(e)) is amended by—

(A) striking "service and the citizens band radio service" in paragraph (1) and inserting

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"service, citizens band radio service, domestic ship radio service, domestic aircraft radio service, and personal radio service"; and

(B) striking "service' and 'citizens band radio service'"in paragraph (3) and inserting "service', 'citizens band radio service', 'domestic ship radio service', 'domestic aircraft radio service', and 'personal radio service'".

(11) EXPEDITED LICENSING FOR FIXED MICROWAVE SERVICE.—Section 309(b)(2) (47 U.S.C. 309(b)(2)) is amended by striking subparagraph (A) and redesignating subparagraphs (B) through (G) as (A) through (F), respectively.

(12) ELIMINATE FCC JURISDICTION OVER GOVERNMENT-OWNED SHIP RADIO STATIONS.—

(A) Section 305 (47 U.S.C. 305) is amended by striking subsection (b) and redesignating subsections (c) and (d) as (b) and (c), respectively.

(B) Section 382(2) (47 U.S.C. 382(2)) is amended by striking "except a vessel of the United States Maritime Administration, the Inland and Coastwise Waterways Service, or the Panama Canal Company,".

(13) MODIFICATION OF AMATEUR RADIO EXAMINATION PROCEDURES.—

(A) Section 4(f)(H)(N) (47 U.S.C. 4(f)(4)(B)) is amended by striking "transmissions, or in the preparation or distribution of any publication used in preparation for obtaining amateur station operator licenses," and inserting "transmission".

(B) The Commission shall modify its rules governing the amateur radio examination process by eliminating burdensome record maintenance and annual financial certification requirements.

(14) STREAMLINE NON-BROADCAST RADIO LICENSE RENEWALS.—The Commission shall modify its rules under section 309 of the Communications Act of 1934 (47 U.S.C. 309) relating to renewal of nonbroadcast radio licenses so as to streamline or eliminate comparative renewal hearings where such hearings are unnecessary or unduly burdensome.

On page 117, between lines 21 and 22, insert the following:

(d) REGULATORY RELIEF.—

(1) STREAMLINED PROCEDURES FOR CHANGES IN CHARGES, CLASSIFICATIONS, REGULATIONS, OR PRACTICES.—

(A) Section 204(a) (47 U.S.C. 204(a)) is amended—

(i) by striking "12 months" the first place it appears in paragraph (2)(A) and inserting "5 months";

(ii) by striking "effective," and all that follows in paragraph (2)(A) and inserting "effective."; and

(iii) by adding at the end thereof the following:

"(3) A local exchange carrier may file with the Commission a new or revised charge, classification, regulation, or practice on a streamlined basis. Any such charge, classification, regulation, or practice shall be deemed lawful and shall be effective 7 days (in the case of a reduction in rates) or 15 days (in the case of an increase in rates) after the date on which it is filed with the Commission unless the Commission takes action under paragraph (1) before the end of that 7-day or 15-day period, as is appropriate.".

(B) Section 208(b) (47 U.S.C. 208(b)) is amended—

(i) by striking "12 months" the first place it appears in paragraph (1) and inserting "5 months"; and

(ii) by striking "filed," and all that follows in paragraph (1) and inserting "filed.".

(2) EXTENSIONS OF LINES UNDER SECTION 214; ARMIS REPORTS.—Notwithstanding section 305, the Commission shall permit any local exchange carrier—

(A) to be exempt from the requirements of section 214 of the Communications Act of 1934 for the extension of any line; and

(B) to file cost allocation manuals and ARMIS reports annually, to the extent such carrier is required to file such manuals or reports.

(3) FOREBEARANCE AUTHORITY NOT LIMITED.—Nothing in this subsection shall be construed to limit the authority of the Commission or a State to waive, modify, or forebear from applying any of the requirements to which reference is made in paragraph (1) under any other provision of this Act other law.

On page 118, line 20, strike the closing quotation marks and the second period.

On page 118, between lines 20 and 21, insert the following:

"(c) CLASSIFICATION OF CARRIERS.—In classifying carriers according to 47 CFR 32.11 and in establishing reporting requirements pursuant to 47 CFR part 43 and 47 CFR 64.903, the Commission shall adjust the revenue requirements to account for inflation as of the release date of the Commission's Report and Order in CC Docket No. 91-141, and annually thereafter. This subsection shall take effect on the date of enactment of the Telecommunications Act of 1995.".

On page 119, line 4, strike "may" and insert "shall".

On page 120, between lines 3 and 4, insert the following:

"(c) END OF REGULATION PROCESS.—Any telecommunications carrier, or class of telecommunications carriers, may submit a petition to the Commission requesting that the Commission exercise the authority granted under this section with respect to that carrier or those carriers, or any service offered by that carrier or carriers. Any such petition shall be deemed granted if the Commission does not deny the petition for failure to meet the requirements for forebearance under subsection (a) within 90 days after the Commission receives it, unless the 90-day period is extended by the Commission. The Commission may extend the initial 90-day period by an additional 60 days if the Commission finds that an extension is necessary to meet the requirements of subsection (a). The Commission may grant or deny a petition in while or in part and shall explain its decision in writing.

On page 120, line 4, strike "(c) and insert "(d)".

On page 53, after line 25, insert the following:

SEC. 107. COORDINATION FOR TELECOMMUNICATIONS NETWORK-LEVEL INTEROPERABILITY.

(a) IN GENERAL.—To promote nondiscriminatory access to telecommunications networks by the broadest number of users and vendors of communications products and services through—

(1) coordinated telecommunications network planning and design by common carriers and other providers of telecommunications services, and

(2) interconnection of telecommunications networks, and of devices with such networks, to ensure the ability of users and information providers to seamlessly and transparently transmit and receive information between and across telecommunications networks,

the Commission may participate, in a manner consistent with its authority and practice prior to the date of enactment of this Act, in the development by appropriate voluntary industry standards-setting organizations to promote telecommunications network-level interoperability.

(b) DEFINITION OF TELECOMMUNICATIONS NETWORK-LEVEL INTEROPERABILITY.—As used in this section, the term "telecommunications network-level interoperability" means the ability of 2 or more telecommunications networks to communicate and interact in concert with each other to exchange information without degeneration.

(c) COMMISSION'S AUTHORITY NOT LIMITED.—Nothing in this section shall be construed as limiting the existing authority of the Commission.

On page 66, line 13, strike the closing quotation marks and the second period.

On page 66, between lines 13 and 14, insert the following:

"(5) ACQUISITIONS; JOINT VENTURES; PARTNERSHIPS; JOINT USE OF FACILITIES.—

"(A) LOCAL EXCHANGE CARRIERS.—No local exchange carrier or any affiliate of such carrier owned by, operated by, controlled by, or under common control with such carrier may purchase or otherwise acquire more than a 10 percent financial interest, or any management interest, in any cable operator providing cable service within the local exchange carrier's telephone service area.

"(B) CABLE OPERATORS.—No cable operator or affiliate of a cable operator that is owned by, operated by, controlled by, or under common ownership with such cable operator may purchase or otherwise acquire, directly or indirectly, more than a 10 percent financial interest, or any management interest, in any local exchange carrier providing telephone exchange service within such cable operator's franchise area.

"(C) JOINT VENTURE.—A local exchange carrier and a cable operator whose telephone service area and cable franchise area, respectively, are in the same market may not enter into any joint venture or partnership to provide video programming directly to subscribers or to provide telecommunications services within such market.

"(D) EXCEPTION.—Notwithstanding subparagraphs (A), (B), and (C) of this paragraph, a local exchange carrier (with respect to a cable system located in its telephone service area) a cable operator (with respect to the facilities of a local exchange carrier used to provide telephone exchange service in its cable franchise area) may obtain a controlling interest in, management interest in, or enter into a joint venture or partnership with such system or facilities to the extent that such system or facilities only serve incorporated or unincorporated—

"(i) places or territories that have fewer than 50,000 inhabitants; and

"(ii) are outside an urbanized area, as defined by the Bureau of the Census.

"(E) WAIVER.—The Commission may waive the restrictions of subparagraph (A), (B), or (C) only if the Commission determines that, because of the nature of the market served by the affected cable system or facilities used to provide telephone exchange service—

"(i) the incumbent cable operator or local exchange carrier would be subjected to undue economic distress by the enforcement of such provisions,

"(ii) the system or facilities would not be economically viable if such provisions were enforced, or

"(iii) the anticompetitive effects of the proposed transaction are clearly outweighed in the public interest by the probable effect of the transaction in meeting the convenience and needs of the community to be served.

"(F) JOINT USE.—Notwithstanding subparagraphs (A), (B), and (C), a telecommunications carrier may obtain within such carrier's telephone service area, with the concurrence of the cable operator on the rates, terms, and conditions, the use of that portion of the transmission facilities of such a cable system extending from the last multiuser terminal to the premises of the end user in excess of the capacity that the cable operator uses to provide its own cable

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services. A cable operator that provides access to such portion of its transmission facilities to one telecommunications carrier shall provide nondiscriminatory access to such portion of its transmission facilities to any other telecommunications carrier requesting such access.

"(G) SAVINGS CLAUSE.—Nothing in this paragraph affects: (i) the authority of a local franchising authority (in the case of the purchase or acquisition of a cable operator, or a joint venture to provide cable service) or a State Commission (in the case of the acquisition of a local exchange carrier, or a joint venture to provide telephone exchange service) to approve or disapprove a purchase, acquisition, or joint venture; or "(ii) the antitrust laws, as described in section 7(a) of the Telecommunications Competition and Deregulation Act of 1995.".

On page 70, line 7, strike "services." and insert "services provided by cable systems other than small cable systems, determined on a per-channel basis as of June 1, 1995, and redetermined, and adjusted if necessary, every 2 years thereafter.".

On page 70, line 21, strike "area." and insert "area, but only if the video programming services offered by the carrier in that area are comparable to the video programming services provided by the unaffiliated cable operator in that area.".

On page 79, before line 12, insert the following:

(3) LOCAL MARKETING AGREEMENT.—Nothing in this Act shall be construed to prohibit the continuation or renewal of any television local marketing agreement that is in effect on the date of enactment of this Act and that is in compliance with the Commission's regulations.

On page 88, line 4, strike "area," and insert "area or until 36 months have passed since the enactment of the Telecommunications Act of 1995, whichever is earlier,".

On page 88, line 5, after "carrier" insert "that serves greater than 5 percent of the nation's presubscribed access lines".

Mr. DASCHLE. Mr. President, Senator HOLLINGS and I have crafted a package of provisions designed to strike a better balance between consumer protections and market deregulation. These safeguards are designed to protect consumers by expanding services and keeping them affordable.

This is accomplished in four ways.

First, it improves the cable rate regulation provisions in the bill without compromising the important deregulatory changes that will spur competition and provide consumers with more choices.

Specifically, the amendment improves the cable rate regulation provision of the committee bill by strengthening the bad actor test. Rates for the upper tiers of cable service will be found unreasonable only if they significantly exceed the national average rate for comparable cable service for systems other than small cable systems determined on a per channel basis as of June 1, 1995, and adjusted every 2 years.

Additionally, the amendment will deregulate a cable company only after a telephone company begins to provide video programming service comparable to the video service provided by the cable company.

Second, this amendment places reasonable limitations on the ability of cable and telephone companies to eliminate each other as potential competitors through buyouts and mergers, except in rural areas where competition may not be viable. This is an important distinction to make. While the overall goal of this legislation is to increase competition, the universal service section and other pieces recognize the fact that competition will not work everywhere. This is especially true in rural areas like South Dakota.

The third important safeguard will allow small telephone companies to jointly market local exchange service with long distance service providers that carry less than 5 percent of the Nation's long distance business. This will allow consumers to realize the benefits of competition in the local telephone exchange, while preserving the competitive balance between the RBOC's and major long distance carriers. The amendment also will sunset the prohibition on joint marketing after 3 years.

Finally, a provision that was originally sponsored by Senator KERREY from Nebraska to promote network interoperability is a part of this package. Ensuring interoperability is an important part of building a seamless, national information infrastructure that will support education, business, and hospitals. This provision will not expand or limit the FCC's current authority over standards setting.

Mr. President, nothing in this agreement precludes existing local telephone marketing agreements from continuing. This amendment recognizes the need to help small broadcasters continue to diversify their broadcasts.

These steps are important not only to the successful passage of this legislation, but also the financial security of American consumers. It recognizes that companies need relief from burdensome Federal regulations, but also provides a mechanism that will protect consumers from unreasonable and unjustified rate hikes. Passage of S. 652 will require give and take on both sides. These measures are reasonable and prudent, and they ought to be adopted.

Mr. DOLE. I ask that the vote occur on this amendment at 12 noon and that the time be equally divided in the usual form.

Mr. KERREY. Reserving the right to object, Mr. President, I have not——

Mr. DOLE. This is Dole and Daschle combined.

Mr. HOLLINGS. It is the leadership amendment—Dole-Daschle amendment.

I am protecting the rights of Senator SIMON just for a minute. He wanted to be consulted on a particular section. If the Senator could withhold the request of time.

Mr. DASCHLE. For the information of all Senators, this is the combination of the legislation that the majority leader and I have been working on. He has a managers' amendment. I have been working with Senator HOLLINGS over the course of the last several days.

Instead of having two separate amendments, we have simply combined them. I think everyone is aware of the text of Senator HOLLINGS' and my amendment. We would be happy to share it with anybody. That is all we are doing, combining them into one vote, and limiting the time to about half an hour.

Mr. KERREY. Mr. President, I have to object until I have a chance to look at the amendment. I have looked at both amendments separately, but not together.

Mr. BUMPERS. Will this require a rollcall vote once we get consent?

Mr. DOLE. Not as far as I am concerned. The Senator from West Virginia would like a rollcall vote. That would be the last vote if we can work it out. If not, we will stay until we work it out.

Mr. DORGAN. Reserving the right to object, Mr. President.

Mr. DOLE. I withhold that request until the Senator from Nebraska has had an opportunity to look at the request.

The PRESIDING OFFICER. The request is withdrawn.

Mr. DORGAN. If I might be recognized, I would support the request and hope the Senator from Nebraska will, as well.

I would only say that I had intended to offer a second-degree amendment to this on the issue of the elimination of the restrictions on the number of television stations that can be owned.

My understanding, and I have agreed not to offer a second-degree here, with the understanding that my right will be protected to offer an amendment to the bill on this subject.

That also is an important issue and I want that issue debated. I will forego a second-degree amendment so we can move this ahead. I want to be protected on the right.

Mr. DOLE. The Senator is correct, he would have that right.

I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

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

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

Mr. LEAHY. Mr. President, I understand that some negotiations were going on while we were in the quorum call.

I would like to note some of my feelings on this bill, because I will have a number of amendments and will be joining with others on amendments, including, for example, the amendment of the Senator from North Dakota, on VIII(c) and others.

Mr. President, the telecommunications bill that we are considering will have an enormous impact on multibillion-dollar cable, phone, and broadcast industries.

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But beyond that, it also affects the pocketbooks of every one of our constituents, and of every single American. It will affect the array of telecommunications services available for each of us, and the choices that we as Americans and as consumers will have.

Most of us and certainly this is true in Vermont, have no choice who gives us cable TV service or our local phone service. Whether or not the service is good, we are stuck with our local phone or cable company. We do not have any choice in the matter.

And, if the price is too high, our only choice is to cut-back on service or to drop it altogether. When I look at the telecommunications bill, my first question is will this foster competition, because competition will give consumers lower prices and more choices than simply cutting back or dropping a service altogether.

I think Congress has been behind the curve in telecommunications. We need to update our laws to take account of the blurring of the formerly distinct separation of cable, telephone, computer, and broadcast services, and encourage new competitors in each of these markets.

The distinguished Senator from South Carolina [Senator HOLLINGS], I know, worked at trying to bring out a bill to that effect last year. Efforts have been made between the distinguished managers, the chairman, and the ranking member this year.

The key, in my view, is providing a legal framework that promotes competition and protects consumers.

The Government's role in the future of telecommunications must be carefully defined. There is no question that bad regulation can stifle the growth of industry. There are other times, however, when both the Federal and the State agencies can foster the competition we need. And, of course, that is particularly important if you are dealing with monopoly industries.

Senator THURMOND, the chairman of the Antitrust Subcommittee, and I held a hearing on this bill a few weeks ago. One witness pointed out there are only two things standing between a monopolist and the consumer's wallet: Competition or regulation. You need one or the other, because if you get rid of both, the consumer may as well just hand over his wallet.

Some of the efforts made in doing away with regulation give some of the telecommunications giants a license to print money. They certainly will not reduce prices—if all regulation is done away with, and there is no competition there. What is their incentive? To lower costs? Of course not. That is as apt to happen as a belief in the Easter bunny. The fact is, they will raise costs.

So I have a number of questions. I hope with some amendments we can address some concerns I have with the bill.

First, the bill would permit our local phone monopoly to buy out our local cable monopoly so the consumers have even less choice. If you have just one monopoly cable company and one monopoly telephone company, and that telephone company buys out the cable company, do you really think rates are going to go down for your cable service? Of course not. We have not found any cable companies by themselves that have been eager to lower rates, and they do not. Suddenly, if there is no regulation and no possibility of competition, one company owns both the telephone and the cable, it does not take a genius to know what happens. The price goes up. In fact it is a new version of Willie Sutton, go to that monopoly because "that is where the money is."

So, as we stand on a precipice between a new world of healthy competition between telephone and cable companies to serve all consumers, let us not go back to a one-wire world, where one monopoly company does both cable and phone service.

The bill unleashes the Bell operating companies, which have monopoly control over the phone wires going into our homes, and lets them into the long-distance market without a formal Department of Justice analysis. I think that is wrong and I will speak more on it a little later on.

Then the bill takes the lid off cable rates before there is any competition in cable service.

If we had a nationwide referendum on taking the lid off cable rates, how do you think the American public would vote? It would be the most resounding "no" vote you ever heard. Yet the special interests want us to give a "yes" vote here.

Does anybody think if you have a totally unrestricted cable system—unrestricted because there is no competition or unrestricted because there is no regulation—that they are going to lower their rates? If anybody believes that, I have a mountain in Vermont to sell you, a bridge in New York to sell you, and a place called the Grand Canyon, and I have the quit claim deeds all ready to go.

Cable rates are bound to go up. They are going to force consumers to make the hard choice of cutting back or turning off their cable service.

Fourth, the bill rolls back State efforts to promote competition. For instance, 10 States require "1-plus" dialing for in-State, short-haul toll calls so consumers do not have to dial cumbersome access codes for carriers other than the local exchange carrier. The bill would preempt these dialing parity requirements that would hurt competition in the in-State toll market, it would hurt the consumer, and again it removes choices of people.

Senators SIMPSON, KERREY, SIMON, and FEINGOLD are working with me on an amendment to restore State authority to require "1-plus" dialing. Other provisions in the bill that should be corrected would preempt State laws on judicial review of State regulatory commission decisions, and prohibit use of rate of return regulation.

Last, there are provisions in this bill that threaten to chill the flow of information and communications on the Internet. They undercut privacy of communications for on-line communications and the ability for the court to conduct court-authorized wiretaps for fighting crime. Users of the Internet are very concerned.

I saw on the Internet, as I was going through it—and I know the distinguished Presiding Officer is one who is familiar with that. I think he and I probably spend as much time using electronic communications as anybody here. I saw an electronic petition that was circulated on the Internet by a coalition of civil liberties groups, including Voters Telecommunications Watch and Center for Democracy and Technology, because I suggested I would offer an amendment which makes it very clear that every one of us are against kiddie porn and all those things, but would protect the integrity of the Internet.

In just a few days here is what happened. This. This. In just about 2 weeks: 25,000 electronic petitions from all over the country, every State in this Union, in support of my amendment. I hope Senators will consider what people have done. And I will speak more on that and we will have an amendment on that. But 25,000 people have already heard and expressed their concern.

This bill does contain provisions that I heartily endorse. I commend Senators PRESSLER and HOLLINGS, and the members of the Commerce Committee, for their attention to universal service and the special concerns that we share for rural customers and those in small towns. They have also attended to promoting access to networks and services by individuals with physical disabilities, and providing incremental rates for rural health clinics, schools and libraries. These are essential components of an effective national information policy. Like the Freedom of Information Act and public access channels, these concepts will help make increasing citizen participation a reality.

Telecommunications is critical to the economic health of our country, the education of our children, the delivery of health care services to our citizens and our overall quality of life. The explosion of new technologies in telecommunications has fueled many of our newest innovations and will continue to create new opportunities, some of them unimagined today.

Our challenge is to try to keep pace with changes in technology that are driving changes in the marketplace. With this legislation, we are making changes in the legal framework governing our telecommunications industries, and we must keep our eye on making our laws more procompetitive and proconsumer.

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What I am saying is that our country has made enormous advances in telecommunications. But in those areas where we have not had real competition, we have stayed behind other parts of the world. With real competition we can not only catch up with the rest of the world, we can be in advance of the rest of the world. Let us make sure what we come up with here fosters real competition, gives consumers a choice, and does not allow a few monopolists to set the rates that all of us have to pay.

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

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

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

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

Mr. ROCKEFELLER. Mr. President, I have a question to address to the majority leader or the minority leader.

Mr. President, I would be very pleased to ask my question to the Democratic leader, if that would be acceptable to him.

We are confronted with a situation here, the present posture, as I understand it, is that we are going to vote on a very complex series of aspects of this bill, and after we have voted time for debate.

What I think I have a real problem with is the fact that debate honestly changes people's minds, a good debate. I think as a result of the debate last night on one of our amendments a number of minds were changed. In this case, where we are dealing with cable rates, where there are less than 35,000 people within the system, and those would be completely regulated, that has enormous effect. And it may be that a lot of Senators do not know that this is in that legislation.

So the question I would have to the Democratic leader, is there anything inherently wrong in not trying to have the vote now but have the debate now, to try to debate this with our colleagues and then have the vote laid over until Monday? It just strikes me that in a democratic body having a debate after you have already cast your vote is not the way democracy usually works.

Mr. DASCHLE. If the Senator will yield, the managers as well as the two leaders have been working on this package for the better part of 3 or 4 days, and we have had a large number of consultations with Members on both sides of the aisle, in an effort to better accommodate concerns of Senators to address this managers' package as well as to address a number of schedules that are becoming increasingly jeopardized as a result of our delay.

We had hoped, after all of this consultation, to lay the amendment down and have a vote, but also ensure that everyone's rights are protected to amend the managers' package as they can amend the bill, just as we do with any other piece of legislation, so every Member is protected. And if there are provisions in this managers' amendment which would be part of the bill that they would not find in their interest, they are protected and would be encouraged to offer amendments to address those particular aspects.

But I must say a tremendous amount of effort has been put into accommodating everybody and to accomplish the point where we are now at legislatively. So I would hope that we could accommodate schedules as well as to accommodate those who have participated in this series of negotiations to get us to this point.

Mr. DOLE. If the Senator will yield, I would be prepared, and I think Senator DASCHLE, in any provision in our amendment to protect the rights of anyone. If it takes consent, I would give consent right now that the Senator would have the right to move to strike that section next week if the Senator wanted more debate at that time. I certainly do not want to take away anybody's rights, but I think what we are trying to do is get a lot of these things we have sort of agreed on into the package without any further delay. And then obviously I would be willing to agree right now if the Senator wanted to offer a motion to strike or whatever on Monday or Tuesday, we could debate it at that time.

Mr. ROCKEFELLER. That would be entirely satisfactory with this Senator. I thank the Chair.

Mr. DOLE. I think that would apply to Senator DASCHLE's provision, too.

Mr. KERREY addressed the Chair.

The PRESIDING OFFICER. The Senator from Nebraska.

Mr. KERREY. Mr. President, I say to my colleagues, I have had, particularly with the amendments separately, when I urged them to come over the last couple days, particularly originally Daschle-Hollings and then Dole separately, I had some difficulties but in combined form I have not, and I have no difficulty in moving to a vote in an expeditious fashion.

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

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

Mr. DOLE. What is the pending business?

The PRESIDING OFFICER. The pending business is the majority leader's amendment, as modified.

Mr. DOLE. Let me just indicate for everybody—then we will have a vote in a minute—this is the provision, so-called Dole provision and the so-called Daschle provision combined. I have taken out one objection. We have indicated to Senator ROCKEFELLER, I have also indicated to Senator DORGAN that I would consent if they wanted to move to strike or whatever if they had problem with a section. I thank Senator DASCHLE.

Mr. DASCHLE. Senator SIMON.

Mr. DOLE. Senators SIMON and LOTT have reached the same agreement. I think with the Daschle amendment, if somebody had not approved, they would have that same right?

Mr. DASCHLE. Yes.

Mr. DOLE. I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second?

There is a sufficient second.

The yeas and nays were ordered.

Mr. DOLE. This will be the last vote today.

The PRESIDING OFFICER. The question is on agreeing to the amendment. The yeas and nays have been ordered. The clerk will call the roll.

The legislative clerk called the roll.

Mr. MACK (when his name was called). Present.

Mr. LOTT. I announce that the Senator from Missouri [Mr. ASHCROFT], the Senator from Georgia [Mr. COVERDELL], the Senator from Texas [Mr. GRAMM], the Senator from North Carolina [Mr. HELMS], the Senator from Arizona [Mr. KYL], the Senator from Alabama [Mr. SHELBY], the Senator from Wyoming [Mr. SIMPSON], the Senator from Pennsylvania [Mr. SPECTER], the Senator from Alaska [Mr. STEVENS], and the Senator from Wyoming [Mr. THOMAS] are necessarily absent.

I further announce that, if present and voting, the Senator from Wyoming [Mr. SIMPSON] would vote "yea."

Mr. FORD. I announce that the Senator from California [Mrs. BOXER], the Senator from Massachusetts [Mr. KENNEDY], and the Senator from Georgia [Mr. NUNN] are necessarily absent.

I also announce that the Senator from Delaware [Mr. BIDEN] is absent because of a funeral.

The PRESIDING OFFICER. Are there any other Senators in the Chamber who desire to vote?

The result was announced—yeas 77, nays 8, as follows:

[Rollcall Vote No. 248 Leg.]

YEAS—77

Abraham	Exon	Kempthorne
Akaka	Faircloth	Kerrey
Baucus	Feingold	Kerry
Bennett	Feinstein	Kohl
Bingaman	Ford	Lautenberg
Bond	Frist	Leahy
Breaux	Glenn	Levin
Brown	Gorton	Lott
Bryan	Graham	Lugar
Bumpers	Grams	McCain
Burns	Grassley	McConnell
Campbell	Gregg	Mikulski
Chafee	Harkin	Moseley-Braun
Coats	Hatch	Moynihan
Cochran	Hatfield	Murray
Cohen	Heflin	Nickles
Craig	Hollings	Packwood
D'Amato	Hutchison	Pell
Daschle	Inhofe	Pressler
DeWine	Inouye	Pryor
Dodd	Jeffords	Reid
Dole	Johnston	Robb
Domenici	Kassebaum	Roth

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Santorum	Snowe	Warner
Sarbanes	Thompson	Wellstone
Smith	Thurmond	

NAYS—8

Bradley	Dorgan	Rockefeller
Byrd	Lieberman	Simon
Conrad	Murkowski	

ANSWERED "PRESENT"—1

Mack

NOT VOTING—14

Ashcroft	Helms	Simpson
Biden	Kennedy	Specter
Boxer	Kyl	Stevens
Coverdell	Nunn	Thomas
Gramm	Shelby	

So the amendment (No. 1255), as modified, was agreed to.

Mr. HARKIN addressed the Chair.

The PRESIDING OFFICER. The Senator from Iowa is recognized.

Mr. HARKIN. Mr. President, I wanted to make a couple of comments on the amendment just adopted. I support the long-term goal of this legislation to deregulate the telecommunications industry in this country and to bring vigorous competition to these markets. We can all envision the intended results in the not-too-distant future. The Bell companies, cable companies, long distance companies, all competing at a local level offering a wide variety of services—video, telephone, cellular, personal communications. All of these services will be offered in a vigorously competitive atmosphere where the companies are bending over backward to give the best and most innovative service for the dollar.

In the coming competitive environment after the lifting of regulations and the modification of final judgment, a business, for example, could call up one company and arrange for that company to provide local telephone service as well as long distance service at one low price, with only one vendor to deal with. But the fact is, in some areas, including in parts of my State of Iowa, these combined services exist now. These services are provided by smaller companies who are able to provide all of a business' telephone services for one price.

How do these companies do that? Well, they buy the local telephone lines in bulk and resell them at retail, just like millions of other small businesses all over the country do. They package the local service along with long distance service and sell them for one price. What does the buyer get? The buyer gets the convenience and low cost of having only one company to deal with, and they pass these savings along to their customers.

The company fills a niche currently unfilled in the market and is able to build capital to allow them to build the infrastructure that they would need to break through into real competition with the local telephone company.

In my home State of Iowa, an innovative telecommunications pioneer, Clark McLeod, has been offering these services in Cedar Rapids and other locations for several years. In the process, he has created thousands of jobs and filled a need for service.

We all talk about the need for competition in the local market. But we have to think about who that competition will come from. Do we think that the only ones who will compete for local phone service will be the big companies already providing telecommunications services? Is the goal here just to allow the big cable and long distance companies to get in and sort of duke it out with Ma Bell? Or should we not provide a regulatory framework that will allow new companies to grow, to build capital, and to break out into full competition?

Mr. President, I was a Member of the House when the cable business just started getting big, when the cable industry was in its infancy. They used to build cable systems just for the purpose of taking in a good quality signal from over the air stations and then piping it into homes where they could get a clearer signal rather than just getting it over the air stations.

In other words, they took the programming from the broadcast stations and then resold it. When they collected sufficient capital, they started the many new cable channels. When MCI, for example, got started, it was renting long distance lines from Ma Bell and reselling them at discount prices.

In other words, the two large industry groups—cable and long distance—that are expected to provide much of the competition, arose from reselling of the services of existing large companies and doing it in a new form. These resellers are like the acorns from which a mighty oak might grow.

Unfortunately, one provision of this bill would have killed these fledgling services. In a supposed effort to be fair to the Bell companies, we would actually kill off companies that are currently providing these joint marketing services.

The joint marketing provision of the underlying bill would have prohibited companies from buying local service from a Bell company and then marketing it jointly with long distance service until the Bell company is allowed to offer long distance services.

This provision is anticompetitive and it is a job killer in my State. It ought to be fully stricken. I have been working with the managers of the bill to address this issue.

I am pleased to say that the leadership amendment that we just approved would take care of the most immediate part of this problem. It would make the ill-advised joint marketing provision apply to only those firms with more than 5 percent of the market nationally. It would sunset the prohibition for everyone in 3 years.

Mr. President, while I think we should strike the whole provision, the change in this amendment is a critically important first step. It would at least protect the many innovative smaller companies like Mr. McLeod and the others in my State, to continue their operations and continue to provide the services valued by so many Iowans.

Some will argue that this provision simply maintains fairness between the Bell companies and their potential competitors. They argue that it is unfair for the long distance companies to be able to offer a package to sell when the Bell companies cannot.

But the fact is, this is adding a new restriction that would kill thousands of jobs that already exist and thousands more that could be created in the interim. Worse yet, it would deprive those companies that want to get into the local market of their best opportunity to do so, impeding the competition that is supposed to be the whole point of this bill. This whole bill is about creating competition in the local market and allowing the power of competition to help the consumers and to expand the technology available to all. The Bell companies are unlikely to lose a significant portion of their business to resellers in the few years that it will take to open the local loop to competition.

So I am very pleased that first step has been taken through a component of the leadership amendment just adopted. I yield the floor.

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. PRESSLER. I ask unanimous consent that the order for the quorum call be rescinded.

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

Mr. PRESSLER. Mr. President, I want to give a little legislative history on the majority leader and minority leader's package, if I may, and if any Senator has pending business that they want to interrupt me with, I will be glad to do so.

I want to praise both Senator DOLE and Senator DASCHLE for their leadership on the amendments we just passed which have been worked out and negotiated over a number of weeks and days and down to the last minute.

The package of amendments that is the Dole-Daschle package is intended to modify a number of areas in the bill and thus improve the bill's deregulatory nature. It ensures that certain provisional intents usually apply the way they were meant to and provides exceptions where necessary.

The amendments end all rate regulations on small and rural cable companies. These companies cannot economically exist under such rate controls and are unable to provide basic and upper-tier services.

It also eliminates restrictions on the number of TV stations, 12 twelve, owned nationwide while maintaining the 35-percent national audience reach. It eliminates all ownership restrictions on radio, and the FCC is granted the authority to deny additional licenses if it thinks an entity is getting undue concentration.

It gets rid of the GTE consent decree arising from GTE's purchase of Sprint.

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GTE has sold Sprint. Therefore, the consent decree is no longer necessary. It eliminates unnecessary regulations and functions at the FCC. These items are noncontroversial, suggested by the FCC. The FCC will also be required to forbear from regulating when competition develops.

Telecommunications carriers will gain a petition process to seek repeal of the FCC and State regulations. The amendment redefines universal service to narrow its definitions to essential services—not entertainment services and equipment.

Finally, the amendment will require the FCC to complete a proceeding within 270 days, determining whether or not AT&T should continue to be regulated as a dominance carrier in the long distance market.

Again, this amendment seeks to improve the bill's deregulatory nature by addressing overlooked items but maintaining the bill's fundamental structure.

Mr. President, those are some comments on the Dole-Daschle package of amendments that we have just adopted, for purposes of legislative history.

Mr. President, I would like to make some remarks about the upcoming Department of Justice amendment that is being offered by my colleague from North Dakota and, in general, the DOJ.

I will proceed with these points on the DOJ and why I feel it is not appropriate to expand this bill to include a DOJ review.

First, DOJ proposed the line-of-business restrictions on the BOC's, not the Court, AT&T or the Bell Companies.

Second, DOJ and the Court both recognized that the line-of-business restrictions are anticompetitive due to the restriction on entry which actually reduces competition.

Third, consequently, DOJ did not follow its own internal policy of proposing a 10-year sunset, but instead promised to conduct triennial reviews.

Fourth, AT&T and the district court accepted the line-of-business restrictions on the basis that DOJ would conduct these triennial reviews and the BOC's could obtain waivers from the MFJ under section VIII(c)—the standard proposed in the Dorgan amendment.

Fifth, DOJ has abandoned its promise to conduct triennial reviews.

Sixth, DOJ fails to deal with waiver requests in a timely manner.

Seventh, yet, nearly, all requests for waivers from the line-of-business restrictions are supported by DOJ and approved by the district court.

Eighth, DOJ has announced new principles which must be met before it will support relief from the MFJ, thereby signaling its rejection of the section VIII(c) test.

THE UNITED STATES DOJ HAS FAILED TO FULFILL ITS OBLIGATIONS UNDER THE MODIFICATIONS OF FINAL JUDGMENT

First, DOJ proposed the line-of-business restrictions on the BOC's, not the Court, AT&T or the Bell companies.

The DOJ was the principal proponent of the line-of-business restrictions.—*United States* v. *Western Electric Co.*, 552 F. Supp. 131, 186 n.227 (D.D.C. 1982).

AT&T did not want the line-of-business restrictions imposed upon the BOC's, but accepted them as part of the bargain to settle the antitrust case with DOJ.

We do not want restrictions on those BOCs. That wasn't our idea. We understand the theory, we understand why that had to be part of the bargain, but it wasn't our idea. . . . The last thing in the world you want to do is to impose some further restrictions on their efficiencies, . . . [W]e should be getting rid of restrictions. . . . They weren't our idea.—Comments of Howard Trienens, AT&T General Counsel, FCC En Banc Meeting (March 24, 1982).

I'm against restrictions. I'll be happy if nobody is restricted on anything. After this divestiture occurs, let [the BOCs] do what they want.—Comments of Howard Trienens, AT&T General Counsel, *United States* v. *Western Electric Co.*, Civil Action No. 82-0192, Hearing Transcript at 25210-25211 (June 29, 1982).

Second, DOJ and the Court both recognized that the line-of-business restrictions are anticompetitive due to the restrictions on entry which actually reduces competition.

The line-of-business restrictions "are generally anticompetitive and deserve the most careful scrutiny."—Response Of The United States To Public Comments On Proposed Modification Of Final Judgment at 56, *United States* v. *Western Electric Co.*, Civil Action No. 82-0192 (May 20, 1982).

A number of comments also expressed concern regarding the absence of any time limit on the BOC line of business restrictions. Some have suggested that in the absence of limitations on the duration of the restrictions, as technology changes, the modification will have unintended anticompetitive consequences by needlessly restricting entry. The Department believes that these concerns are valid. Id. at 61-62.

[S]uch restrictions deserve "the most careful scrutiny" to ensure both that they will have the desired effect and that they will not actually limit competition by unnecessarily barring a competitor from a market.—*United States* v. *Western Electric Co.*, 552 F. Supp. 131, 186 (D.D.C. 1982).

[T]he restrictions are, at least in one sense, directly anticompetitive because they prevent a potential competitor from entering the market. Id.

If the restrictions were to continue in effect, their sole effect would be to limit competition by preventing the entry of a viable competitor. Id. at 195 n.264.

Third, consequently, DOJ did not follow its own internal policy of proposing a 10-year sunset, but instead promised to conduct triennial reviews.

It has been DOJ Antitrust Division policy since 1979, and remains so today, that antitrust consent decrees should have an automatic sunset of 10 years or less. Most antitrust consent decrees contain this 10 year sunset language. The MFJ does not, and is one of the few exceptions to this Department policy.

The DOJ Antitrust Division Manual contains "standard language" to be contained in antitrust consent decrees, which states that the "final judgment will expire on the tenth anniversary of its date of entry or, with respect to any particular provision, on any earlier date specified."—U.S. Department of Justice, Antitrust Division Manual IV-76 (2d ed. 1987).

DOJ promised AT&T and the district court that it would examine the continuing need for the line-of-business restrictions on the third anniversary of its entry and every 3 years thereafter.

[T]he Department intends to review carefully the continuing need for the restrictions. In order to ensure that the Court is fully apprised of development in this area, the Department will undertake to make a formal report to the Court on the continuing need for the restrictions on the third anniversary of the date of divestiture, and every third year thereafter so long as the restrictions remain in force.—Response Of The United States To Public Comments On Proposed Modification Of Final Judgment at 62, *United States* v. *Western Electric Co.*, Civil Action No. 82-0192 (May 20, 1982).

The Department recognizes that as technology changes, the restrictions on the BOCs may outlive their usefulness, and indeed, become anticompetitive in effect. The Department has, therefore, committed to a regular review of the need for the restrictions with the intention of petitioning the Court for their removal at the earliest possible date consistent with technological and competitive conditions.—Brief Of The United States In Response To The Court's Memorandum of May 25, 1982, at 31, *United States* v. *Western Electric Co.*, Civil Action No. 82-0192 (June 14, 1982).

Fourth, AT&T and the district court accepted the line-of-business restrictions on the basis that DOJ would conduct these triennial reviews and the BOC's could obtain waivers from the MFJ under section VIII(C)—the standard in the Dorgan amendment.

AT&T's acceptance of the restrictions is based upon the Department's commitment to a periodic review of their reasonableness . . ., and upon the BOC's ability—independent of the Department's periodic review—to seek the Court's removal of the restrictions (Decree, § VII).—AT&T Brief In Response To The Court's Memorandum of May 25, 1982, *United States* v. *Western Electric Co.*, Civil Action No. 82-0192 (June 14, 1982).

The district court required that DOJ and AT&T agree to Section VIII(C) as a condition of its approval of the MFJ.

It is probable that, over time, the Operating Companies will lose the ability to leverage their monopoly power into the competitive markets from which they must now be barred. This change could occur as a result of technological developments which eliminate the Operating Companies' local exchange monopoly or from changes in the structures of competitive markets. . . . the decree should therefore contain a mechanism by which they may be removed.—*United States* v. *Western Electric Co.*, 552 F. Supp. 131, 194-195 (D.D.C. 1982).

Recognizing this fact, the Department of Justice has undertaken to report to the Court every three years concerning the continuing need for the restrictions imposed by the decree. (Citation omitted.) In addition, both parties have agreed that the restrictions may be removed over the opposition of a party to the decree when the Court finds that "the rationale for [the restriction] is outmoded by technical developments." Id.

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Thus, a restriction will be removed upon a showing that there is no substantial possibility that an Operating Company could use its monopoly power to impede competition in the relevant market.

[T]he Court will approve the proposed decree as in the public interest provided that the parties agree to the addition of the following new section: VIII Modifications. . . . Id. at 225.

Fifth, DOJ has abandoned its promise to conduct triennial reviews.

DOJ conducted the first triennial review in 1987 and recommended removal of the interexchange restriction on mobile services, the manufacturing restriction, the information services restriction, and the restriction against the provision of nontelecommunications products and services.—Report and recommendations of the United States concerning the line of business restrictions imposed on the bell operating companies by the modification of final judgment at 56–57 (February 2, 1987); and response of the United States to comments on its report and recommendations concerning the line of business restrictions imposed on the bell operating companies by the modification of final judgment at 24, 60, 95, and 135 (April 27, 1987).

In 1987, during the first triennial review, the district court only adopted DOJ's recommendation to remove the restriction against the provision of nontelecommunications products and services, and granted limited information services infrastructure components.—*United States* v. *Western Electric Co.*, 673 F. Supp. 525 (D.D.C. 1987).

The court of appeals reversed and remanded the decision of the district court to not remove the information services restriction.—*United States* v. *Western Electric Co.*, 900 F.2d 283 (D.C. Cir. 1990).

The district court removed the information services restriction on remand.—*United States* v. *Western Electric Co.*, slip op. (D.D.C. July 25, 1991).

In 1989, while the appeal from the first triennial review decision by the district court was pending, DOJ advised the Court that it "remains committed to a periodic review of the decree's line of business restrictions," but that it "plans to defer the second general review of the decree restrictions until after the court of appeals decides the pending appeals."—Memorandum of the United States Concerning the second review of the line-of-business restrictions at 3 (July 3, 1989).

DOJ advised the district court that "[f]ollowing the Court of Appeals' decision, the Department will suggest to this Court a schedule and procedures for the next general review consistent with that decision." Id. at 3–4.

SBC, Bell Atlantic, and NYNEX sought a scheduling order which would require DOJ to submit a second triennial review report to the district court within 90 days after the Court of Appeals decision.

In response to DOJ's announcement that it was going to postpone the second triennial review, the district court held that:

[It] does not endorse the Department's recommendation that the triennial review be postponed until after the Court of Appeals decides on currently pending appeals.

This Court has no intention of postponing any phases of its own responsibilities under the decree because appeals have been filed.

[W]hile the Court does not affirmatively endorse the Department's plans, it does not impose any particular timing requirements of its own.

[T]he Department has complete discretion on the question whether and when to file another report, and the Court will not attempt to interfere with the exercise of that discretion.—*United States* v. *Western Electric Co.*, slip op. at 4–5 (July 17, 1989).

DOJ has never conducted another triennial review.

Sixth, DOJ fails to deal with waiver requests in a timely manner.

Section VII of the MFJ contemplates that waivers may be filed directly with the District Court.

Section VII provides, in part, that:

Jurisdiction is retained by this Court for the purpose of enabling. . . a BOC to apply to this Court at any time for such further orders or directions as may be necessary or appropriate for the construction or carrying out of this Modification of Final Judgment, for the modification of any of the provisions thereof, ...

However, in 1984, the district court announced that it would consider waiver requests for removal of the line-of-business restrictions only after review by DOJ.—*United States* v. *Western Electric Co.*, 592 F. Supp. 846, 873–874 (D.D.C. 1984).

This procedure of requiring the BOCs to obtain DOJ review of waiver requests before filing them with the district court has given DOJ the ability to, in effect, deny relief from the line-of-business restrictions through inordinate delays.

In 1984, DOJ disposed of 23 waiver requests, with the average age of waivers pending at DOJ at the end of the year being approximately 2 months;

In 1992, DOJ disposed of 9 waiver requests, with the average age of waivers pending at DOJ at the end of the year being approximately 30 months;

In 1993, DOJ disposed of 7 waiver requests, with the average age of waivers pending at DOJ at the end of the year being approximately 36 months;

In 1994, DOJ disposed of 10 waiver requests, with the average age of waivers pending at DOJ at the end of the year being approximately 30 months;

On average, DOJ now takes almost as much time to consider a single waiver request as was intended to elapse between the comprehensive triennial reviews it promised, but has failed, to conduct.

Seventh, yet, nearly all requests for waivers from the line-of-business restrictions are supported by DOJ and approved by the district court.

DOJ has acted on 268 waiver requests and opposed relief in only 6 cases. In all others, DOJ supported relief either in whole or in part.

Of the same 268 waiver requests, the district court has approved 249 in their entirety and 5 in part. Only 6 were denied and 6 were pending as of the end of 1993.—Affidavit of Paul H. Rubin at ¶8 and 10, submitted in support of the Motion of Bell Atlantic Corp. BellSouth Corp. NYNEX Corp. and Southwestern Bell Corp. to vacate the decree, *United States* v. *Western Electric Co.*, Civil Action No. 82–0192 (filed July 6, 1994).

The district court has approved the vast majority—96 percent—of the waiver requests submitted to it.

Eighth, DOJ has announced "new principles"—as part of the Ameritech agreement—which must be met before it will support relief from the MFJ, Thereby signaling its rejection of the section VIII(C) test.

Section VIII(C) of the MFJ provides that:

the restrictions imposed upon the separated BOCs by virtue of section II(D) shall be removed upon a showing by the petitioning BOC that there is no substantial possibility that it could use its monopoly power to impede competition in the market it seeks to enter.

Section VIII(C) assumes that a local exchange monopoly will continue to exist, but nevertheless provides the BOC's with a basis for relief.

Under Section VIII(C), the only issue is whether there is a "substantial possibility" that a BOC can use its local exchange monopoly to "impede competition".

[U]nless the entering BOC will have the ability to raise prices or restrict output in the market it seeks to enter, there can be no substantial possibility that it could use its monopoly power to "impede competition".—*United States* v. *Western Electric Co.*, 900 F.2d 283, 295–296 (D.C. Cir. 1990).

According to the court of appeals,

. . . the importance of the word "substantial" should not be minimized. The ultimate burden under Section VIII(C) remains on the petitioning BOC, but the requirement that the possibility of using its monopoly power to impede competition be "substantial" relieves the BOC of the essentially impossible task of proving that there is absolutely no way for it to use its monopoly power to impede competition. Id. at 296.

According to the DOJ,

a BOC cannot impede competition in a given market unless it has market power—the ability to restrict output and/or raise prices. Id.

Whatever it means to "leverage" one's monopoly power, the DOJ is surely correct that no damage to competition—through "leverage" or otherwise—can occur unless the BOCs can exercise market power. Id.

Under Section VIII(C), the state of competition or lack thereof in the local exchange is irrelevant.

And while there may be some complexities in defining precise boundaries of the relevant market, one thing that is clear from section VIII(C) is that it is the "market [the BOC] seeks to enter" that matters, and *not* the local exchange market. Id.

On February 28, 1995, Assistant Attorney General Anne K. Bingaman gave an address to The National Press Club entitled "Promoting Competition In Telecommunications" (Bingaman Address) wherein she set forth new principles that would establish a basis for DOJ support for removal of the line-of-business restrictions.

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Until Congress enacts reform legislation, we are prepared to recommend to Judge Greene that the Court move forward under the MFJ when three basic principles are satisfied:

First, steps to foster the emergency of local competition must be taken.

Second, the effectiveness of these steps must be tested by actual marketplace facts—by the state of competition.

Third, RBOC participation in other markets initially must be accompanied by appropriate safeguards." Bingaman Address at 12-13.

On March 2, 1995, David Turetsky, Senior Counsel to AAG Bingaman, gave an interview to Charles Jayco of KMOX Radio in St. Louis, MO, wherein he indicated that DOJ would recommend relief from the long distance [interexchange] restriction in court if the states take steps to foster local competition and choice is really available to consumers.

There is recognition that there is great need for competition, real competition in local telephone service and for that matter, cable television service, too. . . . The way we hope to get there, in the local market, is first of all, national legislation. . . . But this week we said that we have to do what we can with the tools we have in the Antitrust Division of the Department of Justice to try to foster local competition without national legislation. We can't wait. So really what we have done is announced that we're going to *try to find a way to move forward. The first* part of what we're trying to do is really up to the states. If they take steps to foster local competition and if we can test the steps they've taken to see that there are some actual marketplace facts that indicate that choice is really available for consumers, then what we'll do is we'll go to court, which we can do now, and recommend that local phone company be able to also compete in the long distance market, something they're not able to do today.—KMOX Newsmakers Broadcast Transcript at 2 (March 2, 1995).

DOJ's adoption of this new and different standard for removal of the line-of-business restrictions is inconsistent with the section VIII(C) test and inconsistent with the court of appeals' articulation of what the BOC's must demonstrate under section VIII(C) to obtain relief from the line-of-business restrictions.

In other words, DOJ has announced that it will not follow the law of the MFJ and apply the section VIII(C) test to BOC requests for relief from the line-of-business restrictions.

Mr. President, I yield the floor.

The PRESIDING OFFICER. Who seeks recognition?

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

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

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

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

Mr. PRESSLER. Mr. President, last night we had what I thought was a very stimulating debate on what makes technology move. And I pointed out that sometimes Government regulation is appropriate but in the computer industry there were no standards and there was no Government regulation and the computer industry moved forward very quickly.

I am very stimulated by discussions of what makes technology move forward, what kind of research really results in things moving forward.

COMPETITION IN THE COMPUTER AND TELEPHONE INDUSTRIES: A COMPARISON

By the early 1980's, AT&T and IBM were two of the largest and most powerful companies in the world. Both had been embroiled in antitrust litigation with the Department of Justice for over a decade.

Both the AT&T and IBM suits had focused on interconnection and bundling practices. The Government's complaint against IBM charged the company with "[m]aintain[ing] pricing policies, including the quoting of a single price for hardware, software and related support," which "discriminated among customers" and "limited the development and scope of activities of an independent software and computer support industry * * *." IBM was charged with monopolizing both the general marked for electronic digital computer systems, and the submarkets of peripherals and other computer add-ons. The company had allegedly "[e]ngaged in various pricing and marketing practices" in order "to restrain its competitors from entering, remaining or expanding" in the general computer market, and its submarkets. IBM had allegedly pursued policies that maintained a "lease-oriented environment so as to raise the barriers to entry or expansion." IBM, in short, was allegedly refusing access to its closed, proprietary hardware systems, to stymie competition.

The Government's initial complaint against AT&T alleged very similar practices, centering on discriminatory interconnection of other providers of equipment and services, policies that centered on leasing rather than outright sales, and obstruction of competitive equipment providers through maintenance of proprietary standards. AT&T, in short, was allegedly refusing access to its hardware and network, to stymie competition.

The Government at first proposed similar remedies in the two cases. IBM was to offer and price separately its computer systems, peripheral equipment, and software and support services. The Government suggested a possible need for structural reorganization as well: it invited the court to grant further relief "by way of divorcement, divestiture and reorganization with respect to the business and properties of the defendant [IBM] as the Court may consider necessary or appropriate * * *."

On January 8, 1982, the Federal Government resolved both cases—but in fundamentally different ways. The Government simply dismissed the case against IBM. It hoped to achieve its objectives in the computer industry through the consent decree that it signed with AT&T. AT&T was broken up, but was freed from the antitrust quarantines imposed upon it by a previous antitrust decree entered in 1956, and so permitted to enter the computer business to challenge IBM.

EMERGENCE OF COMPETITION: COMPUTERS

By the time the Government had decided not to pursue its case against IBM, Intel was already over a decade old. Apple was growing fast. And IBM had just introduced a brand-new machine, based on an Intel microprocessor. Big Blue's new machine—its "personal computer"—was small and beige. Three weeks after the break-up of AT&T was complete, in January 1984, Steve Jobs stepped out on the podium at the annual stockholders' meeting of Apple Computer and unveiled the new Macintosh.

The Government's decision to allow competition, not regulation to guide the computer market, paid off handsomely. As the Department of Commerce has noted, "[c]ontinuously declining computer prices, steadily rising performance, and increasingly sophisticated uses have all stimulated domestic sales and exports." The Electronic Industries Association has reached a similar conclusion:

Pushed by intense competition among PC suppliers, greater use of commodity-based mass marketing channels, and increased focus on the more price-sensitive buyers in homes, schools and small businesses, vendors continued to slash list prices, cut dealer margins, and introduce low-cost lines aimed at the consumer and home markets.

The impact of this unfettered competition has had its effect on IBM. IBM's market share, measured against overall industry revenues, had fallen to 20 percent by 1993. It has, however, recovered from the initial shock and is now holding its own against other competitors. IBM's stock, which had dropped to $41 a share by mid-1993 is now back near $100. In an attempt to shift its focus from mainframes to the PC market, IBM has introduced its OS/2 Warp operating system, which is fighting against Microsoft's Windows operating system.

It is important to note that while the industry moved from virtual monopoly to full competition, domestic manufacturers maintained their dominant position in the world market where they continue to account for some 75 percent of all computer hardware sales. United States based firms also dominate the world market for software.

EMERGENCE OF COMPETITION: TELEPHONY

Long Distance: In contrast, the markets for products and services provided by the predivestiture AT&T have languished. After an initial postdivestiture drop, AT&T's share of the overall interexchange market is now holding steady at about 60 percent even though AT&T charges higher prices than its rivals for comparable service. The combined market share of AT&T, MCI, and Sprint remains at 94 percent, down only 5 percent since divestiture.

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Price competition has also not maintained pace with the computer industry. MCI and Sprint have brought their prices up to AT&T's since divestiture, and the three major carriers' prices now move almost monolithically. Long-distance prices actually fell faster before divestiture, when access charges are considered.

Equipment: AT&T has lost significant share in the market for telecommunications equipment. In the market for central office switching equipment, all market share lost by AT&T since divestiture has been gained by Canada's Northern Telecom. Foreign producers accounted for about one-fifth of U.S. switch sales in 1982, but they had more than half of the market 10 years later. Between them AT&T and Northern Telecom still controlled some 87 percent of sales in 1992, precisely the same combined share they held in 1982.

In the market for CPE, the vacuum created by AT&T's breakup and the line-of-business restrictions was filled by large foreign manufacturers. The Commerce Department has determined that "[t]here is very little U.S. production of commodity-type [CPE] products, such as telephone sets, telephone answering machines and facsimile machines" and that the country's trade deficit in CPE was approximately $3 billion in 1992.

COMPARATIVE MARKET PERFORMANCE

Price: Nowhere is difference between the IBM and AT&T approaches more apparent than in improvements in price performance ratios. A $5,000 PC in 1990—featuring a 486 microprocessor running at 25 MHz—had the processing power of a $250,000 minicomputer in the mid 1980's, and a million-dollar mainframe of the 1970's. Five years later, that same $5,000 PC is two generations out of date—with a third new generation on the horizon. Systems with nearly twice the processing power of that 1990 system—using a 486DX2—66 chip—are available for under $1,500 and advertisements are run which encourage owners of these chips to upgrade to newer ones. Systems with more than twice the processing power of that system—featuring a 120 MHZ Pentium chip—are now available, most for under $5,000.

The upshot is that consumers can purchase systems with four times the power of 1980's mainframes at one-fiftieth of the price. Put another way, systems today have over 200 times the value of systems in 1984. By contrast, longdistance calls today represent only twice the value of long-distance calls in 1984. Had price-performance gains of the same magnitude occurred in the long-distance market since 1984, the results would have been equally stunning. For example, in 1984, a 10-minute call at day rates between New York and Los Angeles cost a little less than $7, in 1994 dollars. Today it costs $2.50. Had competition and technological advances developed in the long distance market as it did in the computer market, that same would cost less than 5 cents. Alternatively, a 10-minute call from New York to Japan cost roughly $25 in 1984, again in 1994 dollars, and $14 today. Had long-distance service advanced as rapidly as the personal computer industry, that call would cost less than 13 cents.

This same formula can be applied to all telecommunications markets. The price of a PBX, measured on a per-line basis and adjusted for inflation, has fallen by about half since 1984, from about $1,000 to a little over $500. Price and performance gains on par with the computer industry's would have brought that per-line price down to less than $4. Inflation adjusted per-line prices for central office switches went from $330 in 1984 to $165 today. Improvements in Central Office switch value comparable to that seen in PC's would have lowered that figure below $2. A typical telephone cost about $50 in 1985 and $25 today, but had CPE followed the trend in the PC industry, essentially the same functionality might cost under a dollar today.

Open Networks: Central to the Government's case against both companies was their attempts to maintain closed systems. Yet in scarcely a decade after the Government dismissed its suit against IBM, 99 percent of all computing power migrated out of the mainframe and on to dispersed, desktop machines. Driven entirely by market forces, IBM has since extensively unbundled its products and services. IBM has spun off its printer and keyboard division, Lexmark, and has entered into numerous joint ventures with former rivals. "The idea of open systems—that computers should easily share things and basically behave like friends—is what everyone is aiming for," IBM's advertising now declares. During that same time period, regulators and industry participants have been struggling to define the same types of interfaces.

Jobs: One measure of relative market health is growth in the number of employees. In 1980 there were a little more than 300,000 Americans employed in the computer industry while more than a million were engaged in the provision of telephone products and services. By 1993 computer products and services accounted for more than 1.2 million, a four-fold increase. At the same time, the number of telephone employees had dropped to less than 900,000.

CONCLUSION

In 1982, the Department of Justice was prosecuting two cases, one against AT&T and another against IBM. The theories of the two cases were virtually identical. The Government, however, chose to break up AT&T and prohibit its local companies from participating in the markets for long distance service and telecommunications equipment. At the same time, it chose to drop its suit against IBM and allow market forces to shape the computer industry. These two very different approaches have yielded very different results. Today AT&T remains dominant in the market for long distance services. In the market for telecommunications equipment, AT&T has seen erosion of its position, but almost all the new entry has been by foreign firms. IBM, by contrast, is now only the fourth largest personal computer manufacturer. The computer market is flourishing, domestic jobs are growing fast, and U.S. computers set the standard worldwide. These results confirm that in a rapidly developing market, competition will yield better results than will regulation and embargo.

Mr. President, I would like to summarize my statement by saying that I think all of us here have worked together on a bipartisan basis. We have some disagreements on some amendments to come, but I am sure we will work them out. I very much respect everyone's point of view, and I respect the need to debate these. And I welcome Senators to come to the floor to make their statements and to offer their amendments, for that matter.

It is my strongest feeling that the bill we worked out in the Commerce Committee—and we had input from a number of sources. Indeed, we have had meetings since January on this, and we invited other Senators who are not on the Commerce Committee to participate. I believe the very able staffer of my friend from Nebraska—and I wish to praise Carol Ann Bischoff. I had intended to praise her in my closing statement. It is not unusual to praise a staffer, but she did a great job. She was in many of the meetings, and we appreciate that very much.

So what I am saying is a number of people have worked on this legislation. I am not criticizing anyone for raising questions here. We will continue to work on it.

We did have meetings every night from about January on, including Saturdays and Sundays, for interested Senators, and we think that we have crafted a good bill. I want to praise Senator HOLLINGS and Senator INOUYE, all the Democrats and Republicans on the committee and off the committee who participated.

But we worked out this delicate balance on this bill, which provides for an FCC review. It provides for a checklist. It also has the public interest, convenience and necessity standard. We feel that going on to a Justice Department review would be duplicative.

But in any event, let me state the need to pass this bill. This bill will provide a road map for the next 15 years or 10 years or however long it takes to get into the wireless age. It will provide a basis for investment and for jobs, and it will be something like the Oklahoma land rush because right now our telecommunications sectors are an apartheid, an economic apartheid. They each have an economic sector. This bill is intended to get into everybody else's business, but also it takes off certain restrictions on our domestic companies that they spend their money in Europe.

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So I hope we can pass it, and I wish to commend everybody for participating. We have tried to run as open a process as possible. Senator HOLLINGS and I have invited everybody to meetings. His staff has done an outstanding job and our staff on the Commerce Committee has done an outstanding job. We welcome amendments. We welcome digesting this further. I thank everybody for their participation.

I yield the floor.

Mr. KERREY addressed the Chair.

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

Mr. KERREY. Mr. President, I would like to take a few minutes and describe what was in the Hollings-Daschle amendment that was adopted earlier and describe why we believe it is important to have these things included in the bill.

Before I do, I would like to once again compliment and respond to the comments just made by the distinguished chairman of the Commerce Committee, the Senator from South Dakota.

Mr. President, what we are about to do in this legislation is without precedent. There is no legislative precedent for taking this large a sector of the economy. It is true we have deregulated other sectors of the economy but nothing that touches nearly half of all the U.S. economy, either directly or indirectly. It is a mammoth part of the economy.

Make no mistake about it, while it may be true that some Americans do not fly, and some Americans do not use a truck, every single American will be touched by this piece of legislation. If you have a telephone line coming into your home, if you watch broadcast television, if you buy records, if you have cable service, if you use any consumer electronics, if you have a computer, if you have any contact at all with information industries or services, this bill will have an impact on you—a substantial impact on you.

I say this to my colleagues who are wondering why this is important. There will be precious little interest, I suspect, in this legislation, or a relatively small amount of interest in this legislation, while we are debating it as perhaps in the first 30 or 60 days after it is enacted.

For those who wonder what this bill will do, I urge you to go back and examine the 1984, 1985, 1986 period and try and reach back and test the waters to see what consumers and citizens were saying the last time we attempted to move from a monopoly to a competitive environment.

At that time, the Department of Justice managed that transition. That is why the role for the Department of Justice is so important. That is why the Dorgan amendment and the Thurmond amendment are so critical. The Department of Justice does have expertise in doing this. It is not duplicative. It is not additional bureaucracy, Mr. President.

Those who say that and who believe that is true should look at the long run. It requires a process to go forward simultaneously with the Department of Justice and with the FCC. In the Department of Justice, there is a 90-day time certain. That is not duplicative. That does not require people to go through a long, lengthy process. Indeed, I will predict with great confidence that if this bill is passed without—without—the DOJ language in there, what will happen is we will have extensive litigation, because the 14-part test that is required before a regional Bell operating company can get into long-distance service, before your local telephone company can do long-distance telephone service, has not been litigated. There is no precedent. There is no court history that can be referenced with clarity so that people understand what is going on. And it will be litigated.

I understand the delicate balance argument. I understand what the committee had to do. I understand what the committee had to try to balance in order to get this out. Indeed, it is the sole responsibility and credit of the senior Senator from Nebraska, Senator EXON, that the compromise that gives DOJ a consultative role was added by the committee prior to it being voted out.

Nonetheless, I say over and over and over, do not underestimate the difficulty this vote is going to produce for you unless the most experienced manager of taking a monopoly to a competitive environment has more involvement than just consultation. If you are uncomfortable with the bureaucracy argument, there are fewer than 900 employees over in antitrust at the Department of Justice. If the language troubles you in some fashion and you think we need to make certain that time certain is held to, that it is not delayed for a long period of time, come and argue for changes in that.

Second, the distinguished Senator from South Dakota lays out the differences in results with the Justice Department's action with IBM in the early 1980's—about 1982—and the action taken by the Justice Department in 1984.

I say to my colleagues, this makes the case for Justice involvement. They had a success in both cases. It is a completely different situation, however, when you are talking about a monopoly that has been created by law to perform a public service of providing telephone service to all American households.

The goal of the 1934 act says universal service and, indeed, as early as 20 years ago universal service had been attained, but it is a franchise, a monopoly franchise granted first to AT&T and second, after divestiture, to the regional Bell operating companies, and no one should suffer the belief that somehow these companies are not earning relatively high rates of return on equity. Their P&L's are quite impressive. Their performance has been quite impressive. We are not receiving complaints from citizens of this country who come back from Europe or Asia or South America or Australia or Africa saying, "Gosh, I wish I had as good a service as I got when I was outside the United States." We have exceptional service. We have high-quality service. We have high- and well-performing corporations that are providing that service.

So we are going to be asked by our people, the citizens who are not, in the main, asking for us to deregulate these industries, these companies, why we did this thing. It is fair to say, I think, this is a contract with America's corporations who are currently not allowed to do many things that this law will allow them to do. Corporations are saying to us, "Please let us do these things, because if you do, trust us, things are going to get better." But if they do not get better, Mr. President, it will be our vote and we, as Members of this body, will be responsible for it.

I hope the Senate will seriously consider next week when we vote on the Dorgan and the Thurmond amendments—my hope is we can bring the two amendments close enough together that we will have a vote on a single amendment—my hope is that my colleagues will look at this seriously and say this may be the only safety valve that I have on behalf of the consumers, the citizens, the voters of the State which I represent.

Mr. President, I was actually going to do this next week. I will start to do a little of this now.

This is the annual report of one of the companies. You hear people say—I heard it already in this debate—"Gee, the Government is sitting like a big animal in the middle of the road preventing this gold rush to occur, this stampede of innovation, this creation of new jobs."

Look at the job creation over the last 10 years created by the regional Bell operating companies, created by AT&T and other long-distance providers, created by the computer industry. The computer industry surprisingly has laid off 150,000 people over the last 9 years. Look at the existing industries that are coming and talking to us saying they need this change and you do not see much in the way of job creation. You do not see much in the way of job creation, indeed, with the exception of cellular and cable. The job growth has been going downward to the right.

So do not expect in your home States to be greeted by a round of applause that you are going to create jobs in the areas where you are currently being asked or lobbied to support one provision or another, with a few notable exceptions.

This is Southwestern Bell. The headline reads: "Southwestern Bell builds value, your $100 investment has grown to $173 in 10 years and we're ready for another decade of growth."

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I have a whole stack of them. I suppose I will have a chance next week. I am sure somebody is going to come to the floor and talk about how we are blocking these companies; it is difficult for them to do well. Their P&L's are very impressive. They outperform most manufacturing businesses in America. They are doing quite well.

As I said, I do not object to many of the deregulatory efforts. I do not object to cutting the regulation. I am the only Member of Congress to have signed a deregulation bill. But I do not want the presumption that we need to deregulate be that these companies are really underperforming against other corporations in America or that somehow Congress has denied them a fair shake in the marketplace.

Mr. President, let me now go through the package of amendments that we took up earlier.

The Hollings-Daschle amendment was a package of provisions that attempted to strike a better balance between consumer protection and market deregulation. These were safeguards which were designed to protect consumers by expanding services and keeping them affordable.

The first amendment improved the cable rate regulation provision of the committee bill by strengthening what was known as the bad actor test. Rates for the upper tiers of cable service will now only be found unreasonable if they significantly exceed the national average rate for comparable cable service for systems other than small cable systems determined on a per channel basis as of June 1, 1995.

It sounds arcane. It was significant. By excluding the small cable system, we raised the bar a bit—and I think quite appropriately so—to protect American consumers.

In addition, the amendment will deregulate a cable company only after a telephone company begins to provide video programming service that is comparable; not just a single channel, but comparable to the video service provided by the cable company.

A second amendment also prohibited buyouts in joint ventures by telephone companies and cable companies, except in areas below 50,000 and in a nonurbanized areas or if the FCC waives the provision. This places reasonable limitations on the ability of cable and telephone companies to eliminate each other as potential competitors through buyouts and mergers, except in rural areas where competition may not be viable. This change improves the bill.

I must tell you that I am still very much concerned about the potential for a telephone company to buy out a local cable company. Again, you can imagine your own household, where you have a telephone line coming in, a cable line coming in, and those two pipes give you the potential for a competitive environment. That environment is going to be substantially reduced if you allow that kind of acquisition which will reduce you from two to one line.

The Hollings-Daschle amendment will also allow small competitors to the telephone companies to jointly market local and long distance service, but not AT&T, MCI, and Sprint. It amends the provision on joint marketing to allow carriers with under 5 percent of the Nation's prescribers to engage in joint marketing and to sunset the prohibition on joint marketing after 3 years. With the earlier provision, this is something I have taken a particular interest in, as many colleagues have as well. It is unquestionably a procompetitive action.

I urge, again, upon my colleagues the idea that if we are going to have a competitive environment, the competition is going to come from start-up companies who are going to end up like Intel, having a microprocessor 12 years ago and now with tremendous market value, and a tremendous market net worth as a consequence of them having an idea, actually spun off from IBM, that they developed over that period of time. That is where the jobs are going to be created. They are going to be created from new competitors, not from the established businesses. We do not want to be unfair to established businesses, but what this change allows is for the smaller entrepreneurial companies to jointly market and, as a consequence, have a better chance of surviving in that market.

The amendment will allow consumers to realize the benefits of competition in the local telephone exchange, while preserving the competitive balance between the regional Bell operating companies and the major long distance carriers. The provision also promotes network interoperability by all communications carriers. This is a provision I was also personally involved in, having introduced legislation to this effect some months ago. This is an important part of building a seamless national information infrastructure that will enhance education, business, and health care providers.

This amendment would not expand or limit the FCC's current authority over standards setting. I emphasize that last part because, as originally introduced—and this is one of the dangers of these kinds of law-making efforts—it did in fact establish what are called de jure standards, a legal standard thus preventing de facto standards.

What is happening across the board in networking, in transmission, in hardware, in information services, in content, in the market sitting out there, businesses are out there and individuals are out there saying: These are my needs, this is what I need to get done; here is point A and here is point B. This is the kind of network requirements that I have, and the engineers and the innovators are coming up with new solutions constantly.

Thus, though it is terribly important for us to have interoperability in this network, particularly the network-to-network, and the ability to come on line anyplace you are, it is terribly important to have that. This legislation, I think, strikes a very good balance between that need and the comparable need to avoid establishing a standard that would restrict and constrict the development of technology itself.

Nothing in this amendment, Mr. President, precludes existing local telephone marketing agreements from continuing in effects. Many small broadcasters like the programming to fill an entire broadcast day, and consequently they often lease their facilities to other programmers. These are called local marketing agreements. This amendment I referenced earlier recognizes this need and will help small broadcasters continue to diversify their products.

Mr. President, as with the amendment offered by the majority leader, the amendment that was agreed to earlier, that was approved earlier on a rollcall vote, and offered by the distinguished Democratic leader and the distinguished ranking Democratic member of the Commerce Committee, comes to this law and says we are concerned about consumers, we are concerned about those individual families living in households, we are concerned about that small entrepreneur, that start up company that nobody even knows about today. We want to make sure that we give them a full and fair opportunity.

Mr. President, we are probably at a point where it is not worthwhile to continue this exchange. It looks to me like it might be the Senator from South Dakota and I alone sitting here all afternoon talking to one another. That would not necessarily be very constructive. Thus, I look forward to continuing the debate next week on the Department of Justice amendment offered by the Senator from North Dakota and the second-degree amendment offered by the senior Senator from South Carolina.

I yield the floor.

Mr. PRESSLER addressed the Chair.

The PRESIDING OFFICER. The chair states that when the majority leader modified his amendment, that subsumed the underlying Daschle amendment. That is for the information of the Senate.

The Senator from South Dakota.

Mr. PRESSLER. I say to my friend, the Senator from Nebraska, that my mother is watching in Sioux Falls. She might appreciate it if we can just talk all afternoon, but I think other than her, there might be some boredom.

I did want to praise Senator INOUYE for his leadership and willingness on the GTE consent decree. I thank the Senator very much.

Mr. President, I will go a bit further to describe in more detail some of the things in the Dole package this morning. I think all this was worked out in Dole-Daschle and others, including myself as a cosponsor.

In that package, the current law does not recognize the uncertainty and disproportionate burdens rate regulation

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imposes on small cable companies. Without relief, many small cable companies will be unable to rebuild and upgrade their systems; moreover, they may be unable to survive or compete in the telecommunications marketplace.

Small cable companies must spread high fixed costs over a small subscriber base, making it difficult to rebuild and upgrade facilities, to obtain a return on investment, and to service debt. At the same time, small cable companies typically incur a higher cost of capital than the industry as a whole.

The current regulatory scheme has required small cable companies to devote a substantial amount of their operating budgets to legal and accounting expenses simply to understand and comply with the complex regulations spawned by the Cable Act of 1992.

Rate regulations imposed on these companies have depressed their revenues and caused uncertainty in the financial sector, exacerbating the difficulty such companies have in attracting financing. The uncertainty caused by the threat of regulation alone has discouraged the banking community from extending financing to small cable companies. Without such financing, small cable companies will be unable to position themselves to meet competition, or in many cases, to stay in the cable business.

At the same time, small cable companies have been particularly hard-hit by the competitive challenges of direct broadcast satellite [DBS], which has become one of the fastest introductions ever of a new consumer electronics product since its launch in 1994. DBS services, which are expected to serve 2.2 million subscribers by the end of this year, deliver virtually every program network offered on cable, including movies, sports, and dozens of channels of pay-per-view movies.

Small cable companies need immediate rate relief in order to access the capital necessary to compete and to continue to provide services to customers. Consequently, telecommunications reform legislation should exempt small cable companies from rate regulation.

RADIO OWNERSHIP

The financial health and competitive viability of the Nation's radio industry is in our hands.

We all agree that the telecommunications legislation we are considering today is about competition, and not picking winners and losers. And we also agree that this legislation goes a long way toward giving cable, satellite, and the phone companies the freedoms they need to compete, but we now need to agree to extend these same freedoms to the over 11,000 radio broadcasters in this country.

No other audio service provider, be they cable, satellites, or telcos, has the multiple ownership restrictions that radio has. The language we are offering today eliminates these outdated radio-only rules. It is imperative that we in the Congress end this discrimination against radio sooner by adopting this language, rather than wait for the bureaucracy to come around to it later, as this legislation as currently drafted, would have it.

Immediate action is critical because the FCC is on the verge of authorizing digital satellite radio service, whereby 60 new radio signals will broadcast in every market in the United States. This satellite service will be mobile and available in automobiles, homes, and businesses. Also, cable already provides 30 channels of digital radio broadcasting in markets across the United States under a single operator. Obviously, an incredible diversity of voices has been achieved, with even more competition to radio quickly making its way down the information superhighway.

Yet let us not lose sight of the fact that all of these welcome new voices are also aggressive competitors for radio's listeners and advertisers. And unlike radio, these competitors are not burdened with radio's multiple ownership restrictions, nor do they have the same public service obligations are radio broadcasters.

Our Nation's radio broadcasters have a strong tradition of providing the American people with universal and free information services. In a telecommunications environment increasingly dominated by subscription services and pay-per-view, it is essential that we not foreclose the future of free, over-the-air radio by restricting ownership options. For radio, serving the public interest and competing are not mutually exclusive, they are complementary. So it is left up to us to empower radio so it can grow strong well into the next century, and continue to serve our communities as it has done so well for the past 70 years.

The last is perhaps the most important, relief from ownership rules works. In the early and mid-1980's, the FCC issued hundreds of new radio licenses and the market became oversaturated with radio stations without sufficient advertising revenue to support the increase.

However, in 1992, the FCC granted limited relief in radio ownership restrictions. After many years of financial losses, suddenly radio became an attractive area for investment, and alarmingly, multiyear stations going off the air was arrested.

The economies of scale kicked in, stations gained financial strength in consolidation, and competing for advertising improved.

Allow me to cite some statistics. In 1993, a year after the new limits took effect, the dollar volume of FM-only transactions almost tripled, to $743.5 million, while group sales grew 44 percent.

In 1994, sale prices of single FM stations rose 12.7 percent from 1993's $743.5 million to $838 million.

From 1993 to 1994, the total volume of AM station sales shot up 84 percent, totaling $132 million.

There is every reason to believe that all of these positive trends will continue and flourish if we remove radio's outmoded multiple ownership restrictions.

Clearly, maintaining local and national radio ownership limits in the face of tomorrow's competitive environment is not only unfair but is a major step backward.

Mr. President, I might say a word about the GTE consent decree. The GTE consent decree arose from the 1982 acquisition of Southern Pacific Communications Co., the forerunner of Sprint, and Southern Pacific Satellite Company, Spacenet.

The Justice Department, as part of its statutory Hart-Scott-Rodino review of the proposed acquisition, negotiated a consent decree based on section 7 of the Clayton Act.

Unrelated to the acquisition, the suit also claimed GTE's provision of information services created a substantial profitability, monopolizing the market in violation of section 2 of the Sherman Act. This portion was removed in 1991.

GTE was not found to have violated any antitrust statute. They voluntarily accepted the consent decree in December 1994, allowing the company to proceed with acquisition.

The primary restrictions of the decree are: Structural separation between GTE's telephone operating companies and Sprint; and GTE's telephone operating companies are prohibited from providing or joint marketing interLATA long distance companies.

The GTE consent decree should be vacated through the pending telecommunications reform legislation for three reasons: First, GTE no longer owns the Sprint or Spacenet assets that gave rise to the original suit. The Sprint assets were disposed of completely in 1992. Spacenet assets were sold to General Electric in late 1994.

The GTE consent decree is not related to the modified final judgment. The 1982 court order that resolved the AT&T antitrust case and broke up the Bell system restricts the regional Bell operating companies from entering the long distance and manufacturing businesses.

GTE is the only non-Bell telephone company with such cumbersome proceedings. These procedures resulted in higher costs and hamper GTE's ability to compete.

GTE also filed a motion with Judge *Harold Greene in the U.S.* district court to have the court vacate the GTE consent decree.

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

Mr. PRESSLER. I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

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

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

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Mr. DOLE. Mr. President, what is the pending business?

The PRESIDING OFFICER. The pending business is the telecommunications bill.

MORNING BUSINESS

Mr. DOLE. I ask unanimous consent that there now be a period for the transaction of morning business from now until 3 o'clock, with Members permitted to speak for 5 minutes therein.

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

Mr. DOLE. Mr. President, was leaders' time reserved?

The PRESIDING OFFICER. The leaders' time has been reserved.

EXERCISING GOOD CITIZENSHIP

Mr. DOLE. Mr. President, last week, I ventured out to Hollywood and called upon the executives of the entertainment industry to exercise some good citizenship and put an end to the steady flow of mindless violence and loveless sex they serve up each day to our young people. I said that a "line has been crossed—not just of taste, but of human dignity and decency. It is crossed every time sexual violence is given a catchy tune. When teen suicide is set to an appealing beat. When Hollywood's dream factories turn out nightmares of depravity."

Although I made it very clear that government censorship was not the answer, the response to my remarks has been predictable and predictably ferocious. All the usual suspects—Oliver Stone, Ed Asner, Norman Lear—have been out in force, rushing to Hollywood's defense and lashing out at anyone who would dare criticize the entertainment industry for its excesses.

I will continue to speak out because people like Bill Bennett, PAUL SIMON, PETE DOMENICI, BILL BRADLEY, and C. Delores Tucker all happen to be right: cultural messages can and do bore deep into the hearts and minds of our impressionable young. And when these messages are negative ones—repeated hour after hour, day after day, week after week—they can strip our children of that most precious gift of all: Their innocence.

Apparently, the American people share this concern, particularly when it comes to television, perhaps the most dominant cultural force in America today. A recent survey conducted by USA weekend magazine revealed that an astonishing 96 percent of the 65,000 readers surveyed are "very or somewhat concerned about sex on TV," 97 percent are "very or somewhat concerned" about the use of vulgar language on television shows, and another 97 percent are "very or somewhat concerned" about television violence. Jim Freese, the principal of Homestead High School in Fort Wayne, IN, put it this way: "I'm seeing more instances of inappropriate language around school. It is part of the vocabulary, and often they do not think about some of the words because they hear them so often on TV. It is a steady diet. Program after program has this inappropriate language."

According to a study commissioned by USA Weekend, 370 instances of "crude language or sexual situations" were recorded during a five-night period of prime-time programming, or one every 8.9 minutes. Two hundred and eight of these incidents occurred between 8 and 9 p.m., the so-called family hour.

Of course, we have more to lose than to gain by putting Washington in charge of our culture. Instead, it is my hope that the decision-makers within the entertainment industry will voluntarily accept a calling beyond the bottom line and help our Nation maintain the innocence of our children.

Mr. President, I ask unanimous consent that the cover article from the USA Weekend magazine be reprinted in the RECORD immediately after my remarks.

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

[From USA Weekend, June 2-4, 1995]

TURNED OFF

(By Dan Olmsted and Gigi Anders)

It was, in its crude way, a perfect TV moment for our times: 9 p.m. ET on a Wednesday this spring on Grace Under Fire, the top-5 ABC sitcom. Divorced mom Grace is talking in the kitchen with 10-year-old Quentin, who has been visiting his dad. Let's listen in, along with the 28.3 million people watching the show on a typical night, 5.6 million of them under age:

Grace: How come your daddy didn't come in and say hey?

Kid: Aw, he was in a hurry. He had a date with some slut.

Grace: Quentin? I'm going to wash your mouth out with fabric softener. Where did you hear that word?

Kid: Dad's house. It was a cable.

These days, that episode neatly demonstrates, the raw stuff isn't on just cable anymore. Sex, and what your mother called "vulgar language," now play nightly on the four major networks—for laughs, shock value, sizzle and ratings, and because producers say viewers want verisimilitude, and this is how reality looks and sounds in 1990s America.

But such programming may turn off a sizeable number of viewers—including 97 percent, or 63,000, of the 65,142 readers who took part in USA Weekend's survey on TV violence and vulgarity. The key finding: Many viewers want to wash out TV's mouth with something stronger than fabric softeners. They're especially upset that much of the unclean stuff is coming out of the mouths of relative babes like Quentin and into the eyes and ears of kids.

The written survey, which ran in our March 3-5 issue, follows a similar one two years ago that drew 71,000 responses. The earlier survey came amid concern about TV violence and congressional hearings on the subject; is showed violence was readers' top concern, with sexual content a close second.

This year the figures are reversed (see chart, opposite page): Sexual content tops the list of "troublesome programming," with violence second.

The results are not scientific, but they're over-whelming—make for a comparison with two years ago. Viewers still find TV violence troubling but seem increasingly concerned about rawness, especially on the networks' prime-time shows.

Concern over violence remains high, to be sure: 88 percent of readers who responded to the write-in are "very concerned" about it, compared with 95 percent in 1993.

"We limit our kids' TV viewing because of the violence, and because too much TV of any kind turns their minds to jelly," says Sue Sherer, 40, of Rochester, N.Y., a mother of three (ages 11, 9 and 7) and PTA president who filled out the survey. "We rob kids of innocence when we expect them to grow up so fast and mirror kids like those on Roseanne. I don't want them to be naive, either, but I'd like them to be children. And TV is a great vandal of that."

Responding to the concern over vulgarity, USA Weekend monitored five evenings of prime-time network TV (8-11 p.m. ET). We enlisted journalism students from The American University School of Communication in Washington, DC., who videotaped each program and noted incidents of crude language or sexual situations (see chart below).

The result: 370 incidents over five nights—after giving the tube the benefit of the doubt on close calls. "I was surprised," said Alan Tatum, one of the AU students who helped us. Even on "family" shows, "it almost seems the producers feel they need to throw in bodily humor every so often."

Every 8.9 minutes, on average. And 208 incidents—well over half—occurred in "the family hour."

A cultural Rubicon of sorts was crossed in the past few weeks, when ABC moved Roseanne to 8 p.m. ET and two family-hour staples, Blossom and Full House, went off the air.

First sanctioned by the National Association of Broadcasters code in the early 1970s, the family hour (8-9 p.m. Eastern and Pacific time; 7-8 p.m. elsewhere) was long considered the proper time to appeal to kids. It meant Happy Days and Laverne & Shirley, The Cosby Show and Family Ties. But in more recent years, thanks largely to competition from cable and the emergence of the Fox network in 1986, programmers have been so eager to recapture a dwindling TV audience that the family hour has become inhabited by adult and young-adult hits such as Mad About You, Martin, Melrose Place and Beverly Hills, 90210. In fact, following the stunning success of NBC's Thursday night comedy blits, ABC has been trying to create a solid block of its own on Wednesday by reshuffling two of its edgier sitcoms, Roseanne and Ellen, into the family hour.

For all the national discussion about values, even such family-hour shows as Fresh Prince of Bel-Air and The Nanny are laden with sexual innuendo and hot-blooded humor. And Martin has all the subtlety of a Friar's Club roast.

There's a sense that TV, which in the '50s and early '60s made happily married couples like Ricky and Lucy and Rob and Laura sleep in separate beds, is making up for lost time.

Programmers say it's not that simple. "TV is changing," says James Anderson, a vice president of Carsey-Werner, which produces Roseanne. "The show reflects the climate we're in. There's a big discussion going on over what should be shown during the family hour. It's necessary, I guess, but any show that pushes the envelope usually gets penalized in some way. And Roseanne does push it."

He cites the show's complex treatment this season of Roseanne's pregnancy—worrying whether there was something wrong with the baby she was carrying—as an example of provocative but responsible programming. "Parents who say they dislike the show and

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wouldn't let their kids watch are uncomfortable about having to discuss the issues raised on the show with the children."

But, he suggests, the genie isn't going back into the bottle. "The face of TV is going to be seriously redefined over the next couple of years. I mean, Melrose Place is on at 8, and they have way more T&A than Roseanne does." Fox and Melrose Place did not respond to requests for comment.

CBS senior vice-president Martin Franks defended his network's programming, while acknowledging some early-evening broadcast fare is inappropriate for kids. "I have a 13-year-old and an 11-year-old, and I don't let them watch The Simpsons [Fox, 8 p.m. ET Sundays]. I don't want my kids talking that way."

He compared the high level of dissatisfaction recorded by the USA Weekend survey to asking viewers if they dislike "attack ads" during political campaigns: "Of course the answer is going to be yes, yet people watch them and are being affected." Many people who complain about network programs also would complain "if we pre-empted them for a presidential press conference," Franks argues.

"Adults ought to be able to watch something. Someone at this point who is surprised by The Simpsons or Roseanne or Seinfeld is living under a rock."

All four networks have offices of standards and practices that monitor shows for taste and content. (The industrywide National Association of Broadcasters code is defunct.) "You can argue they miss something or their judgment is different from yours," Franks says of the censors, but they take the job seriously: "They make suggestions to change scripts before they're even shot."

The bigger question: Is it worth wondering whether course language and risqué fare have any social impact? Or is that like Dan Quayle attacking Murphy Brown, easy to dismiss as an overblown attack on a fictional character? Educators, for one group, don't think it's far-fetched.

"I've been a principal for 20 years, and I've seen significant changes. And one of the factors is TV," says Jim Freese of Homestead High School in Fort Wayne, Ind., where students filled out the survey. "I'm seeing more instances of inappropriate language around school. It's part of the vocabulary, and often they don't think about some of the words because they hear them so often on TV. It's a steady diet: Program after program has this violence and inappropriate language."

Last month, U.S. Sen. Kay Bailey Hutchison, R-Texas, proposed legislation giving parents access to a "report card" rating the violence in TV shows. Funded by the government and compiled quarterly by a neutral organization such as a university, the report would list the most violent shows and their sponsors; viewers could then pressure the sponsors to withdraw their ads.

The movies' rating system "has worked very well," Hutchison told USA Weekend, adding that the magazine's survey reinforces other studies, as well as comments from her constituents. "Parents are sitting with their children thinking a show will be all right, and all of a sudden there is something very inappropriate." The report card would offer parents a "comfort level," knowing certain programs would not contain violence or vulgar language.

Not surprisingly, the older our survey respondents, the greater the concern. For instance, 95 percent of those over 65 are "very concerned" about TV violence, vs. 70 percent of those under 36. Older readers worry that younger viewers aren't concerned. "Most of my students find the issues under question acceptable," says Nancy Movall of Newell, Iowa, whose high school visual communications class took the survey. "I wonder if it's because they have been raised in a world that sees violence far too often and thus have become more tolerant of it."

Also filling out the survey: 14 inmates at the South Dakota State Penitentiary, who marked "very concerned" about either sex, violence or vulgarity on TV a total of 20 times.

Some language in prime time is now so strong, we've chosen not to print it on our cover:

From The Wright Verdicts, 9 p.m. ET Friday on CBS: "You lousy bastard!"

From NYPD Blue, 10 p.m. ET Tuesday on ABC: "You're lucky I don't kick your ass."

From the CBS movie With Hostile Intent, 9–11 p.m. ET: ". . . kiss my butt a little harder . . . probably getting laid . . . Let's go get naked . . . Aw, hell, I'm stuck with a bitch tonight . . . Roberta's on the rag . . . "

From Fox's Melrose Place, 8–9 p.m. ET: ". . . I want you to go home with me . . . I want you to unbutton my blouse and pull up my skirt . . . I'll be up for hours unless I can find a way to relieve my tension."

From NBC's Friends, 9:30 p.m. ET: "Now we need the semen of a righteous man."

Of course, Friends is a smash: Melrose fans aren't likely to picket Aaron Spelling because of too-steamy plots; and Roseanne, in many critics' eyes, is quality TV.

"Thinking adults are hardly going to turn into a heaping pile of gelatin because they hear the word "ass' on the air," argues Los Angeles Daily News television critic Ray Richmond. "I don't see this 'vulgarity' as a loosening of standards, but rather as a reflection of the reality around us."

Plus, more than two-thirds of U.S. homes now have cable, he notes, and the government's "set of rules for network TV doesn't apply to cable or pay-per-view programs, and they're all on the same remote control in people's living rooms and bedrooms. People who believe TV's going to hell in a handbasket are overreacting."

But is there a middle ground between prudery and prurience? Beneath the comic coarseness of Grace's response to Quentin's use of "slut" is advice that's hard to disagree with. "You shouldn't use that word," she tells her son. "It's demeaning to women, and men who say it. And furthermore, if it weren't for women like them, I wouldn't know how to rat my hair real big and put on blue eyeshadow.

"So show a little respect."

COMMENDATION OF CAPT. SCOTT F. O'GRADY AND U.S. AND NATO FORCES

Mr. DOLE. Mr. President, I send a resolution to the desk and ask it be read on behalf of myself, Senator HELMS, Senator WARNER, and many others. I am not certain of all the cosponsors. This has been cleared, I understand, on both sides.

The PRESIDING OFFICER. The clerk will read the resolution.

The assistant legislative clerk read as follows:

A resolution (S. Res. 132) commending Captain O'Grady and U.S. and NATO forces:

Whereas on June 2, 1995, Bosnian Serb forces using sophisticated surface to air missiles shot down a United States Air Force F-16 aircraft piloted by Captain Scott F. O'Grady while on combat patrol as part of NATO-commanded Operation Deny Flight;

Whereas in late 1994, reports indicate the United Nations vetoed NATO proposed operations to attack Bosnian Serb surface to air missile sites;

Whereas effective measures to defend against Bosnian Serb air defenses did not occur during Captain O'Grady's mission on June 2, 1995;

Whereas thousands of United States Armed Forces and armed forces of NATO allies were involved in search operations to recover Captain O'Grady;

Whereas Captain O'Grady, in the finest tradition of American military service, survived for six days and nights through courage, ingenuity and skill in territory occupied by hostile Bosnian Serb forces;

Whereas on June 8, 1995 Captain O'Grady was rescued in a daring operation by United States Marines;

Whereas aircraft involved in the rescue operation were attacked by Serb forces but no casualties occurred;

Therefore be it resolved by the Senate that it is the sense of the Senate that—

(1) Captain O'Grady deserves the respect and admiration of all Americans for his heroic conduct under life-threatening circumstances;

(2) the relief and happiness felt by the family of Captain O'Grady is shared by the United States Senate;

(3) all members of the United States and NATO armed forces involved in the search and rescue operations, in particular the members of the United States Marine Corps involved in the extraction of Captain O'Grady, are to be commended for their brave efforts and devotion to duty;

(4) U.S. and NATO air crews should not be put at risk in future operations over Bosnia unless all necessary actions to address the threat posed by hostile Serbian air defenses are taken.

Mr. DOLE. Mr. President, this is a time for celebration—a brave American pilot, Capt. Scott O'Grady, has been rescued from Bosnian Serb-held territory. He is back at Aviano Air Base in Italy and will soon be on his way home to see his family.

I am pleased to submit this resolution on behalf of myself and many of my colleagues on both sides of the aisle commending Captain O'Grady, and the U.S. marines who rescued him, for their courage and professionalism.

In the interests of getting this resolution adopted today, I agreed to modify several provisions, although I have a hard time to understand why they are objectionable. But first it was objected to stating the obvious—that many missions prior to Captain O'Grady's were not accompanied by adequate action against hostile air defenses. And second, objection to urging appropriate responses to the attack on Captain O'Grady. The term "appropriate" covers a lot, but apparently some want no response at all to the attack on Captain O'Grady or the attack on the rescue aircraft. But having said that, those provisions have been removed to satisfy my colleagues on the other side of the aisle. I think we all want to make a statement and I believe this resolution makes an appropriate statement. The distinguished Senator from Massachusetts, one of the Senate's combat veterans, said yesterday that it would be appropriate to respond to this incident by bombing Serb missile sites.

Mr. President, events like this should make all Americans proud and appreciative of the sacrifices made by men

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