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he graduated from the Virginia Military Institute in 1969 and was commissioned a second lieutenant of infantry. In the months following his graduation from Infantry Officers Basic School, Lieutenant Harper earned two of the Army's most cherished qualification badges, airborne wings and a Ranger tab. After a tour with America's famed Honor Guard, the 82d Airborne Division, Colonel Harper was ordered to the Republic of Vietnam where he was assigned to the 1st Battalion (Airmobile), 327th Infantry, setting in motion a career that would bring him many commands and responsibilities.

Among his many assignments over the next two decades, the colonel served as: commander, A Company, 18th Infantry; Executive Officer, 1st Battalion (Mechanized) 36th Infantry at Friedberg, Federal Republic of Germany; and, he commanded the 2d Battalion (Mechanized), 16th Infantry at Fort Riley, KS. In addition to his troop leading time, Colonel Harper attended the Command and General Staff College and the Naval War College; served as a staff officer and Chief of the War Plans Division; and finally, as Director of the Chief of Staff of the Army's personal staff group. In his capacity as General Sullivan's staff director, Colonel Harper helped the Chief of Staff transform the Army from a Cold War, forward deployed force into a power projection force ready to defend the Nation anywhere. Colonel Harper's keen insight, sound judgment, and able intellect have made a lasting contribution to the future of the Army and the continued security of the Nation.

Mr. President, Colonel Harper has been a model soldier throughout his career. He embodies the traits that the military expects of those who choose to serve: integrity; loyalty, selfless service: and, concern for soldiers. He is a man who has served the Nation well and he has our appreciation for his dedication and sacrifices over the past 26 years. I join his friends and colleagues in wishing him good health and great success in the years to come.

CONCLUSION OF MORNING BUSINESS

The PRESIDING OFFICER. Morning business is now closed.

TELECOMMUNICATIONS COMPETITION AND DEREGULATION ACT

The PRESIDING OFFICER (Mr. DEWINE). 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 procompetitive, deregulatory national policy framework designed to accelerate rapidly private sector deployment of advanced telecommunications and information technologies and services to all Americans by opening all telecommunications markets to competition, and for other purposes.

The Senate resumed consideration of the bill.

Pending:

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

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

Subsequently, the amendment was modified further.

(3) Feinstein-Kempthorne amendment No. 1270, to strike the authority of the Federal Communications Commission to preempt State or local regulations that establish barriers to entry for interstate or intrastate telecommunications services.

Mr. PRESSLER. Mr. President, I believe the Senator from Mississippi is waiting to speak, and I have some business to take care of, which we are going to make some corrections on. I urge all my colleagues to bring their amendments to the floor. We are trying to move this bill forward. We are trying to get agreement on a lot of the amendments, and we are working feverishly on several amendments that we hope we can get agreements on. Those Senators who wish to speak or offer amendments, I hope they will bring them to the floor.

We do have the vote on the underlying Dorgan amendment at 12:30 p.m. and we will be looking forward to having several stacked votes later in the afternoon.

Mr. LOTT addressed the Chair.

The PRESIDING OFFICER. The Senator from Mississippi.

AMENDMENT NO. 1265, AS MODIFIED

Mr. LOTT. Mr. President, I rise to speak in opposition to the Dorgan-Thurmond amendment that would put the Department of Justice into the middle of this telecommunications entry question. This issue really is being pushed primarily by the Department of Justice but, of course, a number of long distance companies are very much interested in it, and they are asking that the Justice Department be given a decisionmaking role in the process of reviewing applications for the Bell company entry into the long distance telephone service.

A grant of that type of authority to the Justice Department, in my opinion, is unprecedented. It goes far beyond the historical responsibility of Justice. It is a significant expansion of the Department's current authority under the MFJ, and it raises constitutional questions of due process and separation of powers. In short, I think it is a bad idea.

Who among us thinks that after all the other things that we have put in this telecommunications bill that we should have one more extremely high hurdle, and that is the Antitrust Division of the Justice Department, which would clearly complicate and certainly delay the very delicately balanced entry arrangement that is included in this bill, and that is the purpose of the amendment. It is one more dilatory hurdle that should not be included.

The Antitrust Division of the Justice Department has one duty, and that is to enforce the antitrust laws, primarily the Sherman and Clayton Acts. It has never had a decisionmaking role in connection with regulated industries. The Department has always been required to initiate a lawsuit in the event it concluded that the antitrust laws had been violated. It has no power to disapprove transactions or issue orders on its own.

While the U.S. district court has used the Department of Justice to review requests for waivers of the MFJ, the Department has no independent decisionmaking authority. That authority remains with the courts. In transportation, in energy, in financial services and other regulated businesses, Congress has delegated decisionmaking authority for approval of transactions that could have competitive implications with the agency of expertise; in this case, the FCC.

The Congress has typically directed the agency to consider factors broader than simply the impact upon competition in making determinations. This approach has worked well. Why do we want to change it? It contrasts with the role Justice seeks with regard to telecommunications and the telephone entry. Telecommunications is not the only industrial sector to have a specific group at the Justice Department. It has antitrust activity in a transportation, energy and agriculture section, a computers and finance section, a foreign commerce section and a professions and intellectual property section.

The size of the staff devoted to some of these sections is roughly equivalent to that devoted to telecommunications and, I might add, it is too many in every case. If we want to do a favor to the American people, we should move half the lawyers in the Justice Department out of the city and put them out in the real world where they belong, working in the U.S. attorneys' offices fighting real crime. But, no, we have them piled up over in these various sections and, in many cases, in my opinion, not being helpful; in fact, being harmful.

If the Department has special expertise in telecommunications such that it should be given a decisionmaking role in the regulatory process, does it not also have a special expertise in other fields as well? Today's computer, financial services, transportation, energy and telecommunications industries are far too complex and too important to our Nation's economy to elevate antitrust policy above all other considerations in regulatory decisions.

The Justice Department, in requesting a decisionmaking role in reviewing Bell company applications, for entry into long distance telephone service, seeks to assume for itself the role currently performed by U.S. District

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Judge Harold Greene. It does so without defining by whom and under what standards its actions should be reviewed.

Typically, as a prosecutorial law enforcement agency, actions by the Department of Justice have largely been free of judicial review. In this case, the Department also seeks a decisionmaking role. As a decisionmaker, would the Antitrust Division's determinations be subject to the procedural protections and administrative due process safeguards of the Administrative Procedures Act? I do not know what the answer is to that question, but it is an important one.

What does this do to the Department's ability to function as a prosecutorial agency? Should one agency be both prosecutor and tribunal? That is what they are trying to do here. This is a power grab. We should not do this. Congress should reject the idea of giving the Justice Department a decisionmaking role in reviewing Bell company applications to enter the long distance telephone business. It is bad policy, bad procedure and clearly a bad precedent.

Mr. President, as Senator EXON of Nebraska very eloquently explained last Friday—I believe it was in the afternoon—Congress has passed many deregulation measures—airlines, trucking, railroads, buses, natural gas, banking, and finance. None of those measures was given executive department coequal status with regulators. What the Justice Department is seeking here is essentially a front-line role with ad hoc veto powers. Justice would be converted from a law enforcement to a regulatory agency, and it should not be. They would end up focusing chiefly on just this sector of the economy. We just do not need to create the equivalent of a whole new bureaucracy and regulatory agency just for telecommunications.

Let us look at the nearly two dozen existing safeguards that are already contemplated and required by this bill. Some people say, "Wait a minute, you were looking at some things like this last year," the VIII(c) test. That was a year ago, and it did not get through. It is a different world. The committee has continued to work with all parties involved, the experts in the field, and we have laboriously come up with what I think is an understandable and fair process to open up these telephone markets.

First of all, a comprehensive, competitive checklist with 14 separate compliance points, including interconnection, unbundling, number portability. That is the heart of what we would do in the entry test.

It also has the requirement that State regulators certify compliance. There is the requirement that the Federal Communications Commission make an affirmative public interest finding. We have already fought this battle. We had an amendment to knock out the public interest requirements and, quite frankly, that was a tough one for me. I really understand that there is some ambiguity and some concern about what is this public interest test. But we have the hurdle of the checklist, we have the State regulators and we also have the public interest test. So that is three hurdles already.

There is the requirement that the Bell companies comply with separate subsidiary requirements. We want some protections, some firewalls, if you will. So there would be this separate subsidiary requirement. There is the requirement that the FCC allow for full public comment and participation, including full participation by the Antitrust Division of the Justice Department and all of its various proceedings. They are not excluded, they have a consultative role. They will be involved, but they just are not going to be a regulator under this interest test.

There is the requirement that the Bell companies comply with all existing FCC rules and regulations that are already on the books, including annual attestation, which is very rigorous in its auditing procedures; second, an elaborate cost-accounting manual and procedure; computer assisted reporting and analysis systems; and all of the existing tariff and pricing rules. There is also still the full participation of the Sherman Antitrust Act and the Clayton Act regarding mergers.

There is the full application of the Hart-Scott-Rodino Prenotification Act, which requires Justice clearance of most acquisitions. So Justice will be involved under the Hart-Scott-Rodino Act. Also the full application of the Hobbs Civil Appeals Act of the Communications Act, which makes the Antitrust Division automatically an independent party in every FCC common carrier and rulemaking appeal.

The approach in this bill was hammered out in the most bipartisan possible way, with great effort by the distinguished chairman and the distinguished ranking member, and it involved give and take. It was not easy. I think the thing that makes me realize it is probably the best test we can probably have is that nobody is perfectly happy with it. Everybody is a little unhappy with it, showing to me that it is probably fair. After all, as I said in my opening speech on this subject, what we are dealing with here is an effort by everybody to get just a fair advantage. Everybody just wants a little edge on the other one. We have tried to say, no, we are going to have a clear understanding here. Here is the checklist, the public interest tests, and all these FCC and Justice Department involvements. This is fair to both sides. And now they want to add one more long jump to the process—to put the Justice Department in a regulatory role. Big mistake. This has strong support on both sides of the aisle. It is not partisan whatsoever.

Let us use our common sense here. You know, that is a unique thing. Let us try to apply some common sense to this law and what we are trying to accomplish. Let us go with the Commerce Committee experts who drafted this bipartisan legislation. There are more than enough safeguards already in this bill and in existing law. Congress is also going to move this slowly. These changes will not happen overnight. It will take a while. And we will find some points that probably need to be addressed later on. We can still do that.

If any competitive challenges arise because the Antitrust Division is not allowed to convert itself into a telecommunications regulatory agency, then Congress can come back and revisit the issue. We are not finishing this once and for all.

I just want to say that of all the bad ideas I have seen around here this year, the idea that we come in here and put the Justice Department in a regulatory role is the worst one I have seen. It attacks the core, the center of this bill. We have addressed the questions of broadcasting and cable and fairness in radio, television, as well as the Bells and the long distance companies. This is a broad, massive bill. But the core of it all is the entry test. If we pull that thread loose, this whole thing comes undone.

Also, I want to say that I am convinced that the leaders of this committee will continue to move it forward in good faith. If we find there are some problems, or if we find when we get into conference that the House has a better idea on some of these things, there will be give and take. But this is the critical amendment.

I urge my colleagues to vote against the Dorgan amendment, vote to table the Dorgan amendment, and do not be confused by the Thurmond second-degree amendment, because it is a smaller version of the Dorgan amendment. It is the old camel nose under the tent. We should not start down that trail at this point.

Mr. HOLLINGS. If the Senator will yield. The distinguished Senator from Mississippi is really analyzing in a most cogent fashion what discourages this Senator even further. I wondered if the Senator from Mississippi agrees that it will not only bring in the Department of Justice in a regulatory fashion and responsibility, but they actually eliminate the Federal Communications Commission measuring of market competition. Listening to the language: "In making its determination whether the requested authorization is consistent with the public interest, convenience, and necessity, the Commission shall not consider the antitrust effects of such authorization in any market for which authorization is sought."

So when they say antitrust, that means competitive effects. They lock out the word on competition, but that is the intent. You can see how it has been drawn. "* * * shall not consider the * * * effects of such authorization" on competition.

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So they insert the word "antitrust" and do not put in "competition". But that is the intent. So where you have the most recent and leading decision here, the U.S. Court of Appeals in Warner versus Federal Communications Commission, where they stated right to the point, "The Commission struck an appropriate balance between the competing interests of the cable companies and their subscribers," giving the good government award to the FCC on measuring market competition.

You see, the thrust of this amendment, where they get this idea, is that somehow the expertise is over in the Department of Justice, and none whatever, no experience or track record whatever in the Federal Communications Commission, which is totally false. They have been doing it. I listed numerous competitive initiatives by the FCC in the past 10 years. And right to the point here, when we told them, look, in regulating the cable TV folks, find out whether or not effective competition has developed within the market. Once the market is permeated with effective competition, no longer is regulation necessary.

So my question is not just the matter of putting the nose of the camel under the tent, he is putting the whole blooming camel in and crowds out the FCC. It said, look, we do not want the FCC measuring competition and the market. "Shall not." Now, say I am a communications lawyer, so I read that and I say, the FCC is doing it, but the law says, by the Congress, you have this betwixt and between. It is really confusion. Do you not see it a danger to the fundamental authority and responsibility of the FCC?

Mr. LOTT. Absolutely, I think you put your finger right on it. In that amendment, they not only want to add Justice Department, they want to supplant the FCC role here. And that, to me, again, as I have said in my remarks, is unprecedented. I think that the FCC clearly is an agency where the expertise exists. We have tried to make this bill as deregulatory and competitive as possible. But as we move toward this more competitive arena, we must have some process to look and see that the requirements of the bill have been met. The FCC is the one that should do that, not the Justice Department. So I thank the former chairman for his comments in this regard.

Mr. PRESSLER. If my friend will yield for a question, my question is, does this go to the very nature of the role of the Justice Department?

It is my understanding that the enabling act that created the Department of Justice, and the enabling legislation that created the Antitrust Subdivision of the Department of Justice, has them as the enforcer of antitrust law, and the Justice Department is the enforcer of law. They have a prosecutorial capability. And under the Administrative Procedures Act, if you go before the FCC, you have certain rights. The FCC has to be open. The FCC gives certain ex parte rights. The Justice Department can operate in secret because it is a prosecutorial agency. The Administrative Procedures Act does not fully apply. So the nature of the two agencies is different.

But, for the first time, under the Dorgan amendment, we would be creating a regulatory role, permanently. Granted, the district court judge, Judge Greene, made a regulatory role for some Justice Department lawyers who actually worked for him, by his orders. But this would be the first time as far as our research can find, that the Justice Department has been given a permanent regulatory decisionmaking role. So does not this go to the very nature of the division of power to the very nature of the Justice Department?

Mr. LOTT. I think it clearly does. I think it clearly is unprecedented. It would give this regulatory authority to an agency that has not been and should not be a regulatory agency. I think there is clearly a conflict here.

For those who do feel like the Justice Department must be involved, for those on the Judiciary Committee that worry about this sort of thing—and I am not one of them, thank goodness, I want to emphasize—this does not take away the existing law.

The Justice Department will have a consultant role. They will have rights under the antitrust laws. The Sherman Act will still be in place, as the Clayton Act will be in place, the Administrative Procedures Act will be in place, the Hobbs will be applicable and the Hart-Scott-Rodino will be in place. All will be there.

The Justice Department will be able to perform its normal role that it performs in all other areas where we have moved toward deregulation. That is what their role should be. Not this new added power.

Just in conclusion, Mr. President, I urge, again, our colleagues to support the chairman's motion to table the Dorgan amendment. That will occur at 12:30.

Mr. PRESSLER. If I could ask a quick question of my colleague. The Justice Department, under the Hobbs Appeal Act, any time somebody goes to the FCC and they get a decision that they do not like and they appeal it, the Justice Department can be a party to that right now and under our legislation. So the Justice Department is a very active participant in every FCC case.

In fact, our legislation requires consultation between the FCC and the Attorney General. But aside from that, is it not true that they have an active, aggressive role in what they are supposed to be, the legal agency of the Government, under the Hobbs Act in appeals so they can be involved as an independent party in every appeal? And just the threat of that would be very great, would it not?

Mr. LOTT. Certainly that threat would be very great.

Here is my question beyond what the Senator is saying. How would the Antitrust Division of the Justice Department handle that Hobbs Civil Appeals Act appeal by the Antitrust Division?

They are automatically an independent party. However, under this amendment, they will have already ruled in a regulatory way. How will they do that? How can you rule in a regulatory decision and then be an independent party under the Hobbs Civil Appeals Act? Would they be acting against themselves? I do not see how we make that work.

I thank my colleague on the committee for the question. I yield the floor.

Mr. PRESSLER. Mr. President, I want to take a few minutes, and if other Senators wish to speak, I will yield immediately. If other Senators wish to come to the floor to offer amendments or to speak, I will eagerly yield. We are trying to move this bill forward.

I know there are some events this morning that have detained some Senators, and there is the Les Aspin memorial service this afternoon that will detain some of our Members.

We are trying to move the tortuous Senate process forward at a faster rate.

I want to take a few minutes to discuss yet another example of why the Justice Department should not be given the burden to carry out the intent of the amendment offered by Senator DORGAN.

I have previously established a clear, unequivocal record. DOJ does not act in a timely manner. Last night I had several charts here showing how the Department, although it was asked to do things within a 30-day period, has dragged things out over 3 years or more.

Additionally and importantly, the Department cannot be trusted to enforce the standard of review. Currently, the DOJ and the court, under the MFJ, are to apply an VIII(c) test. That is also the standard in the Dorgan amendment. The recent Ameritech plan changes the VIII(c) test.

Now, the Department has announced a plan to delay new competition in long distance until the Department's blueprint for local telephone markets has been implemented. The plan is styled as an agreement with Ameritech.

According to the New York Times, the announcement on Monday is clearly timed to coincide with events in Congress. Perhaps most important from a political standpoint, the Justice Department wants to preserve an important role in determining when the Bells should win freedom—this, according to an article by Edmund Andrews in the New York Times, April 2, 1995.

I think that goes to the heart of it. The Justice Department is trying to preserve a role here. For the first time in my years up here, I see a major Department seeking and demanding a role and lobbying for it. That troubles me a great deal.

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Despite its length and complexity, many key details of the blueprint await further Department review and approval. This is the Ameritech agreement. The Department has rushed the announcement prior to the completion of the period for public comments on the plan in an effort to derail legislation pending in Congress that would limit the Department's role in regulating the telecommunications industry.

I see a colleague has arrived. I will yield to any Senator who has an amendment or a speech. We are trying to move this bill forward. I am delighted to yield the floor.

Mr. MCCAIN. I will have an amendment in a minute to bring to the floor. I am very pleased that the Senator from South Dakota, the distinguished chairman of the committee, solicits a speech from me. It is not very often. It must be an ample indication of the boredom that has set in here on the floor.

While I am waiting to propose the amendment, I would like to reiterate my appreciation for the enormous effort expended by the chairman of the committee who has done just a superhuman job of trying to shepherd this extremely complex and difficult piece of legislation through this body.

Again, I want to thank him for all of the cooperation and courtesy that he has shown me and other Members of this body as we have gone through this effort. I hope that there is light at the end of the tunnel, to borrow an old Vietnam phrase, that we are nearing the end of the consideration of this very important legislation.

Mr. President, I ask unanimous consent that the pending amendment be set aside.

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

AMENDMENT NO. 1276

(Purpose: To require a voucher system to provide for payment of universal service)

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

The PRESIDING OFFICER. The clerk will report.

The legislative clerk read as follows:

The Senator from Arizona, [Mr. MCCAIN], proposes an amendment numbered 1276.

Mr. MCCAIN. Mr. President, I ask unanimous consent further reading be dispensed with.

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

The amendment is as follows:

On page 43, strike out line 2 and insert in lieu thereof the following: Act.

"(k) TRANSITION TO ALTERNATIVE SUPPORT SYSTEM.—Notwithstanding any other provision of this Act, beginning 2 years after the date of the enactment the Telecommunications Act of 1995, support payments for universal service under this Act shall occur in accordance with the provisions of subsection (l) rather than any other provisions of this Act.

"(l) VOUCHER SYSTEM.—

"(1) IN GENERAL.—Not later than 2 years after the date of the enactment of the Telecommunications Act of 1995, the Commission shall prescribe regulations to provide for the payment of support payments for universal service through a voucher system under this subsection.

"(2) INDIVIDUALS ELIGIBLE TO MAKE PAYMENTS BY VOUCHER.—Payment of support payments for universal service by voucher under this subsection may be made only by individuals—

"(A) who are customers of telecommunications carriers described in paragraph (3); and

"(B) whose income in the preceding year was an amount equal to or less than the amount equal to 200 percent of the poverty level for that year.

"(3) CARRIERS ELIGIBLE TO RECEIVE VOUCHERS.—Telecommunications carriers eligible to receive support payments for universal service by voucher under this subsection are telecommunications carriers designated as essential telecommunications carriers in accordance with subsection (f).

"(4) VOUCHERS.—

"(A) IN GENERAL.—The Commission shall provide in the regulations under this subsection for the distribution to individuals described in paragraph (2) of vouchers that may be used by such individuals as payment for telecommunications services received by such individuals from telecommunications carriers described in paragraph (3).

"(B) VALUE OF VOUCHERS.—The Commission shall determine the value of vouchers distributed under this paragraph.

"(C) USE OF VOUCHERS.—Individuals to whom vouchers are distributed under this paragraph may utilize such vouchers as payment for the charges for telecommunications services that are imposed on such persons by telecommunications carriers referred to in subparagraph (A).

"(D) ACCEPTANCE OF VOUCHERS.—Each telecommunications carrier referred to in subparagraph (A) shall accept vouchers under this paragraph as payment for charges for telecommunications services that are imposed by the telecommunications carrier on individuals described in paragraph (2).

"(E) REIMBURSEMENT.—The Commission shall, upon submittal of vouchers by a telecommunications carrier, reimburse the telecommunications carrier in an amount equal to the value of the vouchers submitted. Amounts necessary for reimbursements under this subparagraph shall be derived from contributions for universal support under subsection (c).".

Mr. MCCAIN. Mr. President, at the outset, I have no illusions about the ability to adopt this amendment. I do not think it will be adopted. I do, however, think that it is a defining issue in how we view the role of Government and the role of our regulatory bodies.

In an attempt to deregulate telecommunications in America, and I think it is a defining issue very frankly, in whether we want to continue the complex, myriad, incomprehensible method that we are using today to try to attempt to provide access by all Americans to telecommunications facility.

Right now, I do not know of anyone who knows how we subsidize, exactly, people who are in need of the basic telecommunications services in this country. This amendment would make it very clear and very simple. It would be the provision of vouchers for those who need those services. It would replace the current telecommunications subsidy scheme.

Mr. President, both the current system and that envisioned by the pending legislation mandates subsidy flows from company to company. As one former council to the FCC stated, "From one rich person to another rich person."

This amendment would fundamentally change that system.

Sixty-one years ago, the Congress passed the Communications Act of 1934. The Act mandated that every American, regardless of where they lived, receive basic telephone service at approximately the same rate. Therefore, individuals whether they live in urban America or rural America would pay the same rate for telephone service, regardless of disparities in cost of supplying such service.

This concept of urban-rural equality known as "universal service" was predicated on the agrarian/rural based demographics of our Nation at that time. Poorer rural areas required urban subsidies to meet the goal of universal service. However, demographics have changed since 1934. Today, the majority of Americans now live in urban settings. Telecommunications subsidy schemes, however, have not changed and the urban poor are being unfairly forced to pay for telephone service for those who can much better afford it.

It is simply not fair for those living at the poverty level in the inner city to have to pay for telephone service to the ultra wealthy with second homes in places such as Telluride, Vail, Martha's Vineyard, and the Boulders Resort Area of Arizona.

It is time for a fresh look. As we debate communications law reform, we must step back and ask who is paying for what services. The answer is that those who live in urban areas, as envisioned in 1934, are subsidizing telephone services for those who live in rural areas.

The belief that a universal service subsidy mechanism designed in the 1930's is relevant today and must continue is preposterous. Not only does it unfairly punish lower income, inner city Americans, but it discourages future competition in the local loop.

Vigorous competition with its many benefits to the consumer will only flourish in a free market environment in which entrepreneurs believe they can enter a line of business and make a profit. However, since the current telephone subsidy scheme gives all benefits to the incumbent company, the question arises: What smart businessman or women would want to compete against the entrenched existing company? The answer is none. Thus, if we truly believe in competition for telephone services, we should advocate an end to subsidies.

We should consider a phase out of existing cross-subsidy mechanisms, including long-distance access charges, subsidization of residential rates by business rates, subsidization of rural rates by urban rates, and other rate

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averaging mechanisms in order to ensure that market prices accurately reflect the true cost of providing service. Eliminating these barriers to the free market will enhance competition and experience has proven that competition causes prices to fall and improves customer service. When as many subsidies as possible are eliminated, when free market economics has substantially replaced depression-era subsidies, the universal service goal that is contained in existing law could be achieved by instituting a means-tested voucher system to ensure that everyone has the ability to receive telephone service.

Under a voucher system, any household, regardless of where they live, who earns under 200 percent of the poverty level would be eligible for telephone vouchers. Recipients could use the vouchers to pay for any local telephone service they desired, including cellular or in the near future, satellite communications systems such as PCS. The States, not the Federal Government should administer the voucher system because they can best respond to local priorities and needs.

Vouchers could be reclaimed for dollars by local telephone companies chosen by the consumer to provide service. Therefore, the economic viability of companies who have benefits from the current subsidy scheme will only be in jeopardy if their customers decide they no longer like their current phone company and seek a new provider, in other words free-market economics at work.

Mr. President, I recognize that a voucher system may not be immediately embraced by small rural telephone companies. They are happy with the status quo that ensures them a steady revenue stream. A voucher system does not recognize incumbency, it recognizes merit.

Reality tells us that the elimination of subsidies and the creation of a voucher system would not only empower individuals but would encourage telephone companies to compete more for local business. A voucher system is still a subsidy, but it is a much more benign subsidy then the anticompetitive one which currently exists.

Although the food stamp program is not embraced by all, it is important to note that we do not send money directly to the local Safeway, telling them to bag a government proscribed list of groceries, and then to deliver them to everyone in a certain neighborhood, regardless of income. However, that is precisely what we do with local telephone service. There is simply no logic in today's society for continuation of the current subsidy mechanisms.

Last, it is important to note that while 99 percent of Americans have purchased televisions without the benefit of a subsidy, only 93 percent of all households have telephones. Perhaps due to the empowerment of individuals that a voucher system would perpetuate, as many American will have telephones as have televisions.

Mr. President, this amendment is a radical change from the status quo, and therefore I am under no allusion that it will pass today. I do believe it lays the groundwork for the future and should be supported by the Senate.

There have been a number of interesting articles written about the voucher system and the present system. One of them was in the Wall Street Journal last January 20. It is by Mr. Adam Thierer, who is an analyst with the Heritage Foundation in Washington.

I would like to quote from some of this article, because I think it frames the issue pretty well. It begins by saying:

Republicans in Congress will soon introduce deregulatory legislation that could revolutionize the way America's telecommunications sector works. An outline of the proposed legislation in the Senate reveals that Republicans plan to eliminate remaining barriers to market entry * * * the Republican plan at least starts off on the right foot.

Yet it is evident from the outline that Republicans are no different from Democrats when it comes to the Holy Grail of telecommunications—universal service. The GOP lawmaker's plan for universal service may place everything else they hope to accomplish at risk.

The desire to create a ubiquitous telecommunications system is indeed noble. The problem is that, by mandating universal telephone service, policy makers effectively required that a monopolistic system be developed to deliver service to all. That meant devising a crazy-quilt of internal industry taxes that force low-cost providers to cross-subsidize high-cost providers. Hence, billions of dollars of subsidies now flow from long-distance to local providers, from businesses to residences, and from urban to rural users.

But, despite these bountiful subsidies, roughly one American out of every 17 still does not have a telephone in his home.

* * * * *

Worse yet, by arbitrarily averaging rates across the nation, policy makers have unintentionally created a remarkably regressive tax. Hence, a poor single mother on welfare in the inner city is often paying artificially high rates to help subsidize service to wealthy families who live in nearby rural areas. There is nothing equitable about a system that arbitrarily assesses billions of dollars of internal industry taxes on consumers while failing to provide service to all.

Yet policy makers continue to support the current cross-subsidy taxes in the mistaken belief that they encourage ever-increasing subscribership levels. Economists David Kaserman and John Mayo have appropriately labeled this belief a "fairy tale," since no causal relationship exists between subsidies and subscribership levels. In fact, the exact opposite is the case. The 1980s saw decreased subsidies and increased subscribership levels.

* * * * *

If a free-market approach is unpalatable, Republicans should consider means-tested telecom vouchers. State and local governments, not the feds, could simply offer poor residents a voucher to purchase service from a provider of their choice. Make no mistake, this is still a subsidy, but at least it is one that *will not discourage competitive entry*. It would be funded through general tax revenues, to encourage legislators to target the subsidy as narrowly as possible.

One GOP staffer recently told me this approach is "ahead of its time." In fact, this idea is somewhat behind the times, but it is still the only solution that could co-exist with a competitive marketplace. Free markets, open access, and consumer choice are the better guarantors of innovative goods, lower prices, and true universal service. If policy makers instead continue to place faith in the fairy tale of mandated universal service, they will still be discussing how to create a competitive marketplace at the turn of the century.

I am afraid that Mr. Thierer's prediction is, unfortunately, all too true. On January 11, 1995, in the Investors Business Daily, there was an article that I think has some interesting facts in it.

About 6% of all American homes are still without telephones. But the U.S. Census Bureau reports 99% own radios, 98% have televisions and 75% video cassette recorders—a technology barely 20 years old.

Discounting the implied subsidies of free airwaves for broadcasters, radios and TVs haven't been bolstered by anything like the complex web of subsidies and regulations created over the years to foster universal telephone service.

Several federal agencies manage about $1 billion in payments made by big phone companies and put in the pockets of small ones. But the phone companies themselves set aside and transfer funds, as required by federal rules, to subsidize service to the needy and rural communities.

These subsidies, which total billions of dollars, come from three sources: business users, long distance calls and urban customers, including residential. They are used to artificially reduce the cost of serving rural areas, and to provide below-cost service to poorer households.

But analysts say the administrators of universal service funds, whether at federal agencies or in phone companies, do little to assess the need for assistance. And rate averaging, used by large phone companies, often forces the poorest inner-city households to subsidize rural service for even the richest gentlemen farmers and jet-setting skiers.

"The telecommunications welfare state has been a disaster," asserted Heritage Foundation analyst Adam Thierer in a study published recently. "The regulatory model of the past six decades has failed."

In a study released Jan. 5, for instance, Wayne Leighton of the Center for Market Processes in Fairfax, Va., and Citizens for a Sound Economy in Washington, describes how the tiny resort community of Bretton Woods, N.H., received $22,153 in subsidies last year, because its remote location on the shoulders of the White Mountains makes it a "high-cost" area to serve. That equates to $82 for each of the community's 269 phone lines—many of which serve luxury hotels.

"High-cost is not the same as high need," Leighton said.

"Indeed," Leighton added, "poor inner-city residents rarely benefit from these programs, since their telephone companies spread costs over a great many users. . . . The result is subsidies often help middle- and upper-class subscribers lower their monthly phone bills."

The giant regional telephone monopolies, which want to be allowed to compete with long-distance and cable television companies in those markets, say universal service subsidies cost about $20 billion a year.

Leighton, citing a study by the Telecommunications Industries Analysis Project, estimates the net transfer from urban customers to rural at $9.3 billion a year.

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WHO PAYS?

"A lot of money can be pulled from an urban area, without regarding who it's being pulled from," noted Heritage's Thierer.

To see the effects of subsidies, compare the annual average household cost for telephone service in rural and urban areas. According to a Federal Communications Commission study published in July 1994, the average "rural" household spent $549 in 1990, while in big cities like New York, Chicago and Los Angeles, the comparable figures were $770, $660 and $748, respectively.

Interestingly, a majority of the residents in all three of these major cities are either black or Hispanic. In other major cities with large minority populations, like Detroit, Atlanta, Washington and Houston, the pattern is similar—all had substantially higher average household phone bills than did rural households.

I do not understand how we defend a system that charges higher rates for some of the poorest people in America and minorities. We are having a great debate and we are going to continue to have a great debate over affirmative action. But it seems to me that at least we ought to cure what is clearly reverse affirmation actions.

Consider just the poorest Americans, who presumably would qualify for subsidized rates as low as $6 a month. The fact that only 73% of households with annual incomes of less than $5,000 had phones in 1993 again suggests that the subsidies do not reach their intended targets.

Let me point out again that 73 percent of households in America with annual incomes of less than $5,000 had phones in 1993.

* * * But by one government estimate, 91% of all "poor" households owned color televisions by 1990.

The FCC data also show that between 1984 and 1992, America's black households on average spent between 12% and 23% more on phone services each month than did white households.

And according to 1990 census data, 68% of all blacks lived in the nation's 75 largest urban areas—traditionally the source of most phone company revenues.

Broken down by race, 77% of white households in the poorest segment had phones, while just 65% of blacks did. In the next highest income group, from $5,000 to $7,499, the percentages rose to 86% of whites and 78% of blacks.

The sole reason telecommunications is not as competitive as these other high-technology sectors is that, unlike them, it is not governed primarily by consumer choice.

* * * * *

"There are other options," Thierer observed, "but we're just so scared about letting go of the past."

But so much has changed, critics of the current system point out that a wealth of new technologies makes the old ways completely obsolete. Today, cable television, electric power and wireless systems can all compete with telephone networks.

Free-market reformers could grow more optimistic, if they listen to House Speaker Newt Gingrich, R-Ga. In recent testimony to the House Ways and Means Committee, Gingrich suggested new policies should reflect thinking "beyond the norm."

Mr. President, I am first to admit that a system of vouchers would be clearly beyond the norm.

Mr. President, I received a study called "Local Competition and Universal Service, New Solutions and Old Myths."

The mechanism that they propose to address any such "market failure" would be:

. . . an explicit, market-compatible subsidy system with three primary components. (1) universal service subsidies should be provided directly to end users, (2) all subsidies must be clearly defined and designed to terminate over time, and (3) all funding must be raised explicitly as a telephone subsidy.

On the issue of furnishing the subsidy to end users:

There are numerous advantages to this approach. Combined with means testing, it would ensure that only those customers in need of a subsidy would receive money. Therefore, to minimize market interference, subsidies should be provided directly to the end users—in the form of telephone stamps—who are the intended beneficiaries of the subsidy. This is a three-step process: identify end users who cannot afford service; calculate the differential between what they can afford and the price of service; then provide an appropriate amount of subsidy directly to the consumer. Carefully tailored means testing should minimize any abuse of the program.

This approach reduces marketplace interference by permitting the customers to choose how they spend their "telephone stamps." For example, some urban customers might choose among competitively-priced alternatives such as cellular or PCS service rather than ordinary wireline service as better suiting their multiple-job lifestyles, while still being available for use at home. Rural residents individually might also prefer a wireless to a wired service, or might collectively for their region obtain bids from multiple providers of multiple technologies.

And this mechanism of distributing funds directly to end users also avoids the pre-selection of a particular provider. Since customers can spend their "telephone stamps" as they wish, they will choose the technology and provider who best matches their needs and budget. It may be that in some locations, only one provider makes service available; in that case that provider will receive all the subsidy money, but by operation of the marketplace rather than by regulatory fiat. But it may also be that the availability of the pool of money represented by the sum of all the "telephone stamps" acts as an incentive to draw alternative providers and alternative technologies into the area.

The most difficult problem facing direct user subsidization is the design of an appropriately tailored mechanism for distribution which will take many forms such as tax breaks, telephone stamps, or service credits. These credits should be awarded on a needs basis as determined through some more means testing, perhaps by tying it to other means-tested assistance programs in the State; that is, anyone who qualifies for any program on the State's list of means-tested programs also qualifies for a preset level of telephone assistance set to enable them to obtain basic telephone access.

There would be no need to create a separate bureaucracy. Similarly, the State agency that currently issues assistance, such as food stamps, can also issue the telephone stamps. The consumer could use the equivalent telephone stamps to purchase network service capability if they want by mailing in the stamps with their bill.

As competition drives down the price of technological alternatives, consumers could choose from an expanding array of network alternatives. This would allow customers to maximize the use of the network by placing at their disposal the technology best suited to their means, lifestyles, and location. The providers cash in telephone stamps just as grocery stores do with food stamps.

Mr. President, universal service historically has been the subject of more assumptions than studies and discussions of the issue and have generated more heat than light.

The presumptions of the past have governed the debate for far too long. Rethinking these assumptions clears the way and focuses the discussion on the issues that face telecommunications today. The issue today is not the creation of universal service but its preservation. Services are available today to most Americans. The remaining issue is service activation and affordability. Open competition among fully inoperative networks for local service priced at its true cost, combined with our proposed explicit and targeted approach to any necessary subsidies, is the best way to maintain universal service while bringing the benefits of a competitive marketplace to all telephone customers.

Mr. President, I ask for the yeas and nays on this amendment.

The PRESIDING OFFICER. Is there a sufficient second?

The yeas and nays have been requested. Is there a sufficient second? There appears to be a sufficient second.

The yeas and nays were ordered.

Mr. McCAIN. Mr. President, I yield the floor.

The PRESIDING OFFICER. Who seeks recognition?

Mr. GORTON addressed the Chair.

The PRESIDING OFFICER. The Senator from Washington.

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

The PRESIDING OFFICER. The pending business is the McCain amendment, which is No. 1276.

Mr. GORTON. Mr. President, I ask unanimous consent that we return to the Feinstein-Kempthorne amendment.

Mr. McCAIN. I object.

The PRESIDING OFFICER. Objection is heard.

Mr. McCAIN addressed the Chair.

The PRESIDING OFFICER. The Senator from Arizona.

Mr. McCAIN. I just proposed an amendment. I had anticipated that we would debate the amendment and vote on it at an appropriate time.

Mr. GORTON. I hope that the Senator will not object. The Senate has almost completed its debate on a Feinstein-Kempthorne amendment which was proposed last night. I have a second-degree amendment for that which I would like to get in so that the body

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will understand exactly what it is going to be voting on on that issue.

Mr. McCAIN. Let me say to my friend, I was over in a hearing. The request was to come over and propose amendments because amendments were needed in the Chamber. I then left the hearing. I came over here with my amendment, asked that the pending amendment be set aside at the request of the distinguished chairman, proposed the amendment, and fully anticipated debate and a vote on that amendment.

Mr. PRESSLER. If my colleague will yield, we are going to accommodate. The problem, I am told this morning, is that one of our Members is at a Vietnam veterans ceremony. We are going to try to stack the votes, if we could have the vote at 4 o'clock. That is what the leadership tells me, they are going to try to stack votes; that we have votes after the Les Aspin memorial service this afternoon.

I did not create these things, but that is the situation we are in.

Mr. LOTT addressed the Chair.

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

Mr. McCAIN. Who has the floor, Mr. President?

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

Mr. GORTON. I made a unanimous consent request and the Senator from Arizona objected.

Mr. McCAIN. I object.

Mr. GORTON. I would like to continue with the consideration of the amendment.

Mr. LOTT addressed the Chair.

The PRESIDING OFFICER. The Senator from Mississippi.

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

The PRESIDING OFFICER. The clerk will call the roll.

The bill clerk proceeded to call the roll.

Mr. GORTON. 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. GORTON. Mr. President, I ask unanimous consent that we return to the Feinstein-Kempthorne amendment.

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

AMENDMENT NO. 1277 TO AMENDMENT NO. 1270

(Purpose: To limit, rather than strike, the preemption language)

Mr. GORTON. Mr. President, I send a second-degree amendment to the Feinstein-Kempthorne amendment to the desk and ask for its consideration.

The PRESIDING OFFICER. The clerk will report.

The bill clerk read as follows:

The Senator from Washington [Mr. GORTON] proposes an amendment numbered 1277 to amendment No. 1270.

In the matter proposed to be stricken, strike "or is inconsistent with this section, the Commission shall promptly" and insert "subsection (a) or (b), the Commission shall".

Mr. GORTON. Mr. President, last night, our distinguished colleagues from California and Idaho proposed an amendment with respect to a section entitled "Removal of Barriers to Entry." That section in toto says that the States and local communities cannot impose State or local requirements that may prohibit or have the effect of prohibiting the ability of any entity to provide any interstate or intrastate telecommunications services.

Mr. President, that, of course, is a very, very broad prohibition against State and local activities. And so thereafter there follow two subsections that attempt to carve out reasonable exemptions to that State and local authority. One has to do specifically with telecommunications providers themselves and speaks in the general term of allowing States to preserve and advance universal service, protect the public safety and welfare, ensure the continued quality of telecommunications services, and safeguard the rights of consumers, which are, of course, the precise goals of this Federal statute itself.

However, the third exception is "Local Government Authority." That local government authority relates to the right of local governments to manage public rights-of-way, require fair and reasonable compensation to telecommunications providers, the use of public rights-of-way on a nondiscriminatory basis, and so on.

Then the final subsection is a preemptive subsection, Mr. President, and it reads:

If, after notice and an opportunity for public comment, the Commission determines that a State or local government has permitted or imposed any statute, regulation, or legal requirement that violates or is inconsistent with this section, the Commission shall immediately preempt the enforcement of such statute, regulation, or legal requirement to the extent necessary to correct such violation or inconsistency.

Now, our two distinguished colleagues said that that preemption was much too broad, that its effect would be to say to a major telecommunications provider or utility all you have to do, if the city of San Francisco or the city of Boise attempts to tell you what hours you can dig in the city streets or how much noise you can make or how you have to reimburse the city for the damage to its public rights-of-way, that all that the utility would have to do would be to appeal to the Federal Communications Commission in Washington, DC, and thereby remove what is primarily a local question and make a Federal question out of it which had to be decided in Washington, DC, by the Federal Communications Commission. And so the Feinstein-Kempthorne amendment strikes this entire preemption section.

Now, the Senator from California I think very properly tells us what the impact of that will be. It does not impact the substance of the first three subsections of this section at all, but it does shift the forum in which a question about those three subsections is decided. Instead of being the Federal Communications Commission with an appeal to a Federal court here in the District of Columbia, those controversies will be decided by the various district courts of the United States from one part of this country across to every other single one.

Now, Mr. President, in the view of this Senator, there is real justification in the argument for both sides of this question. The argument in favor of the section as it has been reported by the Commerce Committee is that we are talking about the promotion of competition. We are talking about a nationwide telecommunications system.

There ought to be one center place where these questions are appropriately decided by one Federal entity which recognizes the impact of these rules from one part of the country to another and one Federal court of appeals.

On the other hand, the localism argument that cities, counties, local communities should control the use of their own streets and should not be required to come to Washington, DC, to defend a permit action for digging up a street, for improving or building a new utility also has great force and effect, Mr. President. I think it is a persuasive argument.

So in order to try to balance the general authority of a single Federal Communications Commission against the specific authority of local communities, I have offered a second-degree amendment to the Feinstein-Kempthorne amendment. I hope that the sponsors of the amendment will consider it to be a friendly one.

More often than not in this body, second-degree amendments are designed to totally subvert first-degree amendments to move in a completely different direction, sometimes to save Members from embarrassing votes. This is not such a case.

I have read the arguments that were made by the two Senators who sponsored the first-degree amendment. I agree with them, but almost without exception, their arguments speak about the control by cities and other local communities over their own rights of way, an area in which their authority should clearly be preserved, a field in which they should not be required to have to come to Washington, DC, in order to defend their local permitting or ordinance-setting actions.

I agree with those two Senators in that respect, but I do not agree that we should sweep away all of the preemption from an entire section, which is entitled "Removal of Barriers to Entry"; that fundamental removal to those barriers, an action by a State or a city which says only one telephone company can operate in a given field, for example, or only one cable system can operate in a given field, should not be exempted from a preemption and from a national policy set by the Federal Communications Commission.

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So this amendment does two things, both significant. The first is that it narrows the preemption by striking the phrase "is inconsistent with" so that it now allows for a preemption only for a requirement that violates the section. And second, it changes it by limiting the preemption section to the first two subsections of new section 254; that is, the general statement and the State control over utilities.

There is no preemption, even if my second-degree amendment is adopted, Mr. President, for subsection (c) which is entitled, "Local Government Authority," and which is the subsection which preserves to local governments control over their public rights of way. It accepts the proposition from those two Senators that these local powers should be retained locally, that any challenge to them take place in the Federal district court in that locality and that the Federal Communications Commission not be able to preempt such actions.

So I hope that it is a way out of the dilemma in which we find ourselves, the preservation of that local authority without subverting what ought to be nationwide authority. It will be a while, I think, before this comes to a vote. I commend this middle ground to both the managers of the bill and the sponsors of the amendment. I hope that they will accept it.

Mr. DORGAN addressed the Chair.

The PRESIDING OFFICER (Mr. FRIST). The Senator from North Dakota.

Mr. DORGAN. Mr. President, I ask unanimous consent that the pending amendment be set aside so that I may offer another amendment.

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

AMENDMENT NO. 1278

(Purpose: To provide for Federal Communications Commission review of television broadcast ownership restrictions)

Mr. DORGAN. Mr. President, I have an amendment at the desk. I offer a first-degree amendment on the issue of broadcast ownership restrictions.

The PRESIDING OFFICER. The clerk will report.

The bill clerk read as follows:

The Senator from North Dakota [Mr. DORGAN], for himself, Mr. HELMS and Mr. KERREY, proposes an amendment numbered 1278.

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

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

The amendment is as follows:

Strike paragraph (1) of subsection (b) of Section (207) and insert in lieu thereof the following:

"(b) REVIEW AND MODIFICATION OF BROADCAST RULES.—The Commission shall:

"(1) modify or remove such national and local ownership rules on radio and television broadcasters as are necessary to ensure that broadcasters are able to compete fairly with other media providers while ensuring that the public receives information from a diversity of media sources and localism and service in the public interest is protected, taking into consideration the economic dominance of providers in a market and

"(2) review the ownership restriction in section 613(a)(1)."

Mr. DORGAN. Mr. President, I am scheduled to testify before a base closing hearing in the Cannon Building in a matter of minutes, so I must leave the floor. I did want to offer this first-degree amendment. It would essentially eliminate two provisions, the provisions in the underlying bill that now abolish the current ownership restrictions on television stations.

We currently have a 12-station ownership limitation on television stations and a 25-percent-of-the-national-audience cap. I believe we ought to restore that and provide the authority to the FCC to make those determinations. I think it makes no sense to include in this bill a provision that simply withdraws those restrictions on ownership.

This bill talks about competition. If we allow this to continue in this bill, we will see a greater concentration of television ownership in this country, and we will end up with a half a dozen companies controlling virtually all the television stations in America. I do not think anybody can honestly disagree that that is the result of the provision in the underlying bill.

I think we ought to restore the 12-station limit and the 25-percent-national-audience cap and give the FCC the authority to make its own judgment and evaluate what kind of competition exists and what is in the public interest with respect to this competition. This provision makes no sense at all in the underlying bill.

I will ask for the yeas and nays at an appropriate point. I must leave to testify before the Base Closing Commission, and then I will return to debate this legislation. My understanding is the Senator from Nebraska, Senator KERREY, wants to speak on this. I am pleased he will do so while I am absent from the Chamber.

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

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

Mr. KERREY. Mr. President, before the Senator from North Dakota leaves, it is my intent, unless he objects now, after making my comments to ask for the yeas and nays on this amendment, unless the Senator will object to my asking at the end of my remarks.

Mr. DORGAN. I believe Senator HELMS wants to speak on it and probably Senator SIMON as well. The Senator can ask for the yeas and nays, sure.

Mr. KERREY. Mr. President, first, let me say that the central point of this whole legislation has been that we are trying to create a regulatory environment where competition can produce lower prices and higher quality service for the American consumer. The service that is being sold is information. Unlike many other commodities that we buy—natural gas, for example, transportation, and so forth—this is a very unusual commodity that we are buying, information, although maybe commodity is not exactly the precise words like you are buying hardware and other sorts of things.

It really is an issue of giving power to somebody to control to a very great extent the information that we get.

You say, "Well, I have community standards in place." That is true, the FCC does have control over community standards, and there are lots of other regulatory determinations that could be made by the FCC, but it is the power to broadcast, the power to publish, the power to transmit information. It is the word, Mr. President. Unlike other commodities, I have only 24 hours in the day in which I can process this information, in which I can either listen to the radio or watch television or read a newspaper, or go on-line, or call my kids, or listen to my kids, or engage in some manner, shape, or form in purchasing or using the information services or equipment that this $800 to $900 billion industry is out there manufacturing and producing and trying to get me to buy. So I have 24 hours a day. That is all anybody has.

What we have, over the years, understood is that the person who controls that information very often controls a great deal more than just the right to sell to you. The person who controls the right to own a station, radio or television, or who controls the newspaper, who controls some other information source, they are in control of much more than just the right to sell you some product. In fact, rarely—I am not sure I can even cite an owner that does not respect that they have more than just a fiduciary responsibility to shareholders. They understand that they have a responsibility that is larger than that.

This amendment, I believe, maintains what we have traditionally done, and that is to say you can get all the competition you want with 12 stations and all the competition you want with 25 percent—25 percent ownership in a service area. That has worked. Again, I have not heard consumers come to me on this one and say, gee, could you lift the ownership restrictions because we are not getting the kind of quality service we want, and we believe that if we have 35 percent ownership of our television and radio stations in a service area, that that will improve the quality of our product, and if we concentrate this industry even more, we are going to get improved quality of product.

I believe that the amendment before us illustrates this issue that I have been raising a time or two on the floor, which is that at stake here is the power of a business or an individual to do something—the power of an individual or a corporation, mostly, to do something that they are currently prohibited from doing. A corporation that

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owns radio or television stations currently has certain restrictions placed on them, and the bill, as currently described, would lift a number of those restrictions.

Mr. President, I ask unanimous consent that an article in this morning's Washington Post by Tom Shales be printed in the RECORD at this time.

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

[From the Washington Post, June 13, 1995]

FAT CAT BROADCAST BONANZA

(By Tom Shales)

It's happening again. Congress is going ever so slightly insane. The telecommunications deregulation bill now being debated in the Senate, with a vote expected today or tomorrow, is a monstrosity. In the guise of encouraging competition, it will help create huge new concentrations of media power.

There's something for everybody in the package, with the notable exception of you and me. Broadcasters, cablecasters, telephone companies and gigantic media conglomerates all get fabulous prizes. Congress is parceling out the future among the communications superpowers, which stand to get more super and more powerful, and certainly more profitable, as a result.

Limits on multiple ownership would be eased by the bill, so that any individual owner could control stations serving up to 35 percent of the country (50 percent in the even crazier House version), versus 25 percent now. There would be no limit on the number of radio stations owned. Cable and phone companies could merge in municipalities with populations up to 50,000.

Broadcast licenses of local TV stations would be extended from a five-year to a 10-year term and would be even more easily renewed than they are now. It would become nearly impossible for angry civic groups or individuals to challenge the licenses of even the most irresponsible broadcasters.

In addition, the rate controls that were imposed on the cable industry in 1992, and have saved consumers $3 billion in the years since, would be abolished, so that your local cable company could hike those rates right back up again.

Sen. Bob Dole (R-Kan.), majority leader and presidential candidate, is trying to ram the legislation through as quickly as possible. Tomorrow he wants to take up the issue of welfare reform, which is rather ironic considering that his deregulation efforts amount to a bounteous welfare program for the very, very, very rich.

Dole made news recently when he took Time Warner Co. to task for releasing violent movies and rap records with incendiary lyrics. His little tirade was a sham and a smoke screen. Measures Dole supports would enable corporate giants such as Time Warner to grow exponentially.

"Here's the hypocrisy," says media activist Andrew Jay Schwartzman. "Bob Dole sits there on 'Meet the Press' and says, yes, he got $23,000 from Time Warner in campaign contributions, and that just proves he can't be bought." He criticizes Time Warner's corporate responsibility and acts like he's being tough on them, but it's in a way that won't affect their bottom line at all.

"Meanwhile he is rushing to the floor with a bill that will deregulate cable rates and expedite the entry of cable into local telephone service, and no company is pressing harder for this bill than—guess who—Time Warner."

Schwartzman, executive director of the Media Access Project, says that the legislation does a lot of "awful things" but that the worst may be opening the doors to "a huge consolidation of broadcast ownership, so that four, five, six or seven companies could own virtually all the television stations in the United States."

Gene Kimmelman, co-director of Consumers Union, calls the legislation "deregulatory gobbledygook" and says it would remove virtually every obstacle to concentration of ownership in mass media. The deregulation of cable rates with no competition to cable firmly in place is "just a travesty," Kimmelman says, and allowing more joint ventures and mergers among media giants is "the most illogical policy decision you could make if you want a competitive marketplace."

The legislation would also hand over a new chunk of the broadcast spectrum to commercial broadcasters to do with, and profit from, as they please. Digital compression of broadcast signals will soon make more signal space available, space that Schwartzman refers to as "beachfront property." Before it even exists, Congress wants to give it away.

Broadcasters could use the additional channels for pay TV or home shopping channels or anything else that might fatten their bank accounts.

There's more. Those politicians who are always saying they want to get the government off our backs don't mind letting it into our homes. Senators have been rushing forth with amendments designed to censor content, whether on cable TV or in the cyberspace of the Internet. The provisions would probably be struck down by courts as antithetical to the First Amendment anyway, but legislators know how well it plays back home when they attack "indecency" on the House or Senate floor.

Late yesterday Sens. Dianne Feinstein (D-Calif.) and Trent Lott (R-Miss.) called for an amendment requiring cablecasters to "scramble" the signals of adults-only channels offering sexually explicit programming. The signals already are scrambled, and you have to request them and pay for them to get them. Not enough, Feinstein and Lott said; they must be scrambled more.

The amendment passed 91-0.

It's a mad, mad, mad, mad world.

An amendment expected to be introduced today would require that the infamous V-chip be installed in all new television sets, and that networks and stations be forced to encode their broadcasts in compliance. The V-chip would allow parents to prevent violent programs from being seen on their TV sets. Of course, they could turn them off, or switch to another channel, but that's so much trouble. Why not have Big Brother do it for you?

The telecommunications legislation is being sponsored in the Senate by Commerce Committee Chairman Larry Pressler (R-S.D.), whose initial proposal was that all limits on multiple ownership be dropped. Even his supporters laughed at that one.

Dole is the one who's ramrodding the legislation through, and it's apparently part of an overall Republican plan for American media, and most parts of the plan are bad. They include defunding and essentially destroying public television, one of the few wee alternatives to commercial broadcasting and its junkiness, and even, in the Newt Gingrich wing of the party, abolishing the Federal Communications Commission, put in place decades ago to safeguard the public's "interest, convenience and necessity."

It's the interest, convenience and necessity of media magnates that appears to be the sole priority now. "The big loser in all this, of course, is the public," wrote media expert Ken Auletta in a recent New Yorker piece about the lavishness of media contributions to politicians. The communications industry is the sixth-largest PAC giver, Auletta noted.

Viacom, a huge media conglomerate, had plans to sponsor a big fund-raising breakfast for Pressler this month, Auletta reported, but the plans were dropped once Auletta started making inquiries: "Asked through a spokeswoman about the propriety of a committee chairman's shopping for money from industries he regulated, Pressler declined to respond."

The perfect future envisioned by the Republicans and some conservative Democrats seems to consist of media ownership in very few hands, but hands that hold tight rein over the political content of reporting and entertainment programming. Gingrich recently appeared before an assemblage of mass media CEOs at a dinner sponsored by the right-wing Heritage Foundation and reportedly got loud approval when he griped about the oh-so-rough treatment he and fellow conservatives allegedly get from the press.

Reuven Frank, former president of NBC News, wrote about that meeting, and other troubling developments, in his column for the New Leader. "It is daily becoming more obvious that the biggest threat to a free press and the circulation of ideas," Frank wrote, "is the steady absorption of newspapers, television networks and other vehicles of information into enormous corporations that know how to turn knowledge into profit—but are not equally committed to inquiry or debate or to the First Amendment."

The further to the right media magnates are, the more kindly Congress is likely to regard them. Most dramatic and, indeed, obnoxious case in point: Rupert Murdoch, the fox mogul whom Frank calls "today's most powerful international media baron." The Australian-born Murdoch has consistently received gentle, kid-glove, look-the-other-way treatment from Congress and even the regulatory agencies. When the FCC got brave not long ago and tried to sanction Murdoch for allegedly deceiving the commission about where he got the money to buy six TV stations in 1986, loud voices in Congress cried foul.

These included Reps. Jack Fields (R-Tex.) and Mike Oxley (R-Ohio). Daily Variety's headline for the story: "GOP Lawmakers Stand by Murdoch." They always do. Indeed, Oxley was behind a movement to lift entirely the ban on foreign ownership of U.S. television and radio stations. He wanted that to be part of the House bill, but by some miracle, this is one cockamamie scheme that got quashed.

Murdoch, of course, is the man who wanted to give Gingrich a $4.5 million advance to write a book called "To Renew America," until a public outcry forced the House speaker to turn it down. He is still writing the book for Murdoch's HarperCollins publishing company. The huge advance was announced last winter, not long after Murdoch had paid a very friendly visit to Gingrich on the Hill to whine about his foreign ownership problems, with the FCC.

Everyone knows that America is on the edge of vast uncharted territory where telecommunications is concerned. We've all read about the 500-channel universe and the entry of telephone companies into the cable business and some sort of linking up between home computers and home entertainment centers. In Senate debate on the deregulation bill last week, senators invoked images of the Gold Rush and the Oklahoma land rush in their visions of this future.

But this gold rush is apparently open only to those already rolling in gold, and the land is available only to those who are already big landowners—to a small private club

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whose members are all enormously wealthy and well connected and, by and large, politically conservative. It isn't very encouraging. In fact, it's enough to make you think that the future is already over. Ah, well. It was nice while it lasted.

Mr. KERREY. The headline of this article says, "Fat Cat Broadcast Bonanza."

I admit that is a useful headline for me to make my point, but listen to the argument here.

Limits on multiple ownership would be eased by the bill, so that any individual owner could control stations serving up to 35 percent of the country . . .

The House, by the way, goes to 50 percent versus the 25 percent now.

There would be no limit on the number of radio stations owned. Cable and phone companies could merge in municipalities with populations up to 50,000.

Broadcast licenses of local TV stations would be extended from a 5-year to a 10-year term and would be even more easily renewed than they are now. It would become nearly impossible for angry civic groups or individuals to challenge the licenses of even the most irresponsible broadcasters.

In addition, the rate controls that were imposed on the cable industry in 1992, and have saved consumers $3 billion in the years since, would be abolished, so that your local cable company could hike those rates right back up again.

Mr. President, I believe that those, like myself, who want a competitive environment in telecommunications, who want to support a bill that moves us from a monopoly at the local level to a competitive environment, who believe that you can get benefits from competition, that consumers, taxpayers, and citizens, will say, Senator, I am glad you voted for that bill. I believe we can get that kind of competition without changing the ownership rules for our broadcasters. I just do not see a compelling reason for it. I do not see, indeed, increased competition. I think an argument can be made, in fact, that it is moving in the wrong direction, much more toward a concentration and less competition, and thus I support the Dorgan amendment before us now.

I yield the floor.

Mr. PRESSLER addressed the Chair.

The PRESIDING OFFICER. The Senator from South Dakota.

Mr. PRESSLER. Mr. President, I wish to continue the speech that I began regarding the standard of review in the Justice Department. If other Senators wish to offer amendments—I see that my colleague from Missouri has arrived. If he wishes to speak, I will yield the floor.

Mr. ASHCROFT. Thank you. I would be pleased to speak, but I would like to gather my thoughts.

Mr. PRESSLER. I ask unanimous consent that the speech I am giving will continue at the point I broke off to yield to other Senators.

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

AMENDMENT NO. 1268, AS MODIFIED

Mr. PRESSLER. Mr. President, I am speaking about the role of the Department of Justice. The Department of Justice seems to be seeking a regulatory role, which is unnecessary in this bill—a role that the FCC plays. When we table the Dorgan-Thurmond amendment at 12:30, it will be because of some of the problems. I am citing the Ameritech experience, and I cited an article in the New York Times that said that it appears that the Justice Department is determined to win a permanent role in determining when the Bells should win freedom.

Ameritech may have thought that it had no choice but to accept the deal that was offered. But the Department's ability to force its will upon one company does not render the so-called Ameritech plan a model for the industry. Indeed the plan simply highlights that the 1982 AT&T consent decree has broken down. It is time to return regulation of telephone markets to Congress, the FCC, and the States.

The Ameritech plan, which was agreed to about 2 months ago, has been touted as opening markets, both local and long distance, to increased competition. What it is, in fact, is a sketchy proposal for a complete restructuring of how local telephone service is provided and billed. If it is ever implemented, it will bring about a massive shift of power from State and Federal regulators and the decreeing court to the Department of Justice. At the very least, the plan would compel local telephone companies to change to usage-sensitive billing of the kind that Ameritech has already implemented in Chicago. In other words, all residential subscribers would end up paying a flat up-front fee for every local call they make, plus additional measured charges for every minute of local usage. Ameritech has been filing tariffs since 1992 to move in this direction. Those tariffs have been accepted in Illinois but nowhere else.

Most States and most residential consumers will find this repudiation of price-averaging and universal service wholly unacceptable. What the Department hopes to do is to force these other States, against their better judgment, to go along with its sketchy proposal as the price of ensuring that their local telephone companies are able to provide a full range of services. While the plan may or may not be workable in parts of Ameritech's service area, it would upset the fundamental regulatory schemes of most States if applied more broadly, leading to dramatically higher prices for many residential customers.

Moreover, even after implementing the mandates of the Department, Ameritech will not get long distance relief until the Department of Justice, in its discretion, decides it should. Thus, the Department of Justice will become the Federal regulator, State regulator, and judge, all rolled into one.

For some reason, that seems to be what the Department of Justice wants. It wants to take on this regulating role, which is not in its enabling statute. Its enabling statute is that it is supposed to be an enforcer of law. It is no small wonder the Department favors the plan and strongly favors a similar role under the proposed amendment before us today. Yet, it is the Department itself that is the greatest obstacle to progress under the current decree, and the least capable of taking on such regulatory responsibilities. All requests for waivers of the decree must be processed by the Department before they are presented to the district court. The Department has proven completely incapable of performing that function. Delays of 3 to 5 years in the processing of even simple waivers are commonplace. Yet, the Department is now trying for greatly increased powers and vastly expanded responsibilities.

The Department's new plan, in fact, constitutes a repudiation of the basic tests for relief contained in the AT&T consent decree. Instead of simply demonstrating to the court that it cannot impede competition in the market it seeks to enter—which is all the decree requires—Ameritech must first implement a series of changes in its local telephone operations, all of which are outside of the scope of the decree.

This is a betrayal of the bargain reached in 1982.

The Department, in attempting to take on the roles of State public utility commission, FCC, and decree court, is guilty of gross overreaching. It is also playing into the hands of those who hope to kill the legislation and further delay the opening of telecommunications markets to genuine competition.

It also clearly demonstrates that debate over this amendment is not about the appropriate standard for review, but whether any DOJ role is appropriate given the poor track record at Justice.

Now, the proposed order is a blueprint for additional proposed orders. The order that the Department is proposing for Judge Greene's signature is a long, rambling, and almost impenetrable legal document. It is also not self-effectuating.

Even if Judge Greene signed the order today, nothing would happen. Ameritech would not be permitted to enter any interexchange market. There is no deadline for when it comes.

The order demands many further layers of review by the Department and permits the possibility of Bell having long distance at uncertain future dates at two areas that serve 1.2 percent of the population. The order is 39 pages long and contains 50 main paragraphs.

This decree, the Ameritech decree, is twice as long as the consent decree that broke up the old Bell system in 1984. That is a reflection of lawyers at work, I suppose.

The proposed order is being described as one that will permit a Bell company to enter the long distance market. The order contains no such permission. It

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does not grant Ameritech the right to provide interexchange services in the temporary waiver territory.

All the order itself achieves is a wholesale transfer of power from Judge Greene to the Department of Justice. If the order is entered, it will be up to the Department in the exercise of its discretion to determine when, if ever, Ameritech will be allowed to provide long distance service in any market.

The order has this effect because key conditions on Ameritech's entry are undefinable, indeed, so vague as to be undefinable, because the order asked the district court simply to let the Department declare when the conditions have been met.

Paragraph 9, for example, states that Ameritech shall not offer interexchange telecommunications pursuant to this order until the Department has approved the offering of such telecommunications pursuant to the standard set forth in paragraph 11.

Paragraph 11, however, simply describes an open-ended process of further review. Among other things, the order empowers the Department to hire experts to review Ameritech's future proposals and declares Ameritech must pay for them. The Department, it appears, expects to spend not only time but significant sums of money in evaluating Ameritech's proposals when they are finally put forward.

The order also allows the Department, in its sole discretion, to condition relief upon any other terms that may be appropriate. When and if some Ameritech plan is ultimately approved and put into effect, the Department retains authority to terminate at will by sending a letter to Ameritech telling them to stop. Ameritech will be permitted to petition Judge Greene for review, a right it already has today.

The proposed order is reflective of nothing so much as the Department's desire to micromanage all aspects of the telecommunications industry.

It seems inconceivable that Judge Greene will approve or could lawfully approve such a wholesale transfer of power from his courtroom to the Department's Assistant Attorney General for antitrust. Under both the standard provisions of district court jurisdiction and express jurisdictional terms, the divestiture decree, the Bell companies are entitled to timely district court review of motions for relief from the line-of-business restrictions.

A district court has a general duty under the Federal rules of civil procedure to entertain motions of parties and rule on them in an orderly and timely fashion. This is clearly a serious and important responsibility, particularly in a case such as this one that has remained under the district court's jurisdiction for 21 years. It is not a duty that can be delegated to anyone else.

I see my friend from Missouri is prepared to speak. I yield the floor.

Mr. ASHCROFT. Mr. President, I rise to oppose the amendment which would place the Department in the process of authorizing the entry by the Bell operating companies into the long distance markets.

Senate bill 652, which was the study result of much activity in committee and a long period of investigation, places the responsibility for making that judgment in the FCC. It is important to understand what the Federal Communication Commission is, how it is composed, why it is the appropriate agency to make those kinds of decisions.

The Federal Communications Commission is a quasi-judicial body not affected by politics. Appointees are appointed for an extended period. There are longer periods of appointments than the President's term is. It is designed to be insulated from politics, to make professional judgments that are technical and appropriate to the field that the Federal Communications Commission oversees, and is technically competent and expert in the area of communications.

The amendment which we are considering now and upon which the Senate of the United States will act at 12:30 today is an amendment which would have the Department come in and second-guess the judgment of the Federal Communications Commission by adding a Department-consent requirement before these companies could move on to compete and extend and enhance the competition in the long-distance market.

I do not believe that kind of layering of the bureaucracies, I do not believe that kind of additional Federal and governmental involvement, would promote competition.

As a matter of fact, that kind of bureaucratic involvement very frequently does the opposite of promoting competition. The more bureaucracy that is involved, frequently the more difficult it is for enterprises to have the kind of flexibility that we really want enterprise to have to be competitive in an international marketplace which demands higher and higher levels of productivity.

Now, the bill as presented to this body by the committee, S. 652, is very clear about the way it expects the decision to be made regarding the entry of these competitors into the long-distance marketplace. As a matter of fact, it says to the FCC that there is a list, a specific recipe of conditions, that have to be met. In addition to the 14 or so conditions that are listed in the bill, there is another interest that is charged to the FCC that they must consider. It is the public interest.

Here what we have in the bill is a governmental body, a quasi-judicial body, the regulatory commission called the FCC, the Federal Communications Commission. The Congress in this body is telling them specifically to make the decision based on these criteria and adds to the 14 criteria the public interest.

Now, that ought to be enough governmental involvement to assure that we make good decisions and the right decisions. However, the amendment which is now being considered would add the Department in a totally new and different and unprecedented role for the Department, one in which they have not been involved before. The Department would be asked to implement a supervisory authority here and to make a final decision about whether these companies could enter the long-distance competitive marketplace.

That final decision is something they have never exercised before. Even under the court orders relating to the divestiture from AT&T of the Bell companies and setting up the Bell operating companies around the country, the regional Bell companies, the Department did not have final authority. The Department went before a judicial decisionmaker and advocated a position.

Now, the Department should not be given a decisionmaking authority in this matter because the decisionmaking authority is given to the FCC. The Department should be given an advisory role just like it has an advisory or advocacy role in the current situation.

One important thing to remember is that Senate bill 652 does, in fact, provide for an advisory role for the Department. The FCC, in making its final determination about whether or not it will release the regional Bell operating companies to participate in the competition of the long-distance markets, the FCC is directed to consult with and to seek the advice of the Justice Department. But, it would be unprecedented for us to move beyond that traditional role of the Justice Department to ask the Justice Department to be making final decisions. Because, as a matter of fact, that has never been its role in any previous situation and should not be its role now. The FCC is that Commission that is a quasi-judicial body that can make those decisions, is trained to make them, is expert in the communications industry, and ought to be the final authority.

So it is pretty clear to me, and I believe it ought to be clear to the U.S. Senate, that the FCC should retain that final authority and that the Department of Justice be maintained in its advisory authority that the bill, S. 652, provides. The amendment which would enhance the advisory authority is unnecessary and would be counterproductive.

The PRESIDING OFFICER. The Senator should be advised that we have controlled debate beginning at the hour of 11:30.

Under the previous order, the hour of 11:30 having arrived, the Senate will now resume consideration of the Dorgan and Thurmond amendments, with 1 hour equally divided prior to a motion to table.

Mr. PRESSLER. Parliamentary inquiry, who controls the time?

The PRESIDING OFFICER. The time is controlled by the two managers of the bill.

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Mr. ASHCROFT. Mr. President, I ask unanimous consent for an additional 5 minutes to speak as in morning business.

The PRESIDING OFFICER. Is there objection?

Mr. PRESSLER. Mr. President, I believe under the unanimous-consent agreement I will have to yield 5 minutes off the amendment's time, from what I understand of the parliamentary situation. I am prepared to yield 5 minutes, but I make it clear I will reserve the last 15 minutes for managers of the bill to speak. I believe we should reserve about 15 minutes for Senators DORGAN and THURMOND to speak, if they come to the floor.

So I yield 5 minutes to my friend from Missouri.

Mr. ASHCROFT. In that event I withdraw my request for unanimous consent to speak as in morning business and ask the Chair to inform me when 5 minutes has expired.

The PRESIDING OFFICER. The Senator from Missouri is recognized.

Mr. ASHCROFT. Mr. President, there has been quite a bit of debate on this issue. It has been suggested that those of us who oppose the Department of Justice having a special and unprecedented role of final decisionmaking in this arena do not trust the Department of Justice.

We trust the Department of Justice. But we trust it to maintain its traditional role. We trust it to be a law enforcement agency and an advisor as it relates to legality and propriety of measures that relate to the law. But we do not trust it to do something totally new, something different, nor do we trust it to second-guess an administrative agency that has expertise in this area, the Federal Communications Commission.

So, this is not a question about whether the Department of Justice will have a role. That question was laid to rest long ago. The FCC is required to consult, according to the language of the bill, with the Attorney General regarding the application during the 90-day period. The Attorney General may analyze a Bell operating company's application under any legal standard, including the Clayton Act, the Sherman Act, and other antitrust laws, and those standards of the Clayton Act and the Sherman Act are the kinds of standards that are suggested by the amendment.

The difference between the bill, this bill, and the amendment which is proposed, is whether or not the Justice Department would have final decisionmaking authority. All of its ability to advise and to argue and to participate by virtue of supplying its views are preserved and protected under this bill. But to say the Department of Justice has separate veto authority over the agency of expertise here would be to inject the Department of Justice at a policymaking level never before provided for the Department of Justice, not only in this arena but in other arenas as well.

I just suggest that we do not need to change the character of the Justice Department from an enforcement arena and prosecutorial arena to a policymaking arena. The policy should be judged by the Congress of the United States and the policy is set forth clearly here, in the kind of guidelines that we would seek to suggest for the Federal Communications Commission. This amendment will make a mandate of the advisory role of the Department of Justice, a mandated final decisionmaking role, and it will provide for confusion with two Federal agencies seeking to make final decisions instead of one.

The Federal Communications Commission is a professional, quasi-judicial organization with 5-year terms. The Department of Justice is an appointed position, appointed by the President of the United States. It has all the benefits of political involvement and has the drawbacks of political involvement. I do not believe we want political decisions to be made, the influence or contamination of politics to find their way into this particular set of decisions.

I believe it is important for us to reject this overlapping, doubling up of enforcement at the Federal level, the duplication of decisionmaking. The professional, trained, expert Federal Communications Commission can make this decision with the advice of the Department of Justice. For us to try to have redundant and duplicative Federal control here is for us to reject the promise of the future. Some look into the future and shrink back in fear. I think this is a great opportunity.

In closing, I would say I do not think the competitors of the United States, as they are working on a framework for operations for telecommunications, are going to be thinking about how many layers of regulation they can place on top of this industry. I do not think they are going to think about how much duplicative and redundant control, or whether they are going to convert what had otherwise been law enforcement agencies into policymaking agencies and to have a tug of war between two agencies of the Federal Government which would stymie expansion and development and growth in the industry.

I think our competitors around the world are going to try to seize and regain the advantage that America currently has in telecommunications. For us to add the Department of Justice, not as an adviser—that is already in the bill—but as a final decisionmaker to compete with another agency trained to get this job done would be unwise.

So I urge the rejection of the amendment which would make the Department of Justice a final decisionmaker in this matter.

The PRESIDING OFFICER. The time of the Senator has expired. Who yields time?

Mr. HOLLINGS. Mr. President, as I understand it, time is divided between the two managers. I take it on this side we would manage the 30 minutes for the proponents. In no way do I propose this amendment. I hope to kill it. But I yield such time as the Senator wishes.

Mr. KERREY. I appreciate the kindness.

I can read the handwriting on the wall, Mr. President. The majority leader opposes this amendment, the Democratic leader opposes it, the Democratic whip, the Republican whip, the manager of the bill, the Republican chairman, the Democratic ranking member—all oppose this amendment.

So what I find interesting is the hyperbole that gets layered upon the argument against that the Department of Justice is overreaching, that they are incompetent. That is an argument that I just heard the Senator from South Dakota use against the Department to demonstrate that they are incompetent. It takes a long time, 1,500 days I heard from the Senator from South Dakota say.

Let me give my colleagues an example of the reason it takes a long time. Maybe the Senator from South Dakota thinks the Department of Justice should have this waiver. In 1994, Southwestern Bell and three other RBOC's filed a request to vacate the final modified judgment to simply completely eliminate its restrictions without replacing those restrictions with any consumer safeguard, with any requirement such as those contained in S. 652. That was the waiver application. The Senator from South Dakota and the Senator from Missouri talk about all this overreaching regulation. Perhaps they would like to have the Department of Justice approve this waiver, get it out of the way in a hurry.

Is that what the Senator from South Dakota has been arguing for when he talks about delays? Is this the sort of thing he wants them to approve? Let us not come to the floor and talk about 1,500-day delays. It is being delayed because of this kind of thing. Nobody. I do not believe anybody; maybe there is; maybe someone down here says what we should have had was the Department of Justice approving this kind of waiver. Then S. 652 would not be necessary. Maybe that is the feeling here, we do not want any consumer protection. We do not care if there is local competition. Forget the checklist. Forget the VIII(c) test, and all that nonsense. Let these guys go out and have at it, take their monopoly and run with it, and use the power in any fashion they want.

I do not think so. I think the structure of this bill implies that we are concerned about this monopoly power and that we want some restraint as we move to a competitive environment. And the Department of Justice has been attempting to measure that as

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they evaluate these waivers. My colleagues will come down and say, "Oh, no. Another layer of bureaucracy."

Let us not repeat the mistakes of the past. I call my colleagues' attention to the last major deregulation action in airlines when the Department of Justice again was given a consultative role. They basically had the opportunity to file a brief. They would just as well write their opinion on the wall of a bathroom for all the impact it has.

Now we have in this case the airlines being deregulated. Now comes TWA and a hub in St. Louis wanting to acquire Ozark Airlines. The Department of Transportation gets the application as the FCC would in this case. Now we have Northwest Airlines trying to acquire Republic Airlines in the hub serving Minneapolis. The Department of Justice said: In our opinion, you will get less competition. That is our opinion. That is all the law allows, just an expression of their opinion. They vigorously, in fact, said you are going to get less competition. The Department of Transportation says your opinion is as good as anybody else's. We ignore it. Guess what? There is less competition and higher prices in both of those hubs as a consequence of those actions.

We are not talking about another layer of regulation. The Department of Justice is not asking to intervene and get involved in something about which they know nothing.

We are asking with this amendment, which is obviously going to get defeated—the opponents of this deal are lined up, in effect. We have been working long and hard, and are likely to get 40 votes for this thing. But I will stand here and predict that the Department of Justice is going to issue an opinion on an action taken by a local telephone company that the consumers are going to get less competition, not more. They are going to get less competition. They are going to file an opinion. That opinion will be ignored by the FCC, and Members will be up here saying, "Gee, that was not quite what we had in mind."

So we are not asking for increased regulatory authority. Please do not talk about the delays unless you are prepared to identify a specific waiver that you think should be approved. Let us talk about the waiver. I alert my colleagues that we will have an opportunity on additional amendments to revisit this issue.

I yield the floor.

The PRESIDING OFFICER. Who yields time?

Mr. PRESSLER. Mr. President, I yield 5 minutes to my friend from Montana.

The PRESIDING OFFICER. The Senator from Montana.

Mr. BURNS. Mr. President, I thank the managers of the bill, and I also thank the chairman of the full Commerce Committee, who has really done a marvelous job, along with the ranking member and former chairman, Senator HOLLINGS.

We are not newcomers to this issue. I do not doubt for a minute the dedication that the Senator from Nebraska has in modernizing telecommunications, because we have been on panels together and we have been to different places together, and understand in his State, where distance learning and telemedicine is becoming very, very important, and also the new technology and the policy it is going to take to force that new technology into the rural areas. That is where our first love lies. I think the same could be said about South Carolina and the same could be said about South Dakota. But S. 652 already gives the Justice Department a role. It is spelled out clearly.

It says, before making any determination:

> The Commission shall consult the Attorney General regarding the application. In consulting with the Commission, the Attorney General may apply any appropriate standard.

That is the language that is in this bill. Do we start talking about those who have the expertise in regulating or do we talk about an organization that has the expertise in litigating? What is the primary purpose of the Department of Justice? I would say if the administration in their view thinks that some Federal law has been broken, they advise the Department of Justice to look into it. The same with the Congress. That is what the Department of Justice does. They are not in the process of rulemaking. I think that is left to the FCC and, of course, those of us who want to take the responsibility of setting policy where it should be set, here in this body, and not shirk our responsibilities or our duties in order to set that policy.

The Senator from Nebraska says that there should be a larger role. That is what he is advocating. All we have to do is look back at the modified final judgment. How is it being administered today? It is being administered by the court, by Judge Greene, who has done an admirable job? Nobody can criticize Judge Greene. But the U.S. district court retains jurisdiction over those companies that were party to the MFJ. The court then asked the Justice Department, the Antitrust Division, to assume postdecree duties—"post," after it is all over, it is asked to do those duties. The antitrust division provides Judge Harold Greene of the district court with the recommendations regarding waivers and other matters regarding the administration of MFJ.

Before we can do anything to deal with new technology, to force those new technologies and those tools out to the American people, yes, there have to be rules of entry. But we do not have to add layer upon layer of bureaucracy. If there is one thing that is being talked about around this town right now, it is the budget and spending. What do we spend our money for? It is my determination, after being here about 6 years, that if there is one thing that absolutely costs the taxpayers more money and the waste of money in Government, it is not that they are not doing a good job. It is called redundancy. Everybody wants to do the same thing. Everybody wants their finger in the same pie. Just look at the Department of the Interior. It is probably the greatest example. Every Department has a wildlife biologist. Wildlife biologists, by the way, are kind of like attorneys. If you get three of them together, you are not going to get an agreement. Everybody has a different approach.

So basically what my position and my opinion is is that this is just another layer, another hoop to jump through before we finally deregulate. We want to be regulatory in nature and not more regulation or redundancy.

Mr. President, I ask that this amendment be defeated. I thank the Chair.

The PRESIDING OFFICER. The Senator from South Dakota has 18 minutes.

Who yields time?

Mr. HOLLINGS. Mr. President, I ask unanimous consent that the time for the proponents be managed by the distinguished Senator from North Dakota and the Senator from South Carolina, Senator THURMOND. They are the proponents.

The PRESIDING OFFICER. The Senator has the right to designate the manager.

Who yields time?

Mr. KERREY. Mr. President, will the Senator from North Dakota yield to me 15 seconds to correct a statement?

Mr. DORGAN. I am happy to yield.

Mr. KERREY. Earlier I said that the opponents of this included the Democratic leader. The Democratic leader is on our side. He is against the law in its current form, and is in support of the Dorgan-Thurmond amendment.

Mr. DORGAN. Mr. President, I yield myself such time as I may consume, and I might say that when Senator THURMOND comes, he will want to be able to speak. So I will speak for 5 minutes.

Mr. PRESSLER. Mr. President, how much time does each side have?

The PRESIDING OFFICER. The Senator from South Dakota has 18½ minutes. The Senator from North Dakota has 23 minutes.

Mr. DORGAN. Mr. President, a lot of statements have been made in this debate about the role of the Justice Department. Many of the statements that were made were surprising to me.

Let us back up just for a moment and ask ourselves who investigated and sued to break up the Bell system monopoly which resulted in the very competition that is extolled here on the floor of the Senate as driving down prices in the long distance market? Who did that? It was the Justice Department that did that. Yet, we are confronted with the debate today that says, "Gee, the Justice Department is a roadblock. The Justice Department is a problem. We are talking about layers

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of bureaucracy and layers of complexity."

If you stand here and extol the virtues of competition in long distance and talk about the fact there are now over 500 companies from which you can choose to get long distance service and therefore lower prices because there is such robust competition, you must, it seems to me, recognize we got to that point because of the Justice Department. And if you recognize we got there because of the Justice Department, you cannot stand on this amendment and say somehow the Justice Department is a roadblock. I am telling you it is interesting to me to hear people preach about competition but then not be willing to vote for the things that promote the very competition they preach about.

Competition works when you have many competitors in a competitive environment with the price as the mechanism for competition. Competition works in a free market when the market is free. But competition does not work when you have concentrations such that some can begin to control portions of the marketplace.

Now, all we are asking in this amendment that is now a second-degree amendment supported by Senator THURMOND, myself, Senator DEWINE, Senator KERREY, and others, is that the Justice Department have a role to play on the issue of antitrust, on the Clayton 7 standard, and we have delineated the difference between the FCC role and the Justice role.

Next time somebody stands up and says there is overlapping responsibilities, that is nonsense, total nonsense. There is not an overlap here. It is precisely the purpose of this amendment. So it just does not work to claim that this is overlap and complexity. It is not true. It is not the case. But you cannot preach about competition and then indicate that you support taking the agency out of this process that is the agency which evaluates competition and makes sure there is competition in the marketplace. It just does not square with good logic that if you are a friend of the free marketplace you would not support the things that are necessary and important to keep the marketplace free.

I offered an amendment earlier, and I was not benefited by hearing the Senator from Nebraska speak on it. I am sure he says it was wonderful and eloquent, and I am sure that may well have been the case, but I missed it, nonetheless. It is likely he will repeat it, I am sure, so I will probably have the benefit of hearing it in the future. But I offered the amendment on broadcast ownership, and it is exactly the same principle as the issue of the Justice Department. Those who say let us have robust competition in telecommunications and then say, by the way, we are going to eliminate the ownership restrictions—you can go out and buy 85 television stations if you like; it does not matter to us what kind of concentration exists—well, they are no friend of competition. That is not being a friend of the free marketplace.

I am just saying on these amendments, especially this Justice amendment but also, when that is done, the amendment on broadcast ownership, if you really believe—and I do—in the free marketplace, then you have to be a shepherd out here making sure that the marketplace remains free. There are all kinds of natural economic circumstances that move to attempt to impinge on the free marketplace. Concentration, concentration of assets and concentration of ownership is always, I repeat always, a circumstance where you see less competition and a marketplace that is less free. Concentration is, in my judgment, the kind of circumstance that tends to erode free markets and tends to undermine competition. The underlying amendment that we are going to discuss and vote on as the Justice Department amendment is simply an amendment that says when you are evaluating when there is competition in the local exchanges so then that the regional Bell operating companies are free to go compete in long distance, we want the Justice Department to have a role in that evaluation because they are the experts in antitrust. That is the issue here.

Now, one can vote against this amendment, I suppose, and claim, well, this bill is a free market bill that frees the free market forces; it stokes the juices of competition; it is going to be wonderful for the American people; it is nirvana in the future.

It is nonsense. It is all doubletalk if one does not support the basic tenets of keeping the free market free. And one of those basic tenets, in my judgment, is to make sure that the Justice Department has a role in this circumstance.

So I have been involved in these discussions before, as has the Senator from Nebraska, and others in this Chamber about deregulation. "Deregulation," they just chant that. They ought to wear robes and chant it around here—deregulation, deregulation.

So we deregulated airlines. Guess what, we deregulated the airlines. Wonderful. I said it before. If you are from Chicago, God bless you; you sure got the benefits from deregulation. If your cousin lives in Los Angeles, boy, you got a great deal. If you go out of O'Hare and fly to Los Angeles, you get dirt cheap prices. You have all kinds of carriers competing. That is competition. But go to Nebraska and see what you get from deregulation of airline service, or go to North Dakota and see what you get, or go to South Dakota and see what you get from deregulation of the airline service. It is not pretty. You do not have robust competition. You do not have prices, a competitive allocatur here. What you have is less service and higher costs.

And in the airline deregulation, it is interesting; we have, in my judgment, a parallel because in airline deregulation, when we talk about whether airlines should be allowed to merge and whether we should have these concentrations, the issue was should the Department of Transportation allow the merger to happen. And the Department of Justice was asked in a consultative role.

Well, what we see as a result of airline deregulation is that big airlines have gotten much, much bigger. How? They have gotten bigger by buying all of their regional competitors, and the Department of Justice in some of those cases said it is not in the public interest. And the Department of Transportation said tough luck; we are going to allow the merger anyway.

We have experience directly on this point, and if in the rush to deregulation we do not have the kind of care and patience to make certain that the free market is free and that robust competition exists, we will do the consumers of this country no favor, I guarantee you. We will have had a lot of dialog; we will have used a lot of slogans; and we will have waved our hankies around talking about competition and all the wonderful words that have been focus grouped and tested, and so on, but all of them will not be worth a pile of refuse if we do not do the right thing to make sure that competition exists.

You cannot preach competition and then be unwilling to practice it in terms of the safeguards that are necessary to assure that free markets are free, and that is the purpose of this amendment. I hope those who care about real competition and care about real free markets and those who are willing to make sure the guardians of free markets are able to have a role here, I hope they will come and vote yes on the Thurmond-Dorgan second-degree amendment. I understand the motion will be to table, so I guess in that case I will hope that they will come and oppose the motion to table so that we can pass our amendment.

Mr. President, I reserve the remainder of the time, and I understand Senator THURMOND will wish to access some of the time when he arrives in the Chamber.

The PRESIDING OFFICER. Who yields time?

Mr. PRESSLER. Mr. President, I ask unanimous consent that, notwithstanding the previous order, at 12:30 I be recognized to make a motion to table the Thurmond amendment 1265, as modified and, if the amendment is tabled, amendment 1264 be automatically withdrawn.

The PRESIDING OFFICER. Is there objection?

Mr. DORGAN. Mr. President, reserving the right to object, I did not understand the last portion of the unanimous consent request.

Mr. PRESSLER. Amendment 1264 be automatically withdrawn. That will be the Senator's underlying amendment.

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Mr. DORGAN. The Senator is talking about if the motion to table prevails.

Mr. PRESSLER. That is correct. I ask unanimous consent that notwithstanding the previous order, at 12:30 I be recognized to make a motion to table the Thurmond amendment, as modified and, if the amendment is tabled, amendment 1264 be automatically withdrawn.

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

Mr. PRESSLER. Mr. President, this has been a long debate and many speakers have come to the floor on each side. I strongly believe that we should vote to table the Thurmond amendment because it creates a new role, an unprecedented, unnecessary role for the Department of Justice.

Presently, there are many safeguards to consumers and to companies and to the public built into this legislation. This legislation was the result of meeting after meeting for over 3 months, every night and Saturday and Sunday among Republicans and Democrats, to come together to reach a bipartisan bill. We came up with a plan that the regulatory agency, the FCC, would be the decisionmaker while the Justice Department would still be involved.

In the first step, when a company is applying, the State certifies compliance with a market-opening requirement. So that is a safeguard. Second, the FCC affirms public interest, necessity, and convenience.

We had a vote here the other day on this floor preserving public interest, so the FCC can use the public interest standard.

Third of all, the FCC certifies compliance with a 14-point checklist. I have the 14 points listed here in another chart. The point is that in the bipartisan meetings and building on the legislation of last year and building on efforts of many Senators—indeed, all 100 Senators were consulted during this process leading up to the markup in the Senate Commerce Committee—there was a question: Shall we use the VIII(c) test, which is a complicated test, or shall we use the Clayton 7 test, and we decided to come up with a checklist, a competitive checklist.

Mr. DORGAN. Mr. President, will the Senator from South Dakota yield for one quick moment?

Mr. PRESSLER. Yes.

Mr. DORGAN. I shall not interrupt at length. I did want to point out the Senator from South Dakota is correct, an enormous amount of work went into the construct of the compromise. It is also true, is it not, that the Commerce Committee held this legislation up? The intent was to want to move this along quickly, and many of us were cooperative with that. But we at the committee hearing indicated that we were uncomfortable with several of these provisions and intended to deal with them on the floor of the Senate. So these issues, many of them, were raised in the markup of the Commerce Committee and only with the cooperation of Members who decided to raise the issues on the floor rather than in the committee was the bill able to be brought to the floor.

(Mr. ASHCROFT assumed the Chair.)

Mr. PRESSLER. That is correct. I welcome amendments. I welcome this amendment. I am giving a history of how we came to this checklist. I think the point I am making is that we have had a very bipartisan effort here, and we welcomed amendments there in the committee, and we welcome amendments here. Obviously, every member of every committee can bring something to the floor. But this checklist was worked out an a bipartisan basis. Before the local Bell company can be declared as having an open market, it has to interconnect. That is the first point. That is, they have to open up their wires so others can come in. They have to show the capability to exchange telecommunications between Bell customers and competitor's customers, access to poles, ducts, conduits and rights-of-way; the three unbundling standards, where they have to unbundle the system so other people can get in; access to 911 and enhanced 911; directory assistance and operator call completion services; white pages directory listing; access to telephone number assignment; access to data bases and network signaling; number portability; local dialing parity; reciprocal compensation, and the resale rules.

That is a checklist that the FCC must go through to determine if the Bell company has opened up its business so other competitors have a fair opportunity to compete in the local telephone business. I have not heard anyone criticize this checklist. It seems to be universally accepted. Also, the Bells have additional requirements on them to open their markets. This is done at the FCC level and not Justice, and the Bells must comply with a separate subsidiary requirement, nondiscrimination requirement and a cross-subsidization ban. The FCC must allow the Department of Justice full participation in all of its proceedings. So the Department of Justice is already present without the Thurmond amendment.

Now, the Bells must comply with existing FCC rules and rigorous annual audits, elaborate cost accounting, computer-assisted reporting, and special pricing rules. So there is much involvement. The Sherman Antitrust Act is in place. The Clayton Act is in place. The Hart-Scott-Rodino Act is in place. So the Justice Department has plenty to do. I find this debate very unusual because it implies we are going to get the Justice Department involved. They are involved at every stage. In addition, under the Hobbs Civil Appeals Act, the Department of Justice is involved as an independent party in all FCC appeals.

The Justice Department is involved every step of the way. If there is disagreement and there is an appeal, the Justice Department can be a party to that.

Mr. President, the Justice Department is meant to be, under its enabling legislation, an enforcer of law. It is trying to become a Government regulation agency. Now, it did become that to some extent under Judge Greene's 1982 order. That order arose because Congress failed to act. Congress failed to do what we are trying to do now. Congress failed to require that the local exchanges be opened up, as the checklist requires. But we are doing that now in this legislation. We are finally doing it. Meanwhile the Department of Justice is very much intent, it seems, upon becoming a regulatory agency.

I have pointed out the length of time it takes the Department of Justice to get these things done. Judge Greene suggested 30 days. They are up to almost 3 years. I know they have given this excuse or that excuse, but the point is that Judge Greene thought it could be done in 30 days, originally, in 1982. A bureaucracy such as that will take a long time to produce a piece of paper. That will slow down the process and hurt consumers.

It is my feeling that if we can pass this bill in a deregulatory fashion, it will cause an explosion of new investment in activities and devices. I frequently have compared it to the Oklahoma *Land Rush—If we can pass it.* Right now, our companies are investing overseas, and they are not investing here.

People are trying to say this is anticonsumer. That is nonsense. Look at what happened when competition opened up the market for cellular phones. The price has dropped. Look at what happened when we deregulated natural gas. Prices have dropped. It is my opinion that a long distance call should cost only a few cents. It is my opinion that cable television rates should drop when there is more competition from DBS and video dial tone. If we get yet another regulatory agency involved, we can delay this thing 2 or 3 years. In fact, based on the Justice Department's performance, it will delay this whole operation for 2 to 3 years before we have competition and deregulation.

This is a deregulatory, procompetitive bill. We are trying to put everybody into everybody else's business. Mr. President, there has been a lot of talk about corporate activity on these bills. There is an implication that the Commerce Committee bill has a lot of corporate input. But I say to you, read the newspapers of the last 3 weeks, and you will see all those full-page ads. They are paid for by corporations, and I admire them. They are fine corporations, members of the so-called Competitive Long Distance Coalition, which is headed by a person whom I respect very much, a former leader of this body, with whom I disagree on this matter. A vast amount of the corporate advertising in the last month has been

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by corporations opposed to my position. I point that out because there seems to be some suggestion that S. 652 simply represents corporate thinking. Well, all the ads I have seen in the papers—the full-page ads—have been run by corporations that oppose my position and want the extra Justice Department role. That is because some corporations want to use Government regulation against competition. That is what is going on here.

I think that we should defeat the Thurmond amendment because it is, as my colleague from South Carolina said, not only the camel's nose under the tent, it is the whole camel under the tent, so-to-speak, because once the Justice Department gets in, they will try to expand their regulatory role, as in the Ameritech case. I cited specifically the regulatory approach they have taken in that case. They want to have people over there writing telephone books—literally writing telephone books. They are supposed to be lawyers enforcing the antitrust laws in the Justice Department.

So I hope that we defeat this amendment. I reserve the remainder of my time.

Mr. THURMOND addressed the Chair.

Mr. THURMOND. Mr. President, how much time do the proponents have?

The PRESIDING OFFICER. The Senator from South Carolina has 13 minutes 10 seconds.

Mr. THURMOND. I yield 5 minutes to the distinguished Senator from Ohio, Senator DEWINE.

Mr. DEWINE. Mr. President, it has been argued on this floor time and time again that, under this bill, the Department of Justice could still enforce the antitrust laws. That is true. That is technically true.

But the facts are that under the bill, the Department could still enforce the antitrust laws after—after—the phone companies move into the new markets.

That is the problem. That is exactly the problem. It is like, Mr. President, enforcing the law after the fox has been allowed to guard the chicken coop. At that point, the damage is done. The fox has already eaten the chickens. We can stop the fox, but we cannot get the chickens back. It is too late.

In this particular case, we would be enforcing the law after competition has been driven out, after choices have been eliminated. So while the argument is technically true, it certainly falls short and does not disclose the full story.

Mr. President, we should enforce the law and ensure competition before competition is driven out.

I rise today, Mr. President, in support of the Thurmond second-degree amendment. The goal of the bill we are considering today is to promote competition in the telecommunications industry. The Thurmond amendment is an attempt to make sure that we use the most effective means toward this end.

Mr. President, the American people know when we have competition two good things happen: consumers have more choice, prices go down. This is as true in telecommunications as in any other sector of the economy.

What we are really debating today is how best to make competition take root in the telecommunications industry. The question is, what agency is best equipped to undertake the task of policing competition in these markets?

It is my belief, Mr. President, that the Thurmond amendment offers the most logical answer to that question.

Under this amendment, two agencies of Government play a role. Each of the agencies is to play an important role, a role for which it is extremely well suited and in which it has a great deal of relevant expertise. The Federal Communications Commission sets communications policy. That is what the FCC does best. That is what they know how to do.

Under the Thurmond amendment, that is what they will be doing. The Antitrust Division of the U.S. Department of Justice enforces competition. That is what the Justice Department does. That is what they will do under the Thurmond amendment. The Thurmond amendment makes the best possible use of each of these agencies. We do not need the FCC to hire a new staff of antitrust lawyers, a new layer of bureaucracy, to do something the Justice Department is already equipped to do. We need to liberate the FCC to do what it does best. That is what the Thurmond amendment does.

Equally important, Mr. President, in my opinion, is what the Thurmond amendment does not do. It does not duplicate functions of Government. It is emphatically not a question of simply adding the Justice Department on top of the FCC. The FCC has a role. The Justice Department, under the Thurmond amendment, has another distinctive, different role, not duplicating.

The system envisioned under the Thurmond amendment, Mr. President, will not cause delays in the licensing process. We have heard that time and time again. From the moment an application is made under the Thurmond amendment, both the FCC and the Justice Department will have exactly 90 days, according to law, to make their ruling. These 90-day periods will run concurrently, not sequentially.

The Department has experience in this area. They do it for a period of time. The Clayton Act sets a 30-day limit. They hit that timeframe. Under this amendment, no layering of bureaucracies, no delays, just an intelligent division of labor in U.S. telecommunications policy.

In conclusion, Mr. President, that is what the Thurmond amendment will accomplish. I thank the Senator from South Carolina for his bold leadership in this area with this specific amendment. I urge the adoption of the amendment.

Mr. WELLSTONE. Mr. President, I wish to speak today in support of the Dorgan amendment, an amendment, I firmly believe, that is so key for the protection of consumers that frankly I must wonder how this bill got out of committee without its inclusion.

Now Mr. President, on the substance of the amendment, I could do no better than to defer to the comments already made on this issue by my two colleagues, the distinguished Senators from Nebraska and North Dakota, both of whom demonstrate a penetrating understanding of this very difficult topic. I would, however, like to take a moment to address this amendment from a perspective we've only occasionally heard in the debate on this bill—that of telephone and cable-TV rate-payers, both in my State of Minnesota and across this Nation.

I would hazard a guess that all of my colleagues would join with me in supporting the stated goal of this legislation: increasing competition in local phone service as well as cable TV. All of us likely agree that if competition is allowed to flourish, the biggest winners will be the consumers, the ratepayers, the millions of citizens who power the entire industry.

But, and here's where some of my colleagues and I part company, not all of us are ready simply to throw our trust to the companies that stand to profit from deregulation. Competition doesn't just happen, sometimes it must be nurtured to protect consumers against monopoly control. The Dorgan amendment, by providing a role for the Department of Justice, recognizes this economic fact: this amendment is nothing more than a circuit breaker which will trip only if—let me repeat, only if—it is found that it would not be in the consumer's interest for a local phone company to begin to expand its service. That's all that it is.

Mr. President, the need for the continuation of consumer protections and antitrust circuit breakers is clear. With every passing day, we see more integration in the telecommunications and information marketplace. On Sunday, Mr. President, we saw the Lotus Corp. agree to a friendly takeover by IBM. AT&T and McCaw Cellular will be joining forces, as will other companies, in preparing for this newly de-regulated telecommunications environment.

This integration at the top corporate level and the market position of many of these companies demands that consumers be given a voice—a trusted voice—to speak for them in the coming years. No more trusted voice could be found on this subject than that of the Department of Justice. It was through that Department's courageous leadership that the old AT&T Ma Bell monopoly of old was broken apart—it was a long, tough fight, but this experience gained by the DOJ has been invaluable in guiding the breakup of the Bell system, and the development of competition in long distance and other services. It only makes sense that we allow the DOJ to put this experience to use

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again as we move into an exciting, but potentially risky, new market.

The Dorgan amendment, as modified by the Thurmond second-degree amendment, prescribes how this experience will be put to use. The amendment uses the expertise of both the FCC and the DOJ to their best advantage. Under the amendment, the FCC will conduct a more focused public interest test to review whether the Bell companies face competition and adequately meet the checklist of services called for in this bill—topics the FCC is well accustomed to dealing with. The DOJ will conduct an analysis to ensure that a monopoly will not be created—again, a task that the DOJ is particularly qualified for. In this way, responsibilities are clarified and redundancies between the FCC and the DOJ are elminated, and the consumer is protected.

Now for those who say this is a partisan issue, or those who would charge that such protections are no longer needed, Mr. President I turn to the comments of Judge Robert Bork, a distinguished jurist and conservative commentator of the highest regard. Mr. President, Judge Bork writes:

These restrictions [on the Bell companies] are still supported by antitrust law and economic theory and should be retained. The Bell companies' argument is that the decree's line-of-business restrictions are relics of the 1970's, the industry has changed dramatically, and the restrictions are the product of outmoded thinking. To the contrary, the basic facts of the industry that required the decree in the first place, basically the monopolies of local service held by the Bell companies, have not changed at all.

Without this amendment, Mr. President, this bill asks the Senate to announce the equivalent of unilateral disarmament—the disarmament of the consumer. As it stands right now, this bill says: Mr. and Ms. Consumer, you should give up the rate protections you've had over the years, you should give up any Department of Justice role in this process, you should give up the years of antitrust experience built by those who slew the multitentacled AT&T monopoly in the first place. And what are we going to replace them with? The promise made to consumers by all these unregulated, multinational, multibillion-dollar corporations, that they will do what's in your best interest. A promise that the monopolies of old will behave. A promise that consumers will be protected, that service will be good and that rates will be reasonable.

Mr. President, I don't buy it. Without this amendment, the public will be stripped of one of the key consumer protections they will ever have in the coming years—the voice of the Department of Justice.

Mr. FEINGOLD. Mr. President, I rise in support of the amendment offered by Senators THURMOND and DORGAN. I applaud them for their leadership in the effort to provide the Department of Justice with a strong decisionmaking role in the approval of regional bell operating company entry into long-distance telephony.

The importance of this amendment is underscored by the fact that S. 652 terminates the modified final judgment which settled an antitrust case against AT&T. The MFJ provided a framework by which the regional bell operating companies could enter alternative lines of business. The Department of Justice has had an integral role in protecting consumers by applying the 8(c) test to the RBOC application for a waiver to enter into restricted lines of business. The Department of Justice has ensured that the RBOC's could not use their monopoly power to impinge upon the competition that has developed in long distance. However, S. 652 vitiates the MFJ without providing any substantial safeguards for consumers.

Had it not been for the antitrust efforts of the Department of Justice, which have been consistent through both Republican and Democratic administrations over the last 25 years, we would not have the competitive environment which exists today in long distance. DOJ has been the watchdog for consumers in telecommunications and that is because antitrust laws are intended to be pro-competition and pro-consumer. I urge my colleagues to keep in mind that antitrust laws exist not for the benefit of the competitors but for the benefits which true competition yields to consumers.

Now, as Congress is working toward deregulating telecommunications markets we must keep in mind that true competition will not prevail if one group of players hold all the cards. The power of the local monopoly is without equal in telecommunications markets. The advantages provided to them over those with lesser market power, fewer resources, and limited opportunities to control entry by their competitors are without bounds. As we speak of competition, we must keep in mind that competition cannot exist in markets in which one player has a substantially better hand than his rivals—particularly when those trump cards have been provided by the Federal Government in the form of regulated monopolies.

The Department of Justice is the proper agency to make sure that the deck is not stacked against those attempting to compete fairly in the markets—that is to be sure that RBOC entry into long distance will not substantially lessen competition or tend to create a monopoly in any line of commerce in any section of the country. This test, as contained in section 7 of the Clayton Act, is one that has withstood the test of 80 years of antitrust law. While it is not as strong as the test currently used by the Department of Justice which I would have preferred, known as the 8(c) test, it is a sound test to determine the appropriateness of RBOC entry into long distance.

Mr. President, this compromise amendment offered by my colleagues addresses many of the concerns which have been raised by the opponents of a decisionmaking role for the Department of Justice. First, by requiring the Department of Justice to complete their review and make their recommendation in 90 days from receipt of the application, the RBOC's will be assured of an expeditious review of their request. That should alleviate the concerns of those who fear that DOJ will drag their feet and impede the advancement of competitive telecommunications markets. It will also provide the RBOC's with an incentive not to submit overly broad applications that would not likely be approved.

Second, by narrowing slightly the breadth of the public interest test to be conducted by the Federal Communications Commission, the amendment offered by Senators THURMOND and DORGAN should also assuage the concerns of the RBOC's who claim that a Department of Justice would only duplicate the efforts of FCC.

Mr. President, I also reject the notion that the Department of Justice should only become involved after the damage has been done. Some contend that the appropriate role of the Department of Justice is only to take antitrust actions against those engaging in anticompetitive behavior. That is, we should have more litigation tying up the resources of our Federal courts. I find that argument astonishing in a year in which so many of my colleagues are seeking legislation which attempt to reduce unnecessary litigation. Mr. President, if litigation resulting from inadequate preventative measures is not unnecessary litigation I don't know what types of lawsuits might be categorized unnecessary.

Mr. President, I continue to support the initial amendment offered by my colleagues from North Dakota which would have used a stronger test to ensure *there is no possibility* that a monopolists could use its power to impede competition in the market it seeks to enter. However, the compromise they have presented is a far more appealing than S. 652 in its current form which reverse the progress we have made toward greater competition in long distance over the last 25 years. The *amendment before us employs* a time-tested standard from the Clayton Act which should ensure that consumers *are protected while RBOC's receive the* expeditious review they seek without unnecessary duplication of the functions of the FCC.

I ask unanimous consent that a letter from the Wisconsin's attorney general, James Doyle, supporting a decisionmaking role for the Departunent of Justice be printed in the RECORD.

Mr. President, this is a sound compromise and I urge my colleagues to support it.

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

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STATE OF WISCONSIN,
DEPARTMENT OF JUSTICE,
Madison, WI, May 3, 1995.

HON. RUSSELL D. FEINGOLD,
U.S. Senator, Hart Senate Office Building, Washington, DC.

DEAR SENATOR FEINGOLD: I understand that the antitrust subcommittee of the Senate Judiciary Committee today is considering S. 652, Senator Pressler's bill that would lift the court-ordered restrictions that are currently in place on the Regional Bell Operating Companies, allowing RBOC's to enter the fields of long distance services and equipment manufacturing at such time as sufficient local competition exists in their service areas.

Several antitrust issues loom large in S. 652. For one thing, despite (or, perhaps, because of) its unmatched skill and expertise in evaluating competition in the telecommunications field, the U.S. Department of Justice is given no role whatsoever under S. 652 in assessing in advance whether local competition exists in each region of the country sufficient to, in turn, give the go ahead to the relevant RBOC to enter the markets for long distance services and equipment manufacturing. Moreover, the Pressler bill repeals the current restriction on cross-ownership of cable and telephone companies in the same service area by permitting telephone companies to buy out local cable companies, their most likely competitor, thereby allowing movement to a "one-wire world" with only antitrust litigation to prevent it. In addition, the bill would preempt states from ordering 1+ intraLATA dialing parity until such time as an RBOC was permitted to enter the interLATA long distance market.

I am not alone in strongly opposing these features of the bill. For example, a letter dated April 5, 1995, from Congressman Henry Hyde, Chairman of the House Judiciary Committee, to Congressman Thomas Billey, Jr., chairman of the House Committee on Commerce, stresses the need for a strong role for the Antitrust Division of the U.S. Department of Justice in any telecommunications legislation:

"[L]egislation directed at changing or replacing an antitrust consent decree, needs to encompass an antitrust law, competition perspective as well as a communications law, regulatory perspective.

"[T]here will * * * have to be an evaluation of marketplace conditions on a case-by-case basis. That is, the actual and potential state of competition—in individual states, metropolitan areas and rural areas—will have to be analyzed.

"Using relevant factors as an administrative checklist [as proposed in S. 652] makes sense, but the key will be the decision-making mechanism regarding whether these conditions are actually present in a particular case. This review should be undertaken simultaneously by both the Justice Department and FCC, with DOJ applying an antitrust standard and FCC applying a communications law test. The statute should contain firm deadlines for review by both agencies.

"DOJ is far less likely to challenge Bell entry if they are involved in the decision-making process leading up to Bell entry."

Significantly, on April 3, Ameritech, the U.S. Department of Justice, AT&T, MCI and the Consumer's Union announced that they had all agreed (subject, of course, to approval by Judge Greene) to a waiver of the Modified Final Judgment allowing two Ameritech local service areas—Chicago, Illinois, and Grand Rapids, Michigan, to be used as "test sites." At such time as the U.S. Department of Justice determines that actual competition exists in those areas, Ameritech may then enter the market for long distance services originating from those areas. Significantly, both of these developments—the Hyde letter and the Ameritech agreement—occurred in the few days immediately following the Senate Commerce Committee's March 31 action on S. 652.

The April 3 agreement demonstrates that the most forward-thinking of the RBOC's, Ameritech (branded a "traitor" by its fellow RBOC's, all adamantly opposed to a "gate keeper" role for the U.S. Department of Justice), appreciates the importance of a meaningful U.S. Department of Justice role in the decision-making process leading to the opening of new telecommunications markets.

In my opinion, S. 652 is flawed in certain other respects, not relating to competition law, and I will comment on those features of the bill in due course. Because, however, S. 652 is before your antitrust subcommittee today, I wish to be on record as opposing those features of the bill that offend sound antitrust principles: the elimination of any decision-making role for the U.S. Department of Justice; the repeal of the prohibition against mergers of telephone companies and cable television companies located in the same service areas, and preemption of the state's ability to order 1+ intraLATA dialing party in appropriate cases.

It is critical that federal law ensure a competitive environment in telecommunications for the good of the public. Responsibility for making determinations of sufficient competition should remain in the hands of the Antitrust Division of the U.S. Department of Justice.

Sincerely,

JAMES E. DOYLE,
Attorney General.

Mr. CRAIG. Mr. President, at a time when we are trying to address the deregulation of the telecommunications industry, to further enhance the role of the Department of Justice would be counterproductive.

The Federal Communications Commission [FCC] regulates the communications industry. The Department of Justice [DOJ] enforces antitrust laws.

The pending legislation, S. 652, supersedes the provisions of modification of final judgment [MFJ], that govern Bell Co. entry into businesses now prohibited to them. Once legislation is signed into law, a continued DOJ role in telecommunications policy is no longer necessary except in the area of enforcing the law.

The Department of Justice does not need an ongoing regulatory role as part of an update of our Nation's communications policy. Actual regulatory oversight is not what DOJ is equipped to provide.

DOJ's claim that "it alone among government agencies understands marketplace issues as opposed to regulatory issues," is inaccurate. The FCC has a long history of reviewing and analyzing communications markets. Besides, S. 652 already gives the Justice Department a role which is clearly defined in the language of the bill.

S. 652 states that:

Before making any determination, the Commission shall consult with the Attorney General regarding the application. In consulting with the Commission, the Attorney General may apply any appropriate standard.

Dual DOJ and FCC bureaucracies to regulate the communications industry delays the benefits competition brings consumers. if we are going to strengthen the role of DOJ, why even bother trying to reform the 1934 act? After all, one of the main purposes for passing telecommunications reform legislation is to establish a national policy so that the MFJ can be phased out.

Mr. President, providing this authority to the Justice Department is unprecedented. The Antitrust Division of the Justice Department has never had decision-making authority over regulated industries—or any industry. In addition, assigning a decision-making role to the Department of Justice establishes a dangerous precedent that could be expanded to other industries.

Mr. President, more regulation is not what this bill needs. Again, dual roles for the DOJ and FCC will only delay competition. It will only delay the benefits of competition such as: Lower prices, new services, and more choice for communications services and new jobs. The only jobs that this amendment will provide is new jobs for lawyers at the Department of Justice.

For those who may consider this necessary, let's briefly take a look at the job the DOJ has done in administering the MFJ. It is important to note that the Antitrust Division at Justice does not currently have decision-making authority over the MFJ. That sole authority is held in the U.S. District Court, in the person of Judge Harold Greene. The Antitrust Division essentially serves to staff Judge Greene on the MFJ, providing him with recommendations on waivers and other matters under the administration of the MFJ.

In 1984, the average age of waiver requests pending at year end was a little under 2 months. By the end of 1993, the average age of pending waivers had grown to 3 years. Delays such as these are simply inconsistent with an evolving competitive market.

In addition, the Justice Department is responsible for conducting reviews every 3 years, known as the triennial review, at which recommendations to the court are made regarding the continued need for restrictions implemented under the MFJ.

These reviews were to provide the parties to the MFJ a benchmark by which they could gain relief.

Mr. President, since 1982, only one triennial review has been conducted.

In short, Mr. President, the Department of Justice's track record in fulfilling its obligations under the MFJ is poor. Therefore, I would question the advisability of giving the DOJ an unprecedented role, above and beyond what they currently have under the MFJ.

Mr. President, S. 652 contains clear congressional policy. There is no reason why two Federal entities should have independent authority over determining whether that policy has been met. Again, let us not lose sight of what we are trying to achieve here.

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The ultimate goal of reforming the 1934 act should be to establish a national policy framework that will accelerate the private sector deployment of advanced telecommunications and information technologies and services to all Americans by opening all telecommunications markets to competition, which will create jobs, increase productivity, and provide better services at a lower cost to consumers.

Mr. THURMOND. Mr. President, I yield myself such time as may be required.

Mr. President, I rise today in opposition to the motion to table the Thurmond-D'Amato-DeWine-Inhofe second degree amendment.

Many things have been stated in this Chamber over the last several days about my amendment to protect competition and consumers by providing that antitrust principles will be applied by the Department of Justice in determining when Bell operating companies should be allowed to enter long distance. Now that we are about to vote on a motion to table, it is my belief that we must focus on just three basic points in deciding how to proceed on this pivotal issue.

First, the opponents of my amendment assert that I am trying to add a second agency into the antitrust analysis of Bell entry. In fact, just the opposite is true—my amendment removes an agency. S. 652 currently provides that the FCC shall determine the public interest in consultation with the Justice Department. FCC consideration of the public interest requires antitrust analysis, as indicated by the courts and reiterated by FCC Chairman Hundt in testimony last month before the Congress.

As drafted, therefore, S. 652 already requires antitrust analysis by both the FCC and Department of Justice. My amendment will reduce this redundancy, by prohibiting the FCC from conducting an antitrust analysis when determining the public interest. Instead, the antitrust analysis will be conducted exclusively by the Department of Justice, the antitrust agency with great expertise and specialization in analyzing competition.

Second, the antitrust role of the Justice Department in analyzing entry under my amendment is in no way unusual or inappropriate. It is the same analysis that the Justice Department conducts routinely in determining whether companies should be able to proceed into new lines of business through mergers and acquisitions. Even the standard—section 7 of the Clayton Act—is identical. Considering whether entry will "substantially reduce competition" prior to any harm occurring is equally important here as in other section 7 cases involving a merger or acquisition. This process protects competition and the American public from harm which can be avoided.

Mr. President, we all strongly support competition. The question we are resolving today is whether we will continue to rely on antitrust law administered by the expert agency to protect competition, as we have since the early part of this century. I fear that failure to support my amendment will harm competition, which ultimately harms our constituents.

These issues are critically important, and I believe that it is highly desirable to have an up or down vote on my modified second degree amendment. For all of these reasons, I urge my colleagues to vote against the motion to table.

I reserve the remainder of my time.

How much time is remaining?

The PRESIDING OFFICER. The Senator has 4 minutes 10 seconds remaining.

Mr. PRESSLER. How much time do I have remaining?

The PRESIDING OFFICER. The Senator from South Dakota has 6 minutes 32 seconds.

Mr. PRESSLER. I yield 3 minutes to the Senator from Texas.

Mrs. HUTCHISON. Thank you, Mr. President. I appreciate so much the Senator from South Carolina. I hate to differ with him, but on this issue I do.

The reason is because I sat on the committee and I saw how difficult it was to get to the goal of deregulation and to try to take the harassment off the businesses that we are trying to encourage to come into the marketplace rather than add yet another hurdle that they must jump before they can get into the marketplace to provide the competition that gives the consumers the best choices for the lowest prices.

This amendment is a gutting amendment. That is why I think it is so important that we stick with the FCC and not add one more layer of the Department. We have made the decision that the FCC is the one that must protect the diversity of voices in the market. We have said the FCC can be the one that knows when there is competition at the local level so that we can go into long distance. It is that agency that has the expertise, that we have given the expertise. There is no reason to come in and add another layer.

Antitrust will be taken care of if we increase competition. That is what this amendment will stop from happening.

The committee labored not hours, not days, not weeks; the committee has labored for years to try to level the playing field among all the competitors that want to be in the telecommunications business. What we have found are some very strong competitive companies that want to jump into local service, to long distance service.

We are trying to create that level playing field. We are trying to take the regulators out of the process so that our companies can compete and give consumers the best prices and the best service.

If we stick with the committee, that is what we will have: more competition, easier to get into the competition. We will not put up more hurdles in the process. This is a deregulation bill, not a reregulation bill.

That is why it is very important for my colleagues, as they look at these choices, to know that the committee has done the work, the committee has worked for years to try to create this level playing field.

I have voted for the long distance companies in some instances. I have voted for the Bells in some instances, to try to make sure that that balance is there.

The committee has struck the balance. I thank the Senators who have worked so hard, the distinguished chairman of the committee, the distinguished ranking member. On this one, I think we must stick with the committee that has done so much work.

Thank you, Mr. President.

Mr. THURMOND. Mr. President, I yield 3 minutes to the distinguished Senator from Nebraska.

Mr. KERREY. Mr. President, the choice before Members on the tabling motion will be: Trust the 14-point checklist, basically, that the committee has offered as an indication; or do we want, in a parallel process, the Department to make a determination as to whether or not competition exists at the local level. That is all we are discussing and debating. I believe we want the Department of Justice to make that determination. I do not have the confidence in the 14-point checklist that others do. It is as simple as that.

Many of the statements that have been made about what this amendment attempts to do have simply not been true. Many of the statements that have been made about what the Department of Justice is trying to accomplish here simply are not true. We are simply saying, with this amendment, to Members of Congress, the Department of Justice should have a determination role. They should say, "We have determined that there is competition," or "We have determined that there is not competition."

I will cite, in a repetitive example, two instances that ought to give, I think, Members of Congress a pause. The Senator from South Dakota gets up and says all these delays occur. I cited an application for a waiver of the MFJ that was made in 1994 by Southwestern Bell. I ask the Senator from South Dakota, did he wish that would have been approved in 30 days? That waiver application would strike all the MFJ requirements, strike all the restrictions with no determination of local competition whatsoever. Perhaps the Senator from South Dakota does not like that delay. Perhaps the Senator from South Dakota and other Members would like to have a situation where there is no determination being made by the Department of Justice. If that is the case, vote to table.

But if you want the Department of Justice to have the determination role rather than just "Here is our opinion about this proposal," then you have to vote for this amendment.

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I believe if you do vote for this amendment, you will be happy you did. At the end of the day you do not want to just try to make sure these folks are happy who are outside the hallway out here, adding up votes trying to figure whether this amendment is going to pass or fail. You want the consumers and the citizens and the taxpayers and the voters of your State to be happy. And the only way they are going to be happy, the only way they are going to say this thing works, is if we get real competition at the local level. With real competition at the local level, there will be choice and there will be decreases in price and increases in quality. And that is the only way in my judgment that S. 652 is going to produce the benefits that have been promised.

Mr. PRESSLER. Mr. President, how much time remains?

The PRESIDING OFFICER. The Senator from South Dakota controls 3½ minutes.

Mr. PRESSLER. Mr. President, I yield myself 2½ minutes. I yield the last minute to the Senator from Alaska.

The PRESIDING OFFICER. The Senator from South Dakota.

Mr. PRESSLER. I conclude this by saying I love my colleague from South Carolina, Senator THURMOND. This appears to be a difference over jurisdiction. I plead with my colleagues, do vote this amendment down. It is a gutting amendment. It will add more bureaucracy. It goes against the procompetitive, deregulatory nature of the bill.

I respect my colleague from South Carolina so much, but I see this as a jurisdictional difference. On this occasion I will have to vote to table the Thurmond amendment and continue to love the senior Senator from South Carolina.

I yield to the Senator from Alaska for the last word.

Mr. STEVENS. Mr. President, I believe this is a balanced bill we have here now. The Department of Justice has a statutory consultative role. If it has concerns, the FCC will hear those concerns. The basic thing about this bill is it gets the telecommunications policy out of the courts and out of the Department of Justice and back to the FCC to one area. We hope to transition sometime so we do not even have them involved.

I oppose striking the public interest section because it upsets the balance we have worked out. It upsets the balance in favor of the wrong parties.

I urge support of this motion of the chairman to table.

The PRESIDING OFFICER. The Senator from North Dakota.

Mr. DORGAN. Mr. President, how much time remains?

The PRESIDING OFFICER. The proponents of the amendment have a minute and 35 seconds. The opponents of the amendment have a minute and 58 seconds.

Mr. THURMOND. I will use 30 seconds. The Senator can take the rest.

Mr. DORGAN. Mr. President, if I might take just 1 minute and ask unanimous consent Senator FEINGOLD be added as a cosponsor to the Thurmond-Dorgan second-degree amendment.

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

Mr. DORGAN. Mr. President, let me again say, those who say this upsets the balance, this adds layers of bureaucracy, this adds complexity—in my judgment, respectful judgment, they are just wrong. They are just wrong.

This does not have balance unless it has balance in the public interest on behalf of the American consumer making certain the free market is free. Free market and competition are wonderful to talk about but you have to be stewards, it seems to me, to make sure the free market is free. The only way to do that is to vote for this amendment.

So vote against tabling the Thurmond-Dorgan amendment and give the Justice Department the role they should have to do what should be done for the consumers of this country.

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

The PRESIDING OFFICER. The Senator from South Carolina.

Mr. THURMOND. Mr. President, I want to say to the Senate this. This amendment protects consumers and enhances competition. It does not gut this bill. That is an error. It provides for the Department of Justice to carry out the antitrust analysis of Bell company applications to enter long distance. This is the special expertise of the Department of Justice. My amendment limits the FCC to reviewing other areas and not duplicating DOJ. I am confident that this will reduce bureaucracy and eliminate redundancy of Government between roles of the DOJ and FCC. In other words, it leaves with the FCC to determine issues in which they have expertise. It leaves to the Justice Department determinations in which they have expertise. And that is the way it ought to be.

The PRESIDING OFFICER. The Senator from South Dakota has 2 minutes—a minute and 58 seconds.

Mr. PRESSLER. Mr. President, I yield the remainder of my time.

Mr. THURMOND. Mr. President, I yield any time I have left.

Mr. PRESSLER. Mr. President, I make a motion to table the Thurmond amendment, No. 1265.

Mr. President, I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second?

There is a sufficient second.

The yeas and nays were ordered.

The PRESIDING OFFICER. The question is on agreeing to the motion. The clerk will call the roll.

The legislative clerk called the roll.

The result was announced—yeas 57, nays 43, as follows:

[Rollcall Vote No. 250 Leg.]

YEAS—57

Abraham	Faircloth	Lott
Ashcroft	Ford	Lugar
Baucus	Frist	Mack
Bennett	Gorton	McCain
Biden	Gramm	McConnell
Breaux	Grams	Moynihan
Brown	Gregg	Murkowski
Bryan	Hatch	Murray
Burns	Hatfield	Nickles
Byrd	Heflin	Nunn
Campbell	Helms	Packwood
Chafee	Hollings	Pressler
Coats	Hutchison	Roth
Cochran	Jeffords	Santorum
Coverdell	Johnston	Simpson
Craig	Kassebaum	Smith
Dole	Kempthorne	Stevens
Domenici	Kerry	Thomas
Exon	Kyl	Warner

NAYS—43

Akaka	Glenn	Pell
Bingaman	Graham	Pryor
Bond	Grassley	Reid
Boxer	Harkin	Robb
Bradley	Inhofe	Rockefeller
Bumpers	Inouye	Sarbanes
Cohen	Kennedy	Shelby
Conrad	Kerrey	Simon
D'Amato	Kohl	Snowe
Daschle	Lautenberg	Specter
DeWine	Leahy	Thompson
Dodd	Levin	Thurmond
Dorgan	Lieberman	Wellstone
Feingold	Mikulski	
Feinstein	Moseley-Braun	

So the motion to lay on the table the amendment (No. 1265), as modified, was agreed to.

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

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

The motion to lay on the table was agreed to.

Mr. THURMOND addressed the Chair.

The PRESIDING OFFICER. The Senator from South Carolina.

Mr. THURMOND. Although my amendment was tabled, we will be back. It is very important to have an up and down vote on this amendment. I have filed my amendment at the desk, and it will be in order after cloture. We will then get to the direct vote on this important amendment.

AMENDMENT NO. 1264 WITHDRAWN

The PRESIDING OFFICER. Under the previous order, the underlying amendment has been withdrawn.

RECESS UNTIL 2:15 P.M.

The PRESIDING OFFICER. Under the previous order, the Senate will now stand in recess until 2:15 p.m.

Thereupon, at 12:55 p.m., the Senate recessed until 2:15 p.m.; whereupon, the Senate reassembled when called to order by the Presiding Officer (Mr. KYL).

Mr. CONRAD addressed the Chair.

The PRESIDING OFFICER. The Senator from North Dakota is recognized.

AMENDMENT NO. 1275

(Purpose: To provide means of limiting the exposure of children to violent programming on television, and for other purposes)

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

The PRESIDING OFFICER. The clerk will report.

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The legislative clerk read as follows:

The Senator from North Dakota [Mr. CONRAD] proposes an amendment numbered 1275.

Mr. CONRAD. 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 146, below line 14, add the following:

TITLE V—MISCELLANEOUS

SEC. 501. SHORT TITLE.

This title may be cited as the "Parental Choice in Television Act of 1995".

SEC. 502. FINDINGS.

Congress makes the following findings:

(1) On average, a child in the United States is exposed to 27 hours of television each week and some children are exposed to as much as 11 hours of television each day.

(2) The average American child watches 8,000 murders and 100,000 acts of other violence on television by the time the child completes elementary school.

(3) By the age of 18 years, the average American teenager has watched 200,000 acts of violence on television, including 40,000 murders.

(4) On several occasions since 1975, The Journal of the American Medical Association has alerted the medical community to the adverse effects of televised violence on child development, including an increase in the level of aggressive behavior and violent behavior among children who view it.

(5) The National Commission on Children recommended in 1991 that producers of television programs exercise greater restraint in the content of programming for children.

(6) A report of the Harry Frank Guggenheim Foundation, dated May 1993, indicates that there is an irrefutable connection between the amount of violence depicted in the television programs watched by children and increased aggressive behavior among children.

(7) It is a compelling National interest that parents be empowered with the technology to block the viewing by their children of television programs whose content is overly violent or objectionable for other reasons.

(8) Technology currently exists to permit the manufacture of television receivers that are capable of permitting parents to block television programs having violent or otherwise objectionable content.

SEC. 503. ESTABLISHMENT OF TELEVISION VIOLENCE RATING CODE.

(a) IN GENERAL.—Section 303 (47 U.S.C. 303) is amended by adding at the end the following:

"(v) Prescribe, in consultation with television broadcasters, cable operators, appropriate public interest groups, and interested individuals from the private sector, rules for rating the level of violence or other objectionable content in television programming, including rules for the transmission by television broadcast stations and cable systems of—

"(1) signals containing ratings of the level of violence or objectionable content in such programming; and

"(2) signals containing specifications for blocking such programming.".

(b) APPLICABILITY.—The amendment made by subsection (a) shall take effect 1 year after the date of the enactment of this Act, but only if the Commission determines, in consultation with appropriate public interest groups and interested individuals from the private sector, on that date that television broadcast stations and cable systems have not—

(1) established voluntarily rules for rating the level of violence or other objectionable content in television programming which rules are acceptable to the Commission; and

(2) agreed voluntarily to broadcast signals that contain ratings of the level of violence or objectionable content in such programming.

SEC. 504. REQUIREMENT FOR MANUFACTURE OF TELEVISIONS THAT BLOCK PROGRAMS.

(a) REQUIREMENT.—Section 303 (47 U.S.C. 303), as amended by this Act, is further amended by adding at the end the following:

"(w) Require, in the case of apparatus designed to receive television signals that are manufactured in the United States or imported for use in the United States and that have a picture screen 13 inches or greater in size (measured diagonally), that such apparatus—

"(1) be equipped with circuitry designed to enable viewers to block the display of channels during particular time slots; and

"(2) enable viewers to block display of all programs with a common rating.".

(b) IMPLEMENTATION.—In adopting the requirement set forth in section 303(w) of the Communications Act of 1934, as added by subsection (a), the Federal Communications Commission, in consultation with the television receiver manufacturing industry, shall determine a date for the applicability of the requirement to the apparatus covered by that section.

SEC. 505. SHIPPING OR IMPORTING OF TELEVISIONS THAT BLOCK PROGRAMS.

(a) REGULATIONS.—Section 330 (47 U.S.C. 330) is amended—

(1) by redesignating subsection (c) as subsection (d); and

(2) by adding after subsection (b) the following new subsection (c):

"(c)(1) Except as provided in paragraph (2), no person shall ship in interstate commerce, manufacture, assemble, or import from any foreign country into the United States any apparatus described in section 303(w) of this Act except in accordance with rules prescribed by the Commission pursuant to the authority granted by that section.

"(2) This subsection shall not apply to carriers transporting apparatus referred to in paragraph (1) without trading it.

"(3) The rules prescribed by the Commission under this subsection shall provide performance standards for blocking technology. Such rules shall require that all such apparatus be able to receive transmitted rating signals which conform to the signal and blocking specifications established by the Commission.

"(4) As new video technology is developed, the Commission shall take such action as the Commission determines appropriate to ensure that blocking service continues to be available to consumers.".

(b) CONFORMING AMENDMENT.—Section 330(d), as redesignated by subsection (a)(1), is amended by striking "section 303(s), and section 303(u)" and inserting in lieu thereof "and sections 303(s), 303(u), and 303(w)".

Mr. CONRAD. Mr. President, I rise today to offer an amendment to the telecommunications bill, which is a bill that is designed to do two things. One, it is designed to empower parents to help make the choices of what their children see on television coming into their homes.

Mr. President, several years ago, I became very involved in the issue of violence in the media, because I became convinced that violence in the media is contributing to violence in society; it is contributing to violence on the streets of America. So I worked to form a national organization, which is now some 37 national organizations, all involved in an attempt to reduce violence in the media. This is a national coalition that involves organizations like the American Medical Association, the PTA, the National Council of Churches, the sheriffs, police chiefs, the school psychologists, the school principals, the National Education Association—37 national organizations who are committed to reducing violence in the media.

It is for that reason that I offer what I call the Parental Choice and Television Act of 1995.

Mr. LIEBERMAN addressed the Chair.

The PRESIDING OFFICER. The Senator from Connecticut is recognized.

AMENDMENT NO. 1347 TO AMENDMENT NO. 1275

(Purpose: To revise the provisions relating to the establishment of a system for rating violence and other objectionable content on television)

Mr. LIEBERMAN. Mr. President, I send a second-degree amendment to the desk and ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report.

The legislative clerk read as follows:

The Senator from Connecticut [Mr. LIEBERMAN] proposes an amendment numbered 1347 to amendment No. 1275.

Mr. LIEBERMAN. 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 3, strike out line 12 and all that follows through page 4, line 16, and insert in lieu thereof the following:

SEC. 503. RATING CODE FOR VIOLENCE AND OTHER OBJECTIONABLE CONTENT ON TELEVISION.

(a) SENSE OF CONGRESS ON VOLUNTARY ESTABLISHMENT OF RATING CODE.—It is the sense of Congress—

(1) to encourage appropriate representatives of the broadcast television industry and the cable television industry to establish in a voluntary manner rules for rating the level of violence or other objectionable content in television programming, including rules for the transmission by television broadcast stations and cable systems of—

(A) signals containing ratings of the level of violence or objectionable content in such programming; and

(B) signals containing specifications for blocking such programming;

(2) to encourage such representatives to establish such rules in consultation with appropriate public interest groups and interested individuals from the private sector; and

(3) to encourage television broadcasters and cable operators to comply voluntarily with such rules upon the establishment of such rules.

(b) REQUIREMENT FOR ESTABLISHMENT OF RATING CODE.—

(1) IN GENERAL.—If the representatives of the broadcast television industry and the cable television industry do not establish the rules referred to in subsection (a)(1) by the end of the 1-year period beginning on the date of the enactment of this Act, there shall be established on the day following the end

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of that period a commission to be known as the Television Rating Commission (hereafter in this section referred to as the "Television Commission"). The Television Commission shall be an independent establishment in the executive branch as defined under section 104 of title 5, United States Code.

(2) MEMBERS.—

(A) IN GENERAL.—The Television Commission shall be composed of 5 members, of whom—

(i) three shall be appointed by the President, as representatives of the public by and with the advice and consent of the Senate; and

(ii) two shall be appointed by the President, as representatives of the broadcast television industry and the cable television industry, by and with the advice and consent of the Senate;

(B) NOMINATION.—Individuals shall be nominated for appointment under subparagraph (A)(i) not later than 60 days after the date of the establishment of the Television Commission.

(D) TERMS.—Each member of the Television Commission shall serve until the termination of the commission.

(E) VACANCIES.—A vacancy on the Television Commission shall be filled in the same manner as the original appointment.

(2) DUTIES OF TELEVISION COMMISSION.—The Television Commission shall establish rules for rating the level of violence or other objectionable content in television programming, including rules for the transmission by television broadcast stations and cable systems of—

(A) signals containing ratings of the level of violence or objectionable content in such programming; and

(B) signals containing specifications for blocking such programming.

(3) COMPENSATION OF MEMBERS.—

(A) CHAIRMAN.—The Chairman of the Television Commission shall be paid at a rate equal to the daily equivalent of the minimum annual rate of basic pay payable for level IV of the Executive Schedule under section 5314 of title 5, United States Code, for each day (including traveltime) during which the Chairman is engaged in the performance of duties vested in the commission.

(B) OTHER MEMBERS.—Except for the Chairman who shall be paid as provided under subparagraph (A), each member of the Television Commission shall be paid at a rate equal to the daily equivalent of the minimum annual rate of basic pay payable for level V of the Executive Schedule under section 5315 of title 5, United States Code, for each day (including traveltime) during which the member is engaged in the performance of duties vested in the commission.

(4) STAFF.—

(A) IN GENERAL.—The Chairman of the Television Commission may, without regard to the civil service laws and regulations, appoint and terminate an executive director and such other additional personnel as may be necessary to enable the commission to perform its duties. The employment of an executive director shall be subject to confirmation by the commission.

(B) COMPENSATION.—The Chairman of the Television Commission may fix the compensation of the executive director and other personnel without regard to the provisions of chapter 51 and subchapter III of chapter 53 of title 5, United States Code, relating to classification of positions and General Schedule pay rates, except that the rate of pay for the executive director and other personnel may not exceed the rate payable for level V of the Executive Schedule under section 5316 of such title.

(5) CONSULTANTS.—The Television Commission may procure by contract, to the extent funds are available, the temporary or intermittent services of experts or consultants under section 3109 of title 5, United States Code. The commission shall give public notice of any such contract before entering into such contract.

(6) FUNDING.—Funds for the activities of the Television Commission shall be derived from fees imposed upon and collected from television broadcast stations and cable systems by the Federal Communications Commission. The Federal Communications Commission shall determine the amount of such fees in order to ensure that sufficient funds are available to the Television Commission to support the activities of the Television Commission under this subsection.

Mr. LIEBERMAN. Mr. President, at this point, I will yield the floor and look forward to hearing the remainder of the statement of my friend and colleague from North Dakota.

The PRESIDING OFFICER. The Senator from North Dakota is recognized.

Mr. CONRAD. I thank my friend. He has an amendment he is offering in the second degree to refine my amendment. We have worked closely together on the underlying amendment. I appreciate very much the second-degree amendment he is offering to make a further refinement that I think will improve the underlying amendment. I greatly appreciate the hard work the Senator from Connecticut has put forward on this issue.

As I was saying, several years ago, I became deeply involved in this subject. Frankly, I became involved because of an incident involving my wife when she was attacked outside of our home here in Washington, DC.

At that time, I concluded that I ought to do everything I can do to help reduce violence in society. There are many things that contribute to violence in this country—drugs, gangs, and a whole series of issues that relate to people that do not have an economic chance. Also, we have to get tough on crime in this country. We have to insist that those who commit crimes do their time. They have to be punished. They have to know they are going to be punished and that punishment ought to be swift and severe.

In addition to all of those things, I also am persuaded that violence in the media is contributing to violence in our society. That is not just my conclusion, that is the conclusion of the vast majority of people in this country. That is the conclusion of the American Medical Association, who, as I indicated earlier, is one of the charter members of the national coalition I have put together on this question of violence in the media.

Mr. President, what this amendment does is really two things. It provides that television manufacturers will include in new television sets, at a time that they, in consultation with the FCC, determine is the workable time, to require a choice chip in the televisions. Just as we have chips in the television now that provide for closed captioning, we would provide choice chips in new televisions, which would be able to empower parents to exclude programming that comes into their homes, programming that they find objectionable—not any Member of Congress, not the FCC, not anybody else, but what parents find objectionable or something they do not want to come into their homes. These choice chips that are now under development—in some cases, already well-developed—would enable parents to be involved in their children's viewing habits.

As we know, children are watching, in some cases, 27 hours of television a week—27 hours of television a week. And all too often they are seeing things that their parents find objectionable. They are watching things that their parents would like to prevent them from watching.

Mr. President, many of us believe that parents ought to have that right. They ought to be able to determine what comes into their homes. They ought to be able to determine what their kids are watching. They ought to be able to determine what they find objectionable, not any Government censor—what the parents find objectionable.

So this legislation would create that opportunity. I just point to this USA Weekend Poll that was done from June 2 through June 4. These survey results are very interesting. Ninety-six percent are very or somewhat concerned about sex on TV; 97 percent are very or somewhat concerned about violence on television. When it comes to the two issues included in this amendment, overwhelmingly, they say: Let us do it. Let us have a choice chip in the television set at a cost of less than $5 per television set. In fact, we have just been told that when it is in mass production, it may cost as little as 18 cents per television set.

Should V-chips or choice chips be installed in TV sets so parents could easily block violent programming? That was a question in the USA Today poll. The American people responded "yes" 90 percent. Mr. President, 90 percent want to have the opportunity to choose what comes into their homes.

On the second matter that is in this amendment, that is the creation of a rating system so that parents can have some idea before the programming airs what the programming includes, the question was asked: Do you favor a rating system similar to that used for movies? Yes, 83 percent; no, 17 percent.

Overwhelmingly, the American people want choice chips in television, and they want a rating system.

Mr. President, we heard objections from some that the rating system ought not to be something determined in the first instance by Government. The Government should not make this decision. We have heard that complaint. We have heard that criticism. We heard that suggestion.

In the amendment that I am offering, we give the industry, working with all interested parties, parent-teacher groups, school administers, other interested parties, churches, and others, a 1-

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year window of opportunity to make a decision on what that rating system ought to be. We give the industry, working with all interested parties, a chance, a 1-year chance. Let them decide what the rating system should look like.

I might just say, Mr. President, we gave another industry a chance to do that. We gave the recreational software industry a chance to create a rating system. They went out and did it.

Here is the rating system they came up with. On violence, their advisory has a thermometer with a 1, 2, 3, 4 scale. We can tell what is the level of violence in that program. We can tell on nudity/sex in the same way. That is the rating. And the same way with respect to language that is used.

In Canada, the industry, on a voluntary basis, established a rating system. They did it. It is in place. It is working. We should give our industry, working in cooperation and in conjunction with all other interested parties—with the parents, with the church leaders, with all others in the community who are interested—a chance to establish a rating system so that parents and other viewers have a chance to know just what is this program going to be like with respect to violence? What is it going to be like with respect to sexual activity? What is it going to be like with respect to language?

Then let the viewers decide what it is they want to watch. Let the parents decide what the children are going to be exposed to.

Mr. President, I believe this is an important question and an important issue. When I started on this in North Dakota, I called the first meeting, and I was expecting 10 or 15 people to show up. The place was packed. We had every kind of organization represented there in my hometown of Bismarck, ND.

One of the things they decided to do was have a national petition drive, to send to the leaders of the media a request that they tone down the violence that is in the media, that is in television, that is on the movies. Overwhelmingly at that meeting, individual after individual, stood up and said, "You know, I am absolutely persuaded that violence in the media is contributing to violence on our streets."

I remember very well a school principal standing up in that meeting. He had been a school principal for 20 years in North Dakota. He said, "Senator CONRAD, I have seen a dramatic change in what our children write about when we ask them to do an essay." He said, "It is so different now than when I started in schools 20 years ago. Twenty years ago people would write about their experiences on the farm; they would write about their experiences in a summer job; they would talk about going to camp in the summer. Today when you ask them to write an essay, they write about what they have seen on television. All too often, the images are images of violence and brutality." He said, "Senator, this is affecting our children. It is affecting the way they see life."

We, as adults, ought to do something about it. So the question comes before the Senate, what do we do? Do we have censors? Do we set up a censorship system? Not in America. That violates the first amendment. That is not in tune with American values.

What we can do, what we should do, what we must do, is empower parents, give them a chance to intercept this process, give them a chance to decide what their kids are going to be exposed to. We already know the children in this country, by the time they are 12 years old, have witnessed 8,000 murders, have witnessed 100,000 assaults. Everyone knows that has an effect on those children.

Mr. President, we have gone to great lengths to make sure that what we are offering here today is a voluntary system, voluntary in the sense that we give the industry a chance to establish that rating system, voluntary in the sense that the parents are the ones to decide what comes into their homes for viewing by their children.

Again, I ask unanimous consent to have printed for the RECORD a series of letters from organizations supporting this legislation: the National Foundation to Improve Television; the American Academy of Pediatrics, the American Medical Association Alliance, the National Alliance for Nonviolent Programming, the National Coalition on Television Violence, the National Association of Secondary School Principals, Parent Action, the National Association for the Education of Young Children, the National Association of Elementary School Principals, the American Academy of Child and Adolescent Psychiatry. All of these organizations are supporting this amendment.

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

NATIONAL FOUNDATION
TO IMPROVE TELEVISION,
Boston, MA.

STATEMENT OF WILLIAM S. ABBOTT, PRESIDENT OF NATIONAL FOUNDATION TO IMPROVE TELEVISION, IN SUPPORT OF SENATOR CONRAD'S PARENTAL "CHOICE CHIP" AMENDMENT, JUNE 12, 1995

I am the president of the National Foundation to Improve Television—a nonprofit educational foundation with an exclusive focus on remedies to the problem of television violence. We have worked for 25 years to alleviate the impact that television violence has on young people. On behalf of the millions of children and parents who are desperately calling for help to rid their homes of brutalizing images of murder and mayhem, we applaud Senator Conrad's introduction of this amendment.

The introduction of this amendment is an important step in empowering parents with the help they need to protect their children from the scientifically proven harmful effects of television violence. This amendment does not signal that the government is becoming involved in dictating program content. This amendment does not tell the entertainment industry what kinds of stories they can and cannot tell nor does it trample on anyone's First Amendment rights or creative freedoms.

Senator Conrad's amendment requires the installation of a "choice chip" in all television sets. While its critics in the TV industry have labelled it a "blocking chip", it is important to remember that this chip merely identifies a program as containing harmful violence. It is the individual parent who must actually elect to block violent programs from coming into their home. The introduction of this "choice chip"—and the development of an accompanying "violent program ratings system" devised by the television industry—will be a big step forward for two reasons. First, it will give all parents—including those who must work long hours outside the home and, therefore, cannot constantly supervise their children's viewing—the assistance they need to shield their children from harmful programming, in effect a long-overdue right of self-defense. A concerned parent need only activate the "choice chip" and he or she can be certain that the television will no longer assault their children with images of "Dirty Harry", "The Terminator" and the like. Second, it will unquestionably result in many advertisers pulling their advertising budget from programs with glamorized or excessive violence. Few advertisers will spend their precious dollars running commercials on programs which millions of Americans will have elected to tune out of their homes.

The introduction of this new parental choice technology is not revolutionary. It is simply an extension of the current opportunities many parents and viewers have to use their television's cable converter to block out particular cable channels either completely or during a particular time of the day. With this new capability, parents would simply be further empowered to block out all programming which the industry has determined contain harmful depictions of violence. This violence-specific blocking capability, rather than channel-specific capability, is essential when we recognize that in a very short time parents will be confronted with 500 or more channels entering their homes.

The industry's response, in order to stave off this new form of parental empowerment which will cost it advertising dollars if they continue to program glamorized violence, will be that such a system is too rigid, that it will impact programs ranging from "Texas Chainsaw Massacre" to "Roots". This is, of course, not the case. This plan leaves it to the industry to determine which programs would be tagged with the violence signal. We would trust that the industry would exercise its good judgment in attaching such signal. "I Spit on Your Grave" will warrant the signal, which the "Civil War" documentary, for example, will not. The television industry is currently placing violence warnings on particular programs which it judges to contain excessive or otherwise harmful violence, so it is clear that it can exercise this kind of judgment if it so chooses.

It has been reported that this new technology would add as little as $5 to the price of a new television set. Thus, it is empowerment affordable by all. Properly publicized through an ongoing nationwide public service announcement and parental notification campaign, the technology will become increasingly popular over time. Since television has long contended that the "public interest" is simply what interests the public, and that the ultimate responsibility for children's viewing lies with the parents, it should have no quarrel with a mechanism which gives parents the unprecedented opportunity to supervise effectively their children's viewing.

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For the last 30 years, the American public has told the television industry to lead, follow or get out of the way with regard to reducing the level of glamorized and excessive violence on television. To date, they have certainly not led the way toward resolving the problem. They clearly haven't followed either—as they continue to program high levels of violence despite growing public anger with the amount of violence on television. Through their overwhelming support for Senator Conrad's parental empowerment proposal, the American people are effectively telling the television industry "Get out of the way"—we're ready to address their problem ourselves. Give us the tools and, with the industry's cooperation, we'll do the job

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AMERICAN ACADEMY OF PEDIATRICS,
601 THIRTEENTH STREET, NW.,
Washington, DC, June 13, 1995.

HON. KENT CONRAD,
U.S. Senate,
Washington, DC.

DEAR SENATOR CONRAD: On behalf of the American Academy of Pediatrics, whose 49,000 members are dedicated to promoting the health, safety, and well-being of infants, children, adolescents and young adults, I want to commend you for your strong leadership in the area of children's television. Pediatricians have long been concerned about the effects of television on children—from the lack of educational programs, to the high level of violence which we clearly believe has a role in aggression in children, as well as the continual bombardment of advertisements aimed at them. Children are fortunate to have you working so diligently on their behalf.

While we don't believe that television is solely responsible for all the violence in our society, we do believe that violent programs contribute to the violence in our society. In our practices, pediatricians observe firsthand that such programming tends to make children more aggressive and more apt to imitate the actions they view.

Parents should be responsible for monitoring what their children are viewing. However, over the past years a dramatic alteration of the American family portrait has taken place. To assist families in determining appropriate television programming, we strongly support installation of a micro-chip in all new televisions to allow parents to block violent programs. This provision will allow parents some degree of control of the programs their children watch—an important option for today's programming environment.

Thank you again for your staunch advocacy in creating a better television environment for America's children. We look forward to working with you on this important legislation.

Sincerely yours,
GEORGE D. COMERCI, M.D.,
President.

AMERICAN MEDICAL ASSOCIATION
ALLIANCE, INC.,
Chicago, IL, June 12, 1995.

The American Medical Association Alliance, Inc., is pleased to join the AMA and other members of the Citizens' Task Force Against TV Violence in wholeheartedly supporting the parental choice amendment to the Telecommunications Competition and De-regulation Act of 1995 (S. 652).

As a national organization of more than 60,000 physicians' spouses, the AMA Alliance fully supports v-chip technology allowing parents and other adults to block programs they deem objectionable, and arming them with a standard violence rating system by which they can make those choices.

As a member of the Citizens' Task Force Against TV Violence, the AMA Alliance is committed to curbing the effects of violence in the media as one dimension of its nationwide SAVE Program to Stop America's Violence Everywhere.

NATIONAL ALLIANCE FOR NON-VIOLENT PROGRAMMING SUPPORTS CONRAD AMENDMENT

The National Alliance for Non-Violent Programming, a network of national women's organizations comprising more than 2700 chapters and 400,000 women, works at the grassroots to counter the impact of media violence without invasion of First Amendment rights. The Alliance's approach, media literacy education as violence prevention, is collaborative and non-partisan. The Alliance lends strong support to the Parental "Choice Chip" Amendment to the Telecommunications Act S 652 to be introduced by Senator Kent Conrad of North Dakota.

Rapidly developing technologies are ensuring greater and greater access to all forms of electronic media. A non-censorial solution to the widely-acknowledged problem of the influence of television violence, Senator Conrad's amendment would provide parents and caregivers with the information to make responsible decisions about children's television viewing and the technology to block programming they consider objectionable.

The Conrad amendment calls on the FCC to act in conjunction with the networks, cable operators, consumer groups and parents to establish a system to rate the level of violence on television. The process itself is therefore inclusive and educational. As consumers informed about what is coming into their homes then utilize circuitry to block out the programs they consider objectionable, parents and caregivers will be able to exercise responsibility rather than feeling uninformed or powerless to bring about positive change.

NCTV SUPPORTS CONRAD AMENDMENT

WASHINGTON, DC.—The National Coalition on Television Violence [NCTV] strongly supports the Parental "Choice Chip" Amendment to the Telecommunications Act to be introduced by Senator Kent Conrad of North Dakota.

Dr. Robert Gould, psychiatrist and president of NCTV, commented about the amendment: "The technological explosion has made it impossible for parents to keep abreast of the media: music, movies and television."

With this in mind, Senator Conrad has taken the leadership in the question of Children's Television, especially the effect of violence on our young people. He has worked long and hard to seek reasonable solutions to this pressing problem. He has pulled together an impressive task force of national organizations from which he has sought information and input to a problem which lends itself to wild rhetoric but no action. The amendment that he proposes is both effective and in no way impinges on anyone's freedom of speech as protected by the First Amendment.

Senator Conrad's amendment effectively addresses two of the most pressing problems a parent faces, i.e. how to turn off objectional programming, and how to know what to turn off. A rating system established by the FCC in conjunction with the TV networks, cable operators, consumer groups and parents will give parents necessary information to make informed judgments as to what is appropriate for their children. The technological equipment will allow parents, in their homes, to choose what they wish their children to watch. Technology will finally allow parents to "If you don't like it, turn it off," as has been smugly suggested by the industry for years. The Parental "Choice Chip" will make this a real possibility.

In supporting this amendment, NCTV draws on years of experience monitoring television violence. While there has been, of late, recognition of the influences of television violence, there is still a serious attempt by the broadcast industry to exempt cartoon violence from the discussion. As a last line of defense, the happy violence of cartoons is still deemed by the broadcast industry as not affecting our children Now, with the passage of this amendment, we do not have to wait for the broadcast industry to clean up their act in regard to cartoons. Parents who understand and see the effects of cartoon violence will be able to simply block out the offending programs.

Dr. Gould further states, "The rating system is a means of informing parents about what is coming into their homes and the Parental "Choice Chip" empowers them to fulfill their proper role as parents."

THE NATIONAL ASSOCIATION OF
SECONDARY SCHOOL PRINCIPALS,
Reston, VA, June 12, 1995.

HON. KENT CONRAD,
U.S. Senate,
Washington, DC.

DEAR SENATOR CONRAD: The National Association of Secondary School Principals (NASSP) and its 42,000 members strongly supports your parental "choice chip" amendment to S. 652, the Telecommunications Competition and Deregulation Act of 1995. Your amendment would greatly enhance the national movement to monitor and ultimately decrease violence in television by:

Enabling parents to program their television sets to block out objectional or violent television shows; and

Calling on the Federal Communications Commission (FCC) to work with television networks, cable operators, consumer groups, parents, and others to establish a system to rate the level of violence.

Our nation is experiencing an unrivaled period of juvenile violent crime perpetrated by youths from all races, social classes, and lifestyles. Without question, the entertainment industry plays a role in fostering this anti-social behavior by promoting instant gratification, glorifying casual sex, and encouraging the use of profanity, nudity, violence, killing, and racial and sexual stereotyping.

NASSP urges Congress to support the parental "choice chip" amendment, and commends you, Senator Conrad, for your efforts to protect our children and youth from unnecessary exposure to violence in television and the media.

Sincerely,
DR. TIMOTHY J. DYER,
Executive Director.

PARENT ACTION,
Baltimore, MD, June 12, 1995.

HON. KENT CONRAD,
U.S. Senator,
Washington, DC.

DEAR SENATOR CONRAD: Parent Action of Maryland, a statewide grassroots organization dedicated to helping parents raise families, endorses your Parental Choice and Television amendment to the Telecommunications Act (S. 652).

Our children are bombarded with negative and violent images giving them a disturbing view of the world in which we live. By the time a child leaves school, he or she will have witnessed more than 8,000 murders and 100,000 acts of violence on television. This unceasing and relentless barrage of violence serves only to inure our children to the results of violence, hinder their ability to

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learn and teach them that conflicts can be solved by violence.

Parents, concerned about the effects of television violence on their children, are looking for ways in which they can make good programming choices for their children. Your amendment makes important strides in that direction.

A rating system would provide parents with the information they need to make informed choices of whether a program is appropriate for their children. Installation of a "Choice Chip" in television sets then would allow parents block out the programming they find objectionable. The beauty of your amendment is that it protects the First Amendment and gives parents real power at the same time.

If we truly believe that our children are America's most valuable resource, then we must begin valuing them. We must treasure and respect their minds and development—not assault them with gratuitous violent images.

Sincerely,

K.C. BURTON,
Executive Director.

NATIONAL ASSOCIATION OF ELEMENTARY SCHOOL PRINCIPALS,
Alexandria, VA, June 12, 1995.

Hon. KENT CONRAD,
U.S. Senate,
Washington, DC

DEAR SENATOR CONRAD: The National Association of Elementary School Principals, representing 26,000 elementary and middle school principals nationwide and overseas, is pleased to endorse your Parental Choice Amendment to the Senate telecommunications bill, S. 652.

NAESP supports the effort to create a procedure for establishing a ratings system that involves input from interested parties in the public and private sectors. The violence rating code will help parents to gauge the content of individual television programs and thus make informed decisions about which shows they allow their children to see.

The requirement that a "choice chip" be installed in most new televisions is also an excellent idea. This device will enable parents to have more control over their impressionable children's viewing habits when the parents are unable to monitor television watching directly.

Thank you for your ongoing efforts on this important matter.

Sincerely,

SALLY N. MCCONNELL,
Director of Government Relations.

NAEYC SUPPORTS CONRAD AMENDMENT TO PROMOTE PARENTAL CHOICE IN CHILDREN'S TELEVISION VIEWING

The National Association of Young Children [NAEYC] strongly supports Senator Kent Conrad's amendment to the telecommunications bill to reduce children's exposure to media violence. The amendment would require television sets to be equipped with technology (V-chip) that allows parents to block objectionable programming and establish a violence rating code. These steps are valuable tools that provide parents greater power in controlling the nature of television programs to which their children are exposed.

The negative impact of media violence on children's development and aggressive behavior is clear. Research consistently identifies three problems associated with repeated viewing of television violence:

1. Children are more likely to behave in aggressive or harmful ways towards others.

2. Children may become less sensitive to the pain and suffering of others.

3. Children may become more fearful of the world around them.

In addition, more subtle effects of overexposure to television violence can be seen. Repeated viewing of media violence reinforces antisocial behavior and limits children's imaginations. Violent programming typically presents limited models of language development that narrow the range and originality of children's verbal expression at a time when the development of language is critically important.

Of all of the sources and manifestations of violence in children's lives, media violence is perhaps the most easily corrected. NAEYC believes that the Conrad amendment is an important step—long overdue—to reduce children's exposure to media violence, and it does so by empowering parents. We strongly urge passage of this amendment.

AMERICAN ACADEMY OF CHILD AND ADOLESCENT PSYCHIATRY,
Washington, DC, June 12, 1995.

Senator KENT CONRAD,
U.S. Senate,
Washington, DC.

DEAR SENATOR CONRAD: The American Academy of Child and Adolescent Psychiatry is pleased to endorse your telecommunications bill amendment providing for new television sets being required to contain a v-chip that would permit parents to block television programming that includes programming not suitable to their family. The harmful effects of media violence on children and adolescents have been established, and this amendment will empower parents, whether they are at home or not, to monitor and control access to programs. This is one amendment among many, but it is an important commitment by legislators to parents and to child advocates.

WILLIAM H. AYRES, M.D.,
President.

Mr. CONRAD. Mr. President, I would like to add Senator MIKULSKI as a cosponsor of the amendment.

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

Mr. CONRAD. We will be happy to debate this issue and answer questions.

I want to summarize and say this amendment does two things: It provides for the parental choice chips to be in all new televisions, after the FCC and the industry consult on when is the appropriate time for that requirement to go into effect.

Second, we provide for the establishment of a rating system so that parents and other consumers have a chance to know what the programming contains before they watch it. Again, we do that on the basis of allowing the industry, in consultation with all other interested parties, to establish that rating system within 1 year. If they fail to do it within 1 year, we would ask the FCC to become involved in that process. We see no reason that the industry in 1 year could not arrive, on a voluntary basis, at an appropriate rating system.

Mr. President, I thank my colleagues, Senator MIKULSKI and Senator LIEBERMAN, who have worked with me on this issue.

Senator LIEBERMAN now would like to discuss his second-degree amendment.

Mr. LIEBERMAN. Mr. President. I thank the Chair.

Again, I want to thank my friend and colleague from North Dakota, Senator CONRAD, for his leadership on this matter and to tell him how pleased I am to join with him in this effort.

This is a complicated problem, to which there is not a clear, perfect solution. What we know is that the values of our society, of our children, are being threatened, and that the entertainment media too often have sent messages to our kids that are different than what we as parents are trying to send.

I think Senator CONRAD has taken a real leadership role here and stepped out, stepped forward, with a response that will force this Senate, I hope the television industry, and indeed the country, to face the reality of what we and our kids are watching over television and what we can do about it.

Mr. President, the growing public debate over the entertainment industry's contribution to the degradation of our culture could not have come at a more fortuitous time for the Senate Calendar. We are in the process here of considering the most comprehensive rewrite of the Nation's telecommunications law in 60 years. We are making some pivotal decisions about the future of a most powerful force in American culture. That is television.

Up to this point in the floor debate, we have heard mostly about the wonders of the new technology that will be at our disposal, who will control it, and how much it will cost. What has not been heard that much in all the talk about the wiring, however, is discussion of what exactly those wires are going to carry into our homes. Few questions have been asked about the substance of the programs that will be shown over the proverbial 500 channels we expect once the road map of American telecommunications has been digitized. Even fewer questions have been asked about the quality of programs, of products, to which we will be exposing our children.

Now, in many ways, that is understandable. We, as elected officials, are traditionally and understandably reluctant to set limits of any kind on broadcasters, out of deference to their first amendment freedoms we all are committed to.

That is as it should be. Legislators should make laws, not programming decisions. But we also must remember that we are leaders as well as lawmakers, and we must lead in dealing with America's problems. That is why, again, I commend my colleague, Senator CONRAD, for forcing this body to consider and weigh carefully the ramifications of this legislation for America's families and for our moral health.

Why is this so important now? Because at the very moment that new technologies are exploding through the roof, the standards of television programmers are heading for the floor dropping with the velocity of a safe dropped off a cliff in a vintage Road Runner cartoon. Except, instead of

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Wile E. Coyote, it is the values and sensibilities of our children that are put in peril.

More and more these days, the television aimed at our sons and daughters either numbs their minds or thumbs its nose at the values most parents are trying to instill in them. Turn on the TV at night, and it's hard to avoid the gratuitous sex and violence that has become the bread and butter of prime time television. The Wall Street Journal recently carried a report detailing how even the 8 p.m. timeslot, once the last bastion of family-oriented shows, has become a hotbed of sex and other spicy fare. That is all the more disturbing when you realize that 35 percent of all American children ages 2 to 11 are watching during that hour.

If you tune in after school, you have your pick of the parade of talk shows edging ever closer toward pornography, often dwelling on abnormality, perversion. On Saturday morning, you will be treated to a litany of glossy toy commercials masquerading as real programming. The industry's regard for children and families has grown so low that one network, it happened to be ABC, recently announced that it was adding a cartoon version of the movie "Dumb and Dumber" to its Saturday morning lineup. Television has now officially, with this act, crossed the threshold from covertly encouraging thoughtless behavior to openly celebrating it.

Given the direction television is heading, and given the overwhelming evidence showing that TV's affinity for violence is a real threat to the development of our children, I think we, as Members of the U.S. Senate, should be seriously concerned with where these new technologies will take us. Do we, as a nation, really want to invest billions into building an information superhighway only to turn it into a cybernetic garbage disposal? Are we making progress if we offer consumers 500 different talk shows rather than just a few dozen? Do we not owe our children and our country more than that?

These are questions we, as a society, must address as we try to make sense of the ongoing information revolution, and as we try to deal with the decline in values in our country and our culture. Technology is not a good in itself, but a tool. The information superhighway could potentially help speed the recovery of America's public education system. It could help elevate our culture and our values. But it also could help accelerate the moral breakdown of our society, and that is something I believe we need to talk about openly as we go about reforming of our telecommunications laws.

I recognize that the issue of content, especially as it relates to television, is a difficult one. In this case, we are faced with contradictory goals—protecting the right of the media to speak freely and independently, and allowing the community to influence them when they go too far. In the past, we have erred on the side of free speech, which is a testament to our commitment to the first amendment.

But in a great constitutional irony, our determination to avoid any hint of censorship has been so great that we have effectively chilled the discussion about how we might properly, hopefully working with the television industry, improve the quality of television programming. That neglect has come at a heavy cost to society, for we have opened the door to an anything-goes mentality that is contributing significantly to the crisis of values this country is experiencing.

There is no better—or worse, shall I say—example of this mentality than the proliferating legion of sensationalistic talk shows. They are on the air constantly—by my staff's count there were 23 separate hour-long offering on Washington-area stations in one 9-hour period.

You can see this for yourself, Mr. President, on this chart, with the boxes colored in with the yellow or orange, however it looks from your vantage point, being hour-long talk shows. For the most part, if you turn your TV on to these shows you are not going to find wholesome family fare that you would like your kids to watch.

I should point out, in an expression of appreciation of my staff, that "Regis & Kathie" Lee are not colored in on this chart. Many of these programs air in the afternoon, when many children are home alone because their parents at work, or home with their parents but they parents may be doing something else.

But it is the quality—or lack thereof—that is more disturbing than the quantity. Many of these programs are simply debasing. Their growth has turned daytime television into a waste site of abnormality and amorality, as Ellen Goodman so aptly put it, which is on the its way toward stamping out any last semblance of standards, and shame when those standards are broken, in this country.

The greatest indictment of these shows, as well as the gamut of programming aimed directly or indirectly at children, comes from kids themselves. A recent poll conducted by the California-based advocacy group Children Now showed that a majority of youths between 10 and 16 said that television encourages them to lie, to be disrespectful to their parents, to engage in aggressive and violent behavior, and, perhaps most disturbing of all, to become sexually active too soon.

I am the father of a 7-year-old daughter. When I hear about these programs or see them, I can only wonder if those responsible for this junk appearing on television are parents themselves. Would they allow their children to watch the garbage that they are putting on display?

Mr. President, I have watched my daughter come home and watch one of the cable networks which has a lot of children's material in it. And suddenly you turn in the afternoon to adolescent fare, which may be OK for adolescents, but certainly is not for a 7-year-old. The same is true of some of the evening programming, whose content, even in early evening hours, is inappropriate for children.

I wonder the same thing about those responsible for deciding to target a version of "Dumb and Dumber" to young children. Especially the studio spokesperson who described the upcoming series by saying, "It's going to so dumb it's smart. Or so smart it's dumb. I don't know which"

The case of "Dumb and Dumber" is particularly distressing, because on the same day that ABC announced that it was adding "Dumb and Dumber" to its lineup, the network said it was canceling one of its few quality educational programs for kids. That move would be alarming in its own right. By all accounts the program ABC was abandoning—a science-oriented show called "Cro" that is produced by the same highly regarded group that gave us "Sesame Street"—was an inventive and thought-provoking series.

Like too many of the choices made in our entertainment industry these days, this one mocks the efforts of mothers and fathers who are struggling to create a healthy environment for their children to learn and grow. There is a place for fun, for laughter, for cartoons. But at the same time, there has to be a place about respecting values, intelligence, and good family fare.

Sadly, ABC's decision is typical of the priorities set by America's big four broadcast networks, and those carried out by their local affiliates. According to a congressional hearing held last June, ABC, NBC, CBS, and Fox combined to show a total of 8 hours of educational programming a week in 1993, whereas in 1980, 11 hours was the average for just one network. If that is not distressing enough, a study conducted by the Center for Media Education showed that the clear majority of children's educational shows are broadcast when kids were usually asleep. That raises real doubts about the commitment of the networks and the affiliates to these programs.

The ritual defense and industry uses to justify their growing irresponsibility is that they are providing what the market demands. In some ways it is a persuasive argument in this country, and in most cases I am willing to abide by the market and let it be. But when it is used to shield behavior that potentially puts America's children at risk, I think we have to figure out a reasonable way to set up some warning signs so parents can protect their own children. As Washington Post TV critic Tom Shales said, "Just because people are willing to come is no defense. There's an audience for bloody traffic accidents too."

Our colleague Senator BRADLEY spoke forcefully about this issue in an excellent speech he delivered earlier this year at the National Press Club.

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Yes, we must remain committed to upholding freedom, Senator BRADLEY said, but we must also guard against the corrosive effect of the liberties we afford the markets, especially the entertainment industry. "The answer is not censorship," he said, "but more citizenship."

The Senate majority leader spoke out just within the last week or 10 days on this subject forcefully, and I think appropriately. The Senator from Illinois [Mr. SIMON] has been a long-time critic of television programming, and has appealed to those involved to give better fare to our kids. What Senator BRADLEY and Senator DOLE said about this not being about censorship but citizenship is absolutely right. That is what H.L. Mencken was talking about when he said long ago that the cure to whatever ails democracy is more democracy. Parents must exercise their primary responsibility and hold television programmers accountable and remind them that profits accrued at the expense of our children are really fool's gold. That means speaking out—loudly—and acting as informed consumers. The networks and their local affiliates, the programmers and the syndicators need our help in hearing the call that we expect more in the way of citizenship. And advertisers should recognize their responsibility to the larger civil society that allows us all to exist and grow in this great democracy of ours.

But the question remains, though, what should the proper response of Congress and the law be? I have come to the conclusion myself that talk or jawboning is not enough. Talk is not only cheap, as the proliferation of talk shows has demonstrated. It also is apparently not sufficiently effective in changing the programming climate. Without adequate relief in sight, I believe we have an obligation to provide parents with the help they need to reduce their children's exposure to programs that the parents find offensive and harmful. And that is what Senator CONRAD's amendment puts at issue, confronts, and that is why I am pleased to be supporting his efforts to make the expanding communications technology family friendly and to empower parents to control the programs that enter their own homes. Rather than placing any restraints on content and encroaching on any first amendment freedoms, the Conrad amendment would simply give parents the ability to block programming they do not want their children to see.

This technology is readily available, and its addition as a standard feature in televisions sold today would come at a very small cost, by one estimate less than 5 additional dollars per television set. That is a small price to pay for gaining control over influences that a lot of American families do not want to commit to their home.

For this technology to work, network programming must come with some form of ratings. With his amendment, Senator CONRAD is calling on the television industry to do nothing more than the movie makers and the video game manufacturers have done, and that is to establish a voluntary rating system to evaluate programming for objectionable content.

This amendment, which I am pleased to support, will give the industry a year to develop such a system on their own. If the broadcasters and cable networks for some reason do not respond to this call, then under the proposal of the Senator from North Dakota the FCC would be required to promulgate ratings that would trigger the use of the blocking technology called for in the proposal.

While I share Senator CONRAD's commitment to ratings, I also recognize that some people have first amendment concerns regarding the FCC's direct involvement in developing ratings, and that those concerns may prevent them from supporting this amendment even though they may strongly support its goals.

So with that in mind, I have proposed the second-degree amendment that would limit the Government's role, the FCC's role, should the industry refuse to comply to the invitation to self-restraint that is at the heart of this amendment. Instead of the FCC stepping in, if the television industry fails to develop a voluntary set of standards after 1 year, this amendment would bring about the creation of an independent board, a joint independent ratings board, comprised of representatives of the public and representatives of the television industry to create the ratings necessary under the amendment.

The panel would be a mechanism of last resort, if you will, because I think Senator CONRAD and I both want to work cooperatively with the television industry to see that a truly voluntary system is put in place. That is the best way for this to happen. But if it does not happen, then this second-degree amendment will ensure that the ratings system that emerges will be born from a true public-private partnership, and will be the product of a broad-minded consensus. Based on my recent experience with the video game industry, I am optimistic that we can reach a constructive solution that would avoid any Government intervention.

As some of my colleagues may recall—and Senator CONRAD made reference to it—a little more than a year and a half ago, Senator KOHL and I held a series of hearings to call attention to the increasingly graphic violent, sometimes sexually abusive, nature of video games played by our kids. From the outset we appealed to the producers' sense of responsibility to give parents information necessary to make the right choice for their children. As an incentive, we gave them a choice between rating the games themselves or having an independent board do it.

To the credit of the video game makers, and the producers of recreational software that will enable games to be played on personal computers, the industry itself developed a voluntary system that actually was in place less than a year after Senator KOHL and I held our first hearing. Now I am pleased to say that almost 600 video game titles have been rated. By this year's Christmas shopping season, we hope and believe, based on conversations with the industry itself, that almost all of the video games in the stores will be rated, and, therefore, parents will know the content of the games that they are buying for their children.

Mr. President, finally, it is my hope that the television industry will respond similarly to this initiative by the Senator from North Dakota, by Senator MIKULSKI from Maryland, and by myself, and accept that it has not only obligations but opportunities as a very important member of the greater American community. I can assure the folks in the television and broadcast industry that we stand ready to work with them in a cooperative fashion to do what is best for America's families. Yes, but also ultimately what is best for the American television industry without infringing on any of the freedoms all of us rightly cherish and protect. This is not about censorship. It is about choices. We do not want to take away a network's choice to air offensive material if that is their choice. We just want to make sure that parents and citizens have the choice to prevent their kids or their families or, indeed, themselves from watching that material.

Mr. President, I thank the Chair. I yield the floor.

Mr. CONRAD addressed the Chair.

The PRESIDING OFFICER. The Senator from North Dakota.

Mr. CONRAD. Mr. President, I would like to just put into the RECORD a number of statements from prominent Americans involved in important national organizations who have been a part of supporting this legislation.

First, I would like to quote from Dr. Robert McAfee, the national president of the American Medical Association, who said with respect to the larger legislation from which this amendment is drawn, and I quote. This is Dr. McAfee speaking:

> It is estimated that by the time children leave elementary school, they have viewed 8,000 killings and more than 100,000 other violent acts. Children learn behavior by example. They have an instinctive desire to imitate actions they observe, without always possessing the intellect or maturity to determine if the actions are appropriate. This principle certainly applies to TV violence. Children's exposure to violence in the mass media can have lifelong consequences.
>
> We must take strong action now to curb TV violence if we are to have any chance of halting the violent behavior our children learn through watching television. If we fail to do so, it is a virtual certainly the situation will continue to worsen * * *.

That from the head of the American Medical Association.

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Samuel Sava, executive director of the National Association of Elementary School Principals, said, and I quote:

The effect of television on children is of great concern to school principals. The family room television is more a persuasive and pervasive educator than all the teachers in America's classrooms. There's no question that the overdose of media violence American children receive is linked to their increasingly violent behavior. But more troubling for parents and educators is the fact that the violence children see, hear, and are entertained by makes them insensitive to real violence.

From Timothy Dyer, executive director of the National Association of Secondary School Principals, said, and I quote:

Our nation is experiencing an unrivaled period of juvenile violent crime perpetrated by youths from all races, social classes, and lifestyles. Without question, the entertainment industry plays a role in fostering this anti-social behavior by promoting instant gratification, glorifying casual sex, and encouraging the use of profanity, nudity, violence, killing, and racial and sexual sterotyping.

Mr. President, that is really at the heart of the amendment we are offering today. This amendment says parents—parents—ought to be able to choose what comes into their homes. Parents ought to be empowered to help decide what their children view. Parents ought to have a role in making these choices.

We can help parents have that choice by putting choice chips in the new television sets. The technology is available. It is very low cost. Let us give the parents of America what they say they want.

Again, I go back to this USA Today poll that was just published: Should these kinds of choice chips be installed in TV sets so parents could block violent programming? Yes, 90 percent. Ninety percent of the American people say we ought to do this.

We have done it in the least intrusive way imaginable. We have done it by saying, look, industry, get together with FCC. We are not going to tell you when to do it. We leave it up to your judgment. You work together, FCC and the industry. You get together on when you are technologically ready to have these available in the television sets.

And on a rating system, in the same way we have said, industry, you have a year to work with all interested parties to come up with a rating system that makes sense for the American people. And only if you fail to act does anything else happen. We give you a year to go forward in good faith and get this job done.

We think they will do it. Look at the answer to the question: Do you favor a rating system similar to that used for movies? Eighty three percent in the USA Today poll say, yes, we want a rating system—83 percent. And 90 percent said they wanted the new choice chip in their new television sets.

That is what this amendment offers. It does it in a way that is fully constitutional. It does it in a way that is the least intrusive as possible, and yet it responds to the real wants of the American public, to have parents be able to choose what comes into their homes, to have parents be able to decide what their children want.

Mr. President, I hope that my colleagues would respond favorably to this amendment. I would be happy to answer questions or engage in further debate.

Mr. PRESSLER. Mr. President, we are studying this amendment. We have just seen the Conrad amendment in the second degree to the Lieberman amendment for the first time. In the Commerce Committee, there have been many bills introduced on this subject, including one by the distinguished former chairman, Senator HOLLINGS.

It was the intention and is the hope that we could hold full committee hearings, in fairness to all those Senators. There are so many Senators who have introduced bills on this subject. And when we finish this telecommunications bill, we are in hopes of turning to hearings for a number of reasons to give those Senators who have introduced a bill and been waiting a chance to have their bills considered but also to allow industry and consumer groups to give an analysis of this.

We have just seen this amendment in the second degree to the Lieberman amendment, and I know there is great passion at the moment about this subject throughout our land. I feel very strongly about this subject matter, and we are struggling with trying to find a fair way to deal with this amendment, which Senators have just seen, and dealing with Senator Hollings' bill which was introduced earlier. He had already asked for hearings, and also several other Senators. Also, in fairness to industry groups and parents and children, it would seem that testimony at full committee hearings would be a good first step.

Mr. President, I would like to yield to anyone else who has comments at this time.

Mr. CONRAD addressed the Chair.

The PRESIDING OFFICER (Mr. GREGG). The Senator from North Dakota.

Mr. CONRAD. I thank the Chair.

We have had hearings for years around here on this subject. Everybody wants to have more hearings. Frankly, the American people want us to act. They want us to work together to achieve something. We have had all the hearings we need on this question.

I introduced a bill that contained these provisions on February 2 of this year. So it is not the first time anybody has seen this. This has been in this body since February 2.

I just say that these are the national organizations that say vote for this now, no more delay, no more talk. Let us do something. Let us do something that makes sense. Let us do something that is constitutional. Let us do something that empowers parents. Let us do something that gives a rating system that the industry, on a voluntary basis, is able to create along with all interested parties. We give them a year to get this job done on their own.

Let me just read into the RECORD the national organizations that support this amendment: the National Association for the Education of Young Children, Future Wave, the American Medical Association, the American Medical Association Alliance, the National Association of Elementary School Principals, the American Psychiatric Association, the National PTA, Parent Action, the National Foundation To Approve Television, the National Association of Secondary School Principals, the American Academy of Child and Adolescent Psychiatry, the National Coalition on Television Violence, the American Academy of Pediatrics, the National Association for Family and Community Education, the Alliance Against Violence in Entertainment for Children, the American Nurses Association, the National Council for Children's TV and Media, the National Alliance for Nonviolent Programming, the National Association of School Psychologists, the Orthodox Union, the National Education Association, and the United Church of Christ.

Now, in the broader coalition we also have the sheriffs, police chiefs, and many others.

These organizations have all studied this issue and studied it and studied it and participated in hearing after hearing after hearing. They say now is the time to act. They are not alone. Ninety percent of the American people say, let us have these choice chips in our television sets; 83 percent of them say that they favor a rating system. We have tried to do this in the least intrusive way possible. We have done it by saying, with respect to choice chips, we will not say by when it should be done. We leave it up to the industry in conjunction with the FCC to determine the time at which it is practical to have this requirement go into effect. We leave it up to the experts: When is the time to have it go into effect?

With respect to the question of a rating system, we give the industry a year to work in conjunction with all interested parties on a voluntary basis to determine a rating system. They have done it in Canada. As I indicated earlier, the software industry, we gave them the same chance and they responded. They did a good job. So we are saying we believe this industry can do the same thing.

I wish to applaud the television manufacturers. They have gone a long way toward developing this technology. But clearly, if it is going to be widely disseminated in this country, it is going to require us to do a little something, just do a little something. The American people want us to act.

I thank the Chair.

Mr. HOLLINGS addressed the Chair.

The PRESIDING OFFICER. The Senator from South Carolina.

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Mr. HOLLINGS. Mr. President, I feel like Frank Clement at the 1956 convention. How long, O, America, how long will we continue to debate and not act? I share the same frustration that the distinguished Senators from Connecticut and North Dakota share on this particular score.

Over 2 years ago, getting right to one of the main points about the least intrusive manner—and the Senator from North Dakota is right on target there relative to constitutionality because he has read the cases, and we have all studied them, and that is what you have to do in order to qualify constitutionally in this particular measure—the least intrusive measure is with respect to children.

Yes, the courts have held you could not regulate violence with respect to the distinguished Presiding Officer and this particular Senator as adults. It is unconstitutional to try to even attempt it. So we found that you could do it with children. So having found that it could be done with children, then the least intrusive measure is not as suggested in this particular amendment, plus its perfection by the Senator from Connecticut; the least intrusive is limited to that period of time during the day when children are a substantial or majority portion of the viewing audience. That does not get them all. I feel, as the Senator sponsoring this measure, that I would like to get it all. I would like to get it all the time, but constitutionally I cannot. I think there is too much violence for all of us.

But constitutionally, not being able to, that would be one particular defect, as I see it, in the approach that has been brought out in hearings heretofore, and hearings heretofore incidentally back in 1993 that we had the present Attorney General study S. 470, which is now before our committee, a bill by Senator INOUYE, myself, and others. And Attorney General Reno attested to the fact that she thought it would definitely pass constitutional muster.

There is another feature with respect to this—and I am not just nit-picking because, if they call the amendment and we vote it, I would still vote for the amendment, I say to the Senator. Do not worry about that.

But what happens is you have a fee in here, also. When we had a fee 2 years ago, Senator Bentsen—no, this was 4 years ago, because 2 years ago he was the Secretary of Treasury—but 4 years ago when we had a similar hearing, he said, "Wait a minute, the fee belongs in the Finance Committee," and someone later on would raise that point. I would still vote for it.

There are these kinds of misgivings. I remember the distinguished chairman of the Communications Subcommittee on the House side—the distinguished Presiding Officer would know and be familiar with the honorable Congressman ED MARKEY, of Massachusetts. He had what he called then the V-chip. They are calling this the choice chip. He ran into these similar problems. But it is not my argument.

So we have had problems. Like I said, how long, America, are we going to consider and do nothing because there is a problem for every solution?

I would prefer—it would be up to the sponsors of the bill; I am confident our distinguished chairman would prefer—to take these perfecting amendments, with a matter of a fee there, and otherwise, to have a hearing on this and guarantee we will bring out a bill of some kind that we think is constitutional.

I do not want them to think it is a putoff. I do know there is an inherent danger here that I immediately feel, having been in this particular discipline now for a long time. I started off last week in the opening statement I made that evening—I think it was last Wednesday evening—that any particular entity or discipline in communications has the power to block the bill.

I can see the broadcasters, when they see fees, running around trying to block this bill. That, again, is not necessarily a valid argument against the amendments of the Senators from North Dakota and Connecticut. But there are these inherent dangers that immediately arise. I can think of several others.

I have the opportunity to distinguish what we have pending before the committee. I implore the authors to go along with it, but if they want to vote, I am convinced the majority leader is ready to vote for them. Is it the desire of these Senators, irregardless, as my Congressman Rivers used to say down home, irregardless, you are going to want to vote one way or the other, period, because I do not know whether it is our duty to argue further, I say to the chairman.

I yield the floor.

Mr. CONRAD. Mr. President, I say to the distinguished managers of the bill, Senator HOLLINGS and Senator PRESSLER, that we do intend to get a vote on this matter. We have many national organizations that have waited years to have Congress speak on this question. We have gone through draft after draft after draft to address the legitimate concerns of people to make this as reasonable and unintrusive as possible.

I just say to the Senator from South Carolina, there is no fee in the underlying Conrad amendment. None. There is no fee here. The second-degree amendment has a fee. But the Conrad amendment has no fee; none, zero.

As I say, we have done this in the least intrusive way possible. We are trying to respond to what is the legitimate concern voiced by the Senator from South Carolina. I might say, the Senator from South Carolina [Senator HOLLINGS] has been a great leader on this issue. He has been someone who is concerned and has repeatedly raised the issue of violence in the media. He has said we ought to do something about it, and he has been willing to do that.

The American people want something done, and the least intrusive way to do it is to have choice chips on the televisions. American people overwhelmingly want it. It costs less than $5 a television set, and industry representatives just told us this morning that when it is in mass production, they believe some of these chips will cost as little as 18 cents—18 cents—a television set, to provide parents the right to choose what their kids see.

In addition, we create a rating system so that parents have some idea of what the programming will contain before they see it. Eighty-three percent of the American people say they want such a rating system. Again, we have done it in the least intrusive way possible. We do not let the Government decide it. We say, "Industry, you meet with all industry parties, meet with the parents and teachers, meet with the school principals, meet with all the people who are concerned about this issue, meet with the church leaders and, on a voluntary basis, come up with a rating system and you have a year to do that without any Government interference or action."

Again, I say to the chairman, who has the difficult challenge of managing this bill, we would like a vote. I, at this point, ask for the yeas and nays on the amendment.

The PRESIDING OFFICER. Is there a sufficient second?

Mr. PRESSLER. I would like to reserve the right to table.

The PRESIDING OFFICER. There is not a sufficient second.

Is there a sufficient second? The Chair did not hear the Senator from South Dakota. The Chair is asking if there is a sufficient second.

There is a sufficient second.

The yeas and nays were ordered.

Mr. PRESSLER. Let me make a request here. I see the Senator from Vermont here. If we can lay this aside—the problem we have is the memorial service for Les Aspin. Some Members want to speak, particularly the Senator from Illinois has requested a chance to speak on this amendment before we made any decision about it. So we already made one decision about it. I am wondering if the Senator from Vermont could offer his amendment, if he will allow us to do that. We have been working under the tortuous process of having all these conflicts.

Mr. LEAHY. I had discussed with the distinguished Senator from South Carolina the possibility of going with one of my major amendments. I understand we have some votes at 4 o'clock, or something to that effect. Mr. President, I advise my colleagues and friends that I would be perfectly willing to go forward with the so-called interLATA amendment, if that would be helpful, right after the vote. I have to speak with some of the other cosponsors, but I would be happy to enter

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into a relatively short time agreement and an agreed-upon time to vote on it.

As my colleagues know, I rarely bring up anything that is going to take very long. I do not want to hold up people, and I have another amendment. So I would be very happy, once I bring it up, to enter into a relatively short time agreement with a time certain for a vote.

Mr. PRESSLER. I am trying to help Senator SIMON.

Mr. LEAHY. I will do it right after the 4 o'clock vote.

Mr. PRESSLER. I do not think Senator SIMON is going to be able to speak until 4:15, when the bus gets back from the Les Aspin service. If my friends agree, I ask unanimous-consent that this amendment be laid aside until Senator SIMON can speak and we go to the Bumpers amendment.

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

The PRESIDING OFFICER. The Senator from North Dakota.

Mr. CONRAD. I say to the chairman and the ranking member, I will not object, but I just want to say that I ask for the opportunity to answer Senator SIMON if he makes a statement in opposition to the amendment.

Mr. PRESSLER. I am just trying to accommodate that side of the aisle. I do not know if he is for the amendment or against the amendment.

Mr. CONRAD. I do not either. I do not need a unanimous-consent agreement or anything of the kind. I just ask the chairman for his acknowledgment that we will have a chance to debate it.

Mr. PRESSLER. Yes, yes; absolutely. You shall always have a chance to speak on anything you want as far as I am concerned.

Mr. CONRAD. We will be happy to lay it aside.

Mr. LIEBERMAN addressed the Chair.

The PRESIDING OFFICER. The Senator is reserving the right to object.

Mr. LIEBERMAN. Reserving the right to object, and I will not object, I just want to take this moment to respond to the remarks of the Senator from South Dakota, to thank him for his support of the concept, to acknowledge that he has been on the frontier of this one and has been a pioneer for quite a while, and also to say, in the interim, while this amendment is being laid aside, I am going to pursue the suggestion that he made to modify the amendment to remove the fee provision from my second-degree amendment. It was put in there to make this ratings board self-financing. If the distinguished ranking member thinks that may complicate the future of the proposal, I will be happy to modify it. So I will not object.

The PRESIDING OFFICER. Without objection, the unanimous consent request of the Senator from South Dakota is agreed to.

AMENDMENT NO. 1348

(Purpose: To protect consumers of electric utility holding companies engaged in the provision of telecommunications services, and for other purposes)

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

The PRESIDING OFFICER. The clerk will report.

The bill clerk read as follows:

The Senator from Arkansas [Mr. BUMPERS], for himself and Mr. DASCHLE, proposes an amendment numbered 1348.

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

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

The amendment is as follows:

On page 76, after line 10, insert the following new subsection: "AUTHORITY TO DISALLOW RECOVERY OF CERTAIN COSTS.—Section 318 of the Federal Power Act (16 U.S.C. 825q) is amended—

(A) by inserting "(a)" after "Sec. 318."; and

(B) by adding at the end of thereof the following:

"(b)(1) The Commission shall have the authority to disallow recovery in jurisdictional rates of any costs incurred by a public utility pursuant to a transaction that has been authorized under section 13(b) of the Public Utility Holding Company Act of 1935, including costs allocated to such public utility in accordance with paragraph (d), if the Commission determines that the recovery of such costs is unjust, unreasonable, or unduly preferential or discriminatory under sections 205 or 206 of this Act.

"(2) Nothing in the Public Utility Holding Company Act of 1935, or any actions taken thereunder, shall prevent a State Commission from exercising its jurisdiction to the extent otherwise authorized under applicable law with respect to the recovery by a public utility in its retail rates of costs incurred by such public utility pursuant to a transaction authorized by the Securities and Exchange Commission under section 13(b) between an associate company and such public utility, including costs allocated to such public utility in accordance with paragraph (d).

"(c) In any proceeding of the Commission to consider the recovery of costs described in subsection (b)(1), there shall be a rebuttable presumption that such costs are just, reasonable, and not unduly discriminatory or preferential within the meaning of this Act.

"(d)(1) In any proceeding of the Commission to consider the recovery of costs, the Commission shall give substantial deference to an allocation of charges for services, construction work, or goods among associate companies under section 13 of the Public Utility Holding Company Act of 1935, whether made by rule, regulation, or order of the Securities and Exchange Commission prior to or following the enactment of the Telecommunications Competition and Deregulation Act of 1995.

"(2) If the Commission pursuant to paragraph (1) establishes an allocation of charges that differs from an allocation established by the Securities and Exchange Commission with respect to the same charges, the allocation established by the Federal Energy Regulatory Commission shall be effective 12 months from the date of the order of the Federal Energy Regulatory Commission establishing such allocation, and binding on the Securities and Exchange Commission as of that date.

"(e) An allocation of charges for services, construction work, or goods among associate companies under section 13 of the Public Utility Holding Company Act of 1935, whether made by rule, regulation, or order of the Securities and Exchange Commission prior to or following enactment of the Telecommunications Competition and Deregulation Act of 1995, shall prevent a State Commission from using a different allocation with respect to the assignment of costs to any associate company.

"(f) Subsection (b) shall not apply—

"(1) to any cost incurred and recovered prior to July 15, 1994, whether or not subject to refund or adjustment;

"(2) to any uncontested settlement approved by the Commission or State Commission prior to the enactment of the Telecommunications Competition and Deregulation Act of 1995"; or

"(3) to any cost incurred and recovered prior to September 1, 1994 pursuant to a contract or other arrangement for the sale of fuel from Windsor Coal Company or Central Ohio Coal Company which has been the subject of a determination by the Securities and Exchange Commission prior to September 1, 1994, or any cost prudently incurred after that date pursuant to such a contract or other such arrangement before January 1, 2001.".

Mr. BUMPERS. Mr. President, this amendment is being offered by Senators DASCHLE and KERREY and myself. I hope that we might get the managers of this bill to accept this amendment. It is precisely the language that was in last year's telecommunications bill. I do not know what happened on the way to the forum this year.

Somehow or another it did not make it. Since it is the same language that was in last year's bill, perhaps by the time we get around to finishing the debate the floor managers might see fit to accept it.

Now, Mr. President, here is what this amendment is about: any company that owns 10 percent of a utility company is considered a utility holding company. In 1935, because some public utility holding companies were very big and very powerful, we passed the Public Utility Holding Company Act [PUHCA].

Holding companies that operate essentially on a multistate basis, 11 electric utility holding companies and three natural gas utility holding companies—are what we call registered public utility holding companies. They must act and conduct themselves in accordance with PUHCA.

In my State, Arkansas Power & Light is owned by Entergy, a registered utility holding company. Entergy also owns utility subsidiaries in Louisiana, Mississippi, and Texas.

The other public utility companies have a similar number of utility subsidiaries. These 14 registered public utility holding companies serve approximately 50 million households in the United States.

The chart I have here contains a map of the affected States. All the States in dark blue, are served by registered utility holding companies. The States in light blue, including North Dakota, South Dakota, Minnesota, and Wisconsin, will be served by registered holding companies following the completion of proposed mergers.

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Under the telecommunications bill, PUHCA will be amended to permit these public utility holding companies to get into telecommunications activities. Unlike the baby Bells, they can enter into these businesses immediately after the President puts his signature on this bill. No questions asked.

Here is what I am trying to address with this amendment. In 1971, a utility subsidiary of a registered public utility holding company, American Electric Power, the Ohio Power Co., which is an electric utility company, entered into a contract with a sister affiliate, called Southern Ohio Coal Co.

In 1971, 24 years ago, Southern Ohio Coal Company agreed to sell coal to Ohio Power under a contract. They said, "We will sell you coal at our cost." Think about that. One sister company is saying to another sister company "We will sell you coal at our cost." The only agency with authority to scrutinize that contract as to whether it is a good contract or a bad contract for consumers is the Securities and Exchange Commission [SEC], as is required by PUHCA.

The SEC looked at the contract in 1971 and said "this is just hunky-dory. Fine contract. Off you go." The coal company sold its coal to its sister company—both of them owned by the same parent—Ohio Power, which generated electricity and obviously passed the cost of the coal as a part of its costs to the ratepayers in Ohio.

If you are sitting around at night in your house worrying about your electric bill and that air-conditioner is going full-time because it has been a hot day, you worry about the price of the power, but you assume that somebody, somewhere, is making sure what you are paying for that air-conditioning that day is a fair price.

Electric rate regulation in this country is conducted at both the Federal and State levels. The Federal Energy Regulatory Commission [FERC] is the only body that regulates the rates charged for power sold at the wholesale level. Everybody here knows what FERC is. FERC regulates wholesale sales of power.

What is a wholesale sale of power? That is the sale of power to a utility which in turn will sell it to the people who buy its power. Only FERC can set those rates.

Back to the guy sitting in his living room with the air-conditioning going. He does not realize that Southern Ohio Coal Company is selling coal to Ohio Power, who is generating electricity for his air-conditioner. He did not realize that the coal company was charging Ohio Power as much as twice as much as that coal could be bought for on the open market. That is right—100 percent more than their cost.

So, the municipalities that bought power from Ohio Power Company got to thinking, "We are getting ripped off." So they go to FERC and they say, "Listen, FERC, we are paying a utility rate for electricity that has been generated with coal from Southern Ohio Coal Co. and Ohio Power is giving them as much as 100 percent profit." That is right. Ohio Power is paying the coal company 100 percent more than they can buy from anybody else in southern Ohio.

They go to FERC and say, "how about giving us a break on our rates? Check this out and see if it is right." So FERC sends a bunch of investigators out to find out if this is a true story. What do we get? It is. It is true.

Ohio Power has been paying up to 100 percent more for coal than they could have bought it from anybody. And they have been putting it in their rates, and the poor guy sitting in his living room wondering how he will pay for his electricity bill that month suddenly realizes he has been taken.

So FERC says, "This is not right. This is not fair by any standard. Stop it. We are going to give you people a new rate. We will not sit by and tolerate something like this."

What do you think Ohio Power did? Why, they did what any big fat-cat corporation would do that has all the money in the world—they appealed the FERC decision. Who did they appeal it to? The U.S. Court of Appeals for the District of Columbia Circuit.

The court of appeals decided that FERC had no jurisdiction. They did not have a right to delve into this issue. The court said the only agency with authority to look at this issue is the Securities and Exchange Commission. They approved the original contract. They said, it was just fine. And 21 years have gone by and they never looked at it again.

Incidentally, the poor little municipalities were continuing to get ripped off. They filed a petition with the SEC in 1989. Guess what the SEC has done in the last 6 years with their petition? You guessed it, Mr. President, nothing. Nothing.

When they saw that SEC was not going to do anything, that is the reason they took it to FERC and said, "FERC, why don't you help us? You have the jurisdiction to do it."

FERC said, "We do, and we will."

The court of appeals said, "No dice."

Now, Mr. President, my amendment is simple, straightforward, and fair. There are a lot of people in this body who are apprehensive about this bill. Know why they are apprehensive? Because they are afraid that it will wind up being anticompetitive, instead of procompetitive.

There is one thing in this bill that everyone should understand. The bill addresses public utility holding companies. It talks about public utility holding companies. It talks about FERC.

And Senator D'AMATO, to his credit, put a little proconsumer language in this bill. But his language will not ensure that poor old Joe Lunchbucket sitting in his living room worrying about his air-conditioning bill will be protected. TOM DASCHLE, BOB KERREY and DALE BUMPERS, we care about what his electric bill will be this month.

We are offering this amendment to prohibit cross-subsidization between affiliates of a public utility holding company. We are saying, "We are not going to allow these people to charge 100 percent more than their cost and charge it to this poor guy sitting in his living room watching television."

This amendment is directly related to the telecommunications bill. These public utility holding companies, serving more than 50 million households, want to get involved in the telecommunications business. I am for them. I want them in the cable television business. I want competition in the cable television business.

As I said in my opening statement, if the President signs this bill the public utility holding companies can immediately go into the telecommunications business—telephone, cable television, you name it.

So what I am saying is I do not want one utility company that generates electricity ripping off their sister affiliates and charging it to poor old Joe Lunchbucket. I do not want sister affiliates inflating their costs from one company to another and passing it on to any ratepayers.

Let me give an illustration. This chart explains precisely what I am talking about. Here is the registered holding company—let us assume this is American Electric Power. Here is a subsidiary which sells both fuel and telecommunications services. This subsidiary, we will say, is Southern Ohio Coal Co. They are mining coal and selling it to these utilities. But let us assume they are also in the telecommunications business, all of a sudden. They start shifting their costs from telecommunications to their coal operations, so they can compete better in the telecommunications market. They shift their costs over to the coal company, knowing that nobody is guarding the store, and that they can charge it to these utility companies and put it right back on old Joe Lunchbucket again. Not only are they going to charge them this exorbitant rate for coal and make him pay for it through his electric bill, now they are going to go to the telecommunications business and shift the cost from the telecommunications to coal, so their telecommunications cost will be so much less nobody can compete with them here in Washington, DC, or in Little Rock, AR.

Here is another example. Here is the same registered utility holding company. They form a telecommunications subsidiary. In addition, the holding company already has a service company which performs certain functions for the utility subsidiaries.

Let us assume that the telecommunications company is going to provide telecommunications services to the service company. They are going to charge them just like the coal company did, a 100 percent profit. And then what is going to happen? They are

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going to pass it right down to the utility companies through the service company contracts and the utilities are going to pass it down to old Joe Lunchbucket again.

Mr. President, this gets a little complicated for people who have not dealt with it for the past 3 years, as I have. As I say, I am still a little nonplused about why my amendment was in the bill last year and is not in the bill this year. I guess somebody just felt they had a little more clout this year. They might not have liked it last year. I am not rocking the boat, but a lot of people, as I say, are worried about how the consumer comes out in all of this. If my amendment is not adopted, I can tell you exactly how the consumer is going to come out if he buys any services from a registered public utility holding company.

Mr. President, I yield the floor.

The PRESIDING OFFICER. Who seeks recognition?

Mr. HOLLINGS. 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. 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 an amendment that is already at the desk that I have discussed with the managers of this bill. It is similar to an earlier amendment that was offered by the Senator from Pennsylvania and adopted, I believe 90-something to something, dealing with incidental interLATA relief.

Mr. President, I ask unanimous consent that the Bumpers amendment be laid aside temporarily so that we may consider this amendment.

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

Mr. KERREY. Mr. President, on this chart I am going to show the problem. We also have an illustration of why this amendment is needed or why we need to change the current method of regulation.

We have in the United States of America, since the divestiture in AT&T, created these local access transport areas (LATA's) throughout the country defining what local telephone service is. In northeast Nebraska, we have two—644 and 630. The red line down the center separates one from the other.

We have established a method to get our K through 12 schools hooked up to the Internet that requires us to go through a central hub. There are a number of them called educational service units.

Unfortunately for schools up in the northeastern part of the State, they have to cross one of these artificial boundaries, these LATA boundaries, in order to get to this little red dot here which represents the Wakefield, NE, educational service unit. All of these school districts here—Jackson, South Sioux City, Dakota City, Homer, Hubbard, Winnebago, Walthill, Macy, Rosalie—all have to cross that LATA in order to be able to connect to the educational service unit in Wakefield. It is about 17 miles total, somewhere in that range, from one of these towns to this central hub.

This problem was identified to me originally by a principal, Chuck Squire, of Macy School, as he was trying to get his school hooked up to the Internet. The requirement was again, as I said, to go through Wakefield. Because it crosses that interLATA boundary, it is no longer a local call. You have to pay an access charge when you are going from here to any one of these schools over here. The cost for dedicated Internet service if the local Bell company could provide the service would be approximately $180 a month, with an $800 installation charge. But for a long distance company, it ends up being almost $1,100 a month with a $1,000 installation charge, because the traffic needs to be routed across the State boundary.

What happens is the schools end up with about $10,000 to $12,000 more per year in the monthly charge. These are very small school districts, most of them, and $12,000 ends up being a lot of money. They get nothing more for it.

And this amendment, as I said, that I have discussed both with the chairman of the committee and with the ranking member, would grant incidental LATA relief to the Bell Operating Companies to provide dedicated two-way video or Internet service for this dedicated purpose, in this case the K through 12 environment.

The hope is, of course, that the legislation itself will eventually obliterate the need to ask for this kind of incidental relief. The hope is that these kinds of restrictions that make it difficult for prices to come down—you can see in a competitive environment, if you had competition at play here, these prices would go down. This price was not high as a consequence of some cost. It is a consequence entirely of the current regulatory structure.

So again, I am finished describing what the amendment does. I hope that the amendment can be simply agreed to at this time.

Mr. HOLLINGS. Mr. President, if the distinguished Senator from Nebraska is waiting for a response from this side, there is an amendment on interLATA rates which I discussed with the distinguished Senator at the time. We wanted to make absolutely clear that we did not open up a big loophole. The distinguished Senator now has it limited. It is dedicated, and I think in good order. We are prepared to accept the amendment on this side.

The PRESIDING OFFICER. Will the Senator from South Carolina wait for a second?

We do not have the amendment of the Senator from Nebraska at the desk.

Mr. KERREY. I will send a copy that I have here to the desk.

AMENDMENT NO. 1335

(Purpose: To provide that the incidental services which Bell operating companies may provide shall include two-way interactive video services or Internet services to or for elementary and secondary schools)

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

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

The Senator from Nebraska [Mr. KERREY] proposes an amendment numbered 1335.

Mr. KERREY. 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 16 and all that follows page 94, line 23, and insert in lieu thereof the following:

"(B) providing—

"(i) a telecommunications service, using the transmission facilities of a cable system that is an affiliate of such company, between LATAs within a cable system franchise area in which such company is not, on the date of enactment of the Telecommunications Act of 1995, a provider of wireline telephone exchange service, or

"(ii) two-way interactive video services or Internet services over dedicated facilities to or for elementary and secondary schools as defined in section 264(d),".

Mr. PRESSLER. Mr. President, we just saw this amendment about 30 minutes ago for the first time. We have been juggling six amendments. We would ask that the Senator withhold asking for a vote on it until we have a chance to study this amendment. I commend the Senator from Nebraska. It looks like something that I am taking a favorable look at. But we have not run it through all the hoops over here.

Mr. KERREY. I do not quite follow. I thought earlier we had discussed it.

Mr. PRESSLER. We discussed it last night, and had not agreed to accept it. But we just saw it for the first time 30 minutes ago. At that time, the Senator said he was going to supply us with a different copy. Do we have the final copy of the amendment?

Mr. KERREY. We just sent a copy to the desk.

Mr. PRESSLER. Do we have a final copy of the amendment?

Mr. KERREY. The Senator should have the final copy now.

Mr. PRESSLER. Will the Senator agree to set it aside and give us a chance to look at it? It will take us 15 minutes. We want to take a look at it.

Mr. KERREY. Sure. I would be pleased to.

The PRESIDING OFFICER. Without objection, the amendment is set aside.

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

The PRESIDING OFFICER. The clerk will call the roll.

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The assistant legislative clerk proceeded to call the roll.

Mr. SIMON. 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. Will my colleague yield? I have a unanimous-consent request. May I make this unanimous-consent request?

Mr. SIMON. I have no objection to that at all.

Mr. PRESSLER. By the way, we are looking forward very much to hearing the Senator's views on this. We have been holding the option open.

I ask unanimous consent that at 4 p.m. today, the Senate proceed to vote on the McCain amendment 1276, to be followed immediately by a vote on the motion to table the Feinstein amendment number 1270, and that the time between now and 4 p.m, which is 1 minute, be equally divided in the usual form for debate on either amendment. So there would be no further debate. I think we have debated both amendments.

Mr. HOLLINGS. Reserving the right to object, Mr. President, do I understand the Senator moved to table the McCain amendment?

Mr. PRESSLER. No; we are proceeding to vote on the McCain amendment.

Mr. HOLLINGS. I move to table the McCain amendment, and I ask for the yeas and nays.

Mr. DOMENICI. Reserving the right to object, the Chair has not ruled on that request, have you?

The PRESIDING OFFICER. No, I have not.

Mr. HOLLINGS. I object.

Mr. DOMENICI. Will the Senator yield me 1 minute?

Mr. PRESSLER. Sure.

Mr. HOLLINGS. Sure.

(The remarks of Mr. DOMENICI pertaining to the introduction of S. 917 are located in today's RECORD under "Statements on Introduced Bills and Joint Resolutions.")

Several Senators addressed the Chair.

The PRESIDING OFFICER. The unanimous-consent request is pending.

Is there objection? Without objection, it is so ordered.

Mr. SIMON. Mr. President, reserving the right to object, the request is that we vote at 4 o'clock; is that correct?

Mr. PRESSLER. Yes; I am trying to get two votes out of the way so we can get moving along, so to speak. We still have some Senators coming back from the Les Aspin function. Then we will have a full force, and we will then do some business.

Mr. SIMON. Will the manager agree that after that, I be recognized? I have no objection.

The PRESIDING OFFICER. If there is no objection, the unanimous-consent request is agreed to.

There is 1 minute of time divided equally between the manager of the bill and the ranking member.

Who yields time?

Mr. MURKOWSKI addressed the Chair.

Mr. PRESSLER. There must be no time.

The PRESIDING OFFICER. The manager has control of the time.

Mr. PRESSLER. I suggest that the hour of 4 p.m. has arrived and there would be no time to divide.

The PRESIDING OFFICER. The Senator is correct.

The Chair notes that the Senator from Alaska is seeking recognition. Does the manager wish to yield him his time?

Mr. MURKOWSKI. If I may. I simply want to speak very briefly, about 3 minutes, in opposition to the Ohio Power amendment.

Mr. PRESSLER. Then I ask unanimous consent that at the end of 3 minutes the Senate will vote on the two votes that have been requested.

The PRESIDING OFFICER. Is there objection? Without objection, it is so ordered. The Senator from Alaska is recognized.

Mr. MURKOWSKI. I thank my friend, the floor manager.

Mr. President, I rise in opposition to the pending amendment to overturn the Ohio Power court case. I am opposed to it simply because it is bad policy, and I will explain briefly why.

In the Ohio Power case, the U.S. court of appeals held that the Congress gave a single Federal agency—the Securities and Exchange Commission—jurisdiction over the interaffiliate transactions of registered electric utility holding companies. Those utilities sell power to an estimated 50 million households in 30 States.

The court said that a second Federal agency, the Federal Energy Regulatory Commission, cannot also regulate the same matter. No dual regulation, the court said.

So, Mr. President, good public policy is that if something must be regulated, then one and only one agency should do it, not two, which is the provision in the amendment before us. Utilities should not be whipsawed between the conflicting decisions of two different regulatory agencies. Unfortunately, that is precisely what this amendment does.

Mr. President, the proponent of the amendment argues that the FERC is a better regulator than the SEC; that we ought to overturn Ohio Power so that the FERC can regulate these transactions. But rather than take jurisdiction away from the SEC and give it to the FERC, the pending amendment allows both agencies to regulate the same matter.

I question the claim that FERC has been a better regulator than the SEC. I am less concerned about which agency regulates than having only one agency regulate. If both agencies use the same statutory standard for making their decisions and if both made their decisions at the same time, then the problems created by dual regulation might be manageable. But that is not how it will work if the pending amendment is adopted.

First, the SEC will regulate pursuant to the Public Utility Holding Company Act, and the FERC will regulate pursuant to the Federal Power Act. These two laws have different statutory standards, and the result will be conflicting regulatory decisions.

Second, because of differences in the two statutes, the decisions made by the SEC and the FERC cannot take place at the same time. The Public Utility Holding Company Act requires preapproval by the SEC, whereas the Federal Power Act provides for post-transaction review by the FERC. In the Ohio Power case, for example, the FERC acted 11 years after the SEC made its regulatory decision.

In short, the two regulatory systems are incompatible. Neither is inherently better than the other, they are simply different. The Ohio Power court recognized that fact; the pending amendment ignores it.

Mr. President, I am also concerned that the pending amendment does not respect the sanctity of contracts. It is intended to allow the FERC to retroactively overturn longstanding, SEC-approved contracts. Some of these contracts have been in place for more than a decade, and the parties have invested many hundreds of millions of dollars. Those investments will be placed in jeopardy if the pending amendment is adopted.

Mr. President, the proponent of the amendment also claims that it is needed to restore State public utility commission jurisdiction to where it was prior to Ohio Power. However, in some respects, the amendment actually has the opposite effect. It specifically prohibits State public utility commissions from using a cost allocation method different from one the SEC uses. In short, the pending amendment will require State public utility commissions to do what the SEC tells them to do.

Perhaps the most troubling aspect of the amendment is its resurrection of the very cost trapping the Ohio Power court found unacceptable. This will happen when a utility incurs costs pursuant to an SEC-approved contract but the FERC subsequently denies the passthrough of those approved costs.

In summary, Mr. President, the amendment would create a complex, overlapping, and confusing regulatory maze. It would allow electric agencies to be squeezed between the conflicting agency decisions. That is bad public policy.

Mr. President, the amendment should be rejected, and I urge my colleagues to vote against it.

I thank the floor managers for the opportunity to speak in opposition to the Bumpers amendment.

I yield the floor.

The PRESIDING OFFICER (Mr. THOMPSON). The Senator's time has expired.

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VOTE ON AMENDMENT NO. 1276

The PRESIDING OFFICER. The question is on agreeing to amendment No. 1276. The yeas and nays have been ordered. The clerk will call the roll.

The assistant legislative clerk called the roll.

The result was announced—yeas 18, nays 82, as follows:

[Rollcall Vote No. 251 Leg.]

YEAS—18

Abraham	Gorton	McCain
Ashcroft	Gramm	Nickles
Brown	Helms	Packwood
Coats	Hutchison	Santorum
DeWine	Kyl	Specter
Dole	Mack	Thompson

NAYS—82

Akaka	Feinstein	Lugar
Baucus	Ford	McConnell
Bennett	Frist	Mikulski
Biden	Glenn	Moseley-Braun
Bingaman	Graham	Moynihan
Bond	Grams	Murkowski
Boxer	Grassley	Murray
Bradley	Gregg	Nunn
Breaux	Harkin	Pell
Bryan	Hatch	Pressler
Bumpers	Hatfield	Pryor
Burns	Heflin	Reid
Byrd	Hollings	Robb
Campbell	Inhofe	Rockefeller
Chafee	Inouye	Roth
Cochran	Jeffords	Sarbanes
Cohen	Johnston	Shelby
Conrad	Kassebaum	Simon
Coverdell	Kempthorne	Simpson
Craig	Kennedy	Smith
D'Amato	Kerrey	Snowe
Daschle	Kerry	Stevens
Dodd	Kohl	Thomas
Domenici	Lautenberg	Thurmond
Dorgan	Leahy	Warner
Exon	Levin	Wellstone
Faircloth	Lieberman	
Feingold	Lott	

So the amendment (No. 1276) was rejected.

Mr. PRESSLER. I ask unanimous consent that the next vote be set aside temporarily.

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

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

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

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, I ask unanimous consent the Bumpers amendment be voted on in 10 minutes and the Senator from Mississippi have 10 minutes to speak on it—5 minutes each. At that point we will move to table the Bumpers amendment.

The PRESIDING OFFICER. Is there objection?

Mr. LOTT. Mr. President, reserving the right to object, and I do not intend to object, I would like to ask the distinguished chairman of the committee if he would add that, after the vote on the Bumpers amendment, Senator SIMON then be recognized for an amendment that he has been seeking recognition on.

Mr. PRESSLER. That is fine.

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

Who yields time?

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

The PRESIDING OFFICER. Without objection, it is so ordered. The Senator is recognized for 5 minutes.

Mr. LOTT. Mr. President, under the unanimous consent agreement I believe we have 10 minutes, now.

Mr. DOMENICI. Could we have order, Mr. President?

The PRESIDING OFFICER. There will be order in the Chamber.

AMENDMENT NO. 1348

Mr. LOTT. I believe that we do have 10 minutes now of debate on the Bumpers amendment, and then we would go to a vote at that point. So I would like to be heard briefly in opposition to the Bumpers amendment.

First, before I do that, I thank the Senator from Arkansas. Although I cannot support his amendment, I appreciate his willingness to work with me and Senator D'AMATO in developing appropriate safeguards as registered utilities enter this telecommunications area. I also thank him for working last year to resolve these issues in the Energy Committee. Of course it involves the Banking Committee as well as the Energy Committee. He was very cooperative in that effort.

The amendment he raises today should be considered, but not on this legislation. The Energy Committee has rightfully asked that such amendment first go through the Energy Committee where it was considered last year in preparation for the telecommunications bill being voted on by the Commerce Committee. So I must honor Senator MURKOWSKI's request as chairman of the committee on that matter and oppose the amendment on that basis, if no other. Having said that, I want to point to the substantial safeguards that were included in the managers' amendment to address the concerns of Senators D'AMATO and BUMPERS.

I would also like to take just a moment to point out the critical importance of this provision to the legislation and in particular to our region of the country, because it is going to provide an opportunity for tremendous services through the utility companies in our area and really will go a long way to providing the smart homes we have been talking about in addition to the new smart information highways.

What this all involves is the now famous Ohio Power case, and it deals with a Supreme Court ruling that restricts a State's right to disallow certain costs between companies in a registered holding company system for the purposes of ratemaking. With respect to such transactions related to telecommunications activities, this matter has already been addressed with language that prevents cross-subsidization between the companies. To the extent there remain unresolved issues regarding the broader application of the Ohio Power case, they should be dealt with by the Congress as part of its overall review of the Public Utility Holding Company Act, PUHCA.

Senator D'AMATO has indicated he will hold hearings on it and consider comprehensive PUHCA legislation later this session. I feel very strongly that is needed.

For these reasons the Bumpers amendment is not necessary at this time and I urge my colleagues to vote against it.

The purpose of the telecommunications bill is to allow competition in the broadest sense possible in the provision of telecommunications services. Most utility companies are already able to participate in the market. However, current law prevents the 14 registered utility holding companies from fully participating in telecommunications markets. With appropriate consumer protections, this amendment allows registered utility holding companies to enter this important market on the same footing as other utilities and new market entrants. The amendment would allow a registered holding company to create a separate subsidiary company that would provide telecommunications and information services.

The amendment contains numerous consumer protection provisions—the bill itself—which would be substantially altered by what the distinguished Senator from Arkansas is trying to do here.

So the public utility company subsidiary of a registered holding company may not issue securities and assume obligations or pledge or mortgage utility assets on behalf of a telecommunications affiliate without approval by State regulators. Also, protections in the bill say a telecommunications subsidiary of a registered holding company must maintain separate books, records and accounts and must provide access to its books to the States. State regulators may order an independent audit and the public utility is required to pay for that audit. If ordered by State regulators, a public utility may file a quarterly report, if that is ordered by the State regulators. Also, the public utility company must notify State regulators within 10 days after the acquisition by its parent company of an interest in telecommunications.

So there are very strong protections here. I think what we are talking about is making sure these registered utility holding companies can provide these services. It greatly enhances the opportunity for information and for competition, and I do not believe we need this amendment for there to be adequate protections for the consumer. They are in the bill.

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The PRESIDING OFFICER. The time of the Senator has expired.

Mr. LOTT. We took great precautions to make sure those protections were included in the bill. So for these reasons outlined, I urge defeat of the Bumpers amendment and I yield the floor.

The PRESIDING OFFICER. The Senator from Arkansas is recognized for 5 minutes.

Mr. BUMPERS. Mr. President, for the benefit of my colleagues who were not here for the earlier part of this debate, let me just say that my amendment is what I would call the do-right amendment. It was precipitated by an incorrect decision issued by the D.C. Circuit Court of Appeals in the Ohio Power case. In 1992, a bunch of cities who bought power from a utility subsidiary of a registered utility holding company, named Ohio Power. They were buying power from Ohio Power and Ohio Power was buying coal to generate that power from a sister company called Southern Ohio Coal.

The municipalities went to FERC, because FERC sets wholesale rates; that is power sold from a utility company to a city, for example. And they say, "We think Ohio Power's rates are too high and the reason they are too high is because this coal company is charging its sister company an exorbitant rate for coal." FERC sends their investigators out and what do they find? They found Ohio Power is charging 100 percent more for coal than that coal can be bought from anybody else in southern Ohio. What is happening is Ohio Power is paying twice as much for coal and what are they doing? They are passing it right on down to the municipalities who, in turn, have to pass it right on down to Joe Lunchbucket, who is worried about how he is going to pay his air-conditioning bill this month. It is just that simple. That is all there is to this.

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

Mr. BUMPERS. I will be happy to yield.

Mr. JOHNSTON. Is this the identical amendment which was passed out of the Energy Committee after a great deal of hearings and work last year. I believe it was 14 to 5?

Mr. BUMPERS. Mr. President, this amendment is the precise language reported out of the Energy Committee, 14 to 5 last year. And it was incorporated in this bill precisely that way. There is nothing new about it.

Mr. JOHNSTON. I thank my colleague.

Mr. BUMPERS. The problem with the Court of Appeals' decision in Ohio Power is that the court said that the SEC is the only regulatory body with authority to protect consumers. And the problem is, the SEC will not, and possibly can not, do it.

They approved the original contract and for 24 years have refused to look at it. So what happens? The consumers are paying twice as much for coal as the coal can be bought from anyplace else.

I am just simply saying cross-subsidization of these affiliate companies held by public utility holding companies is wrong. There is not a person within earshot of my voice today who believes it is right. Why would you not vote to stop that? Why would you not give poor old Joe Lunchbucket a little bit of a break out of this? If you do not, these same holding companies are going to go into telecommunications, and unlike Pacific Bell, Bell South, Southwestern Bell, they go in the day the President puts his signature on this bill. They can be in the cable business. They can go into anything they want to. They do not have to go to the FCC and the Justice Department.

They can also orchestrate transactions between sister companies. Who is going to sell what to whom? One sister sells telecommunications products to another. And maybe that company also sells coal to a utility company. They pass it on. Even the telecommunications cost goes right down to the utility, right down to poor old Joe Lunchbucket. Nobody here believes that is right.

Do you know who favors my amendment? Every State public service commission. The Consumer Federation of America, the industrial energy consumers, including General Motors and Dow Chemical are even for it. The National Association of State Utility Consumer Advocates, the Ohio Wholesale Customers Group, and on and on. They all support the Bumpers amendment.

Mr. President, I do not know of anything further that I can say. This is an opportunity to protect consumers. If you want competition, you cannot have it unless you support this amendment because, if you do not, these anticompetitive practices will continue. It is just that simple.

I yield the floor.

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. PRESSLER. I move to table, 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 South Dakota to lay on the table the amendment of the Senator from Arkansas. On this question, the yeas and nays have been ordered, and the clerk will call the roll.

The result was announced—yeas 52, nays 48, as follows:

[Rollcall Vote No. 252 Leg.]

YEAS—52

Abraham	Burns	Coverdell
Ashcroft	Chafee	Craig
Bennett	Coats	D'Amato
Bond	Cochran	DeWine
Brown	Cohen	Dole
Domenici	Kassebaum	Santorum
Faircloth	Kempthorne	Shelby
Frist	Kyl	Simpson
Gorton	Lott	Smith
Gramm	Lugar	Snowe
Grams	Mack	Specter
Grassley	McCain	Stevens
Gregg	McConnell	Thomas
Hatch	Murkowski	Thompson
Heflin	Nickles	Thurmond
Helms	Packwood	Warner
Hutchison	Pressler	
Inhofe	Roth	

NAYS—48

Akaka	Feingold	Leahy
Baucus	Feinstein	Levin
Biden	Ford	Lieberman
Bingaman	Glenn	Mikulski
Boxer	Graham	Moseley-Braun
Bradley	Harkin	Moynihan
Breaux	Hatfield	Murray
Bryan	Hollings	Nunn
Bumpers	Inouye	Pell
Byrd	Jeffords	Pryor
Campbell	Johnston	Reid
Conrad	Kennedy	Robb
Daschle	Kerrey	Rockefeller
Dodd	Kerry	Sarbanes
Dorgan	Kohl	Simon
Exon	Lautenberg	Wellstone

So the motion to lay on the table the amendment (No. 1348) was agreed to.

Mr. PRESSLER addressed the Chair.

The PRESIDING OFFICER. The Senator from South Dakota.

ORDER OF PROCEDURE

Mr. PRESSLER. Mr. President, I ask unanimous consent that the Senate now return to the Dorgan amendment No. 1278 and that there be 20 minutes for debate to be equally divided in the usual form, with no amendments in order to the Dorgan amendment; that at the conclusion or yielding back of time I will be recognized to move to table the Dorgan amendment 1278, which deals with the 35 percent for national markets being lowered to 25 percent of the national media market, and this would move us forward. The Dorgan amendment is ready for voting. I would plead with everybody to let us vote on this and then proceed.

My motion would ask that we go to the Dorgan amendment 1278.

Mr. CONRAD. Reserving the right to object.

The PRESIDING OFFICER. Is there objection?

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

The PRESIDING OFFICER. The Lieberman amendment to the Conrad amendment.

Mr. CONRAD. The Lieberman amendment or the Dorgan amendment?

The PRESIDING OFFICER. The Lieberman amendment to the Conrad amendment.

Mr. CONRAD. Is the pending business?

The PRESIDING OFFICER. Is the pending business.

Mr. CONRAD. Mr. President and chairman of the committee, I would be reluctant to agree to this request if we cannot get some agreement on when our amendment would be handled. We are the pending business, the Lieberman second-degree amendment to the Conrad amendment. We would like to get this matter resolved. We have had a lengthy discussion, and I

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would hope that we could move to a vote on that. And so I would be constrained to object unless there was some meeting of the minds with respect to when we would get to our amendment.

Mr. PRESSLER. Let me say that the Dorgan amendment came up first, and we are struggling to move forward here. Several Senators are seeking agreements that I am not in a position to give. This is something we could get done and behind us in the next 30 to 35 minutes. It is a major amendment involving the percentage of national media that one company or group can control. It is now set at 35 percent in the bill. The Dorgan amendment, as I understand it, would strike that and bring it back to 25 percent.

There has been debate on it. I think there is only one more speaker. I ask that we lay aside the amendment of the Senator from North Dakota, Senator CONRAD, if he will be kind enough to let us do that, and go to the Dorgan amendment, get a vote on it, and keep on going from there.

Mr. CONRAD. I just say to the chairman, if I could, I have to register objection if there is not some agreement reached——

Mr. DOLE. Will the Senator yield?

Mr. CONRAD. I will be glad to yield.

Mr. DOLE. We can bring the Dorgan amendment back by regular order. We can do it that way. Senator SIMON has an amendment relating to violence. We would like to have debate on all three amendments—the CONRAD amendment, the second-degree amendment, and then an amendment I am offering with Senator SIMON, a sense-of-the-Senate amendment, that all relates to TV violence. I wonder if we might have the debate on all of those before we start voting. That is the only problem we have.

Mr. CONRAD. As I understand, the pending business before the Senate is——

Mr. DOLE. Regular order brings back the Dorgan amendment, so I call for the regular order.

The PRESIDING OFFICER. The regular order is amendment No. 1278.

Mr. PRESSLER. Mr. President, I ask unanimous consent there be 20 minutes for debate equally divided on amendment No. 1278, and at the conclusion or yielding back of time, I be recognized to table the Dorgan amendment No. 1278.

The PRESIDING OFFICER. Is there objection?

Mr. CONRAD. Reserving the right to object. Again, can we not find some way of having a meeting of the minds on what the order will be? I will be happy to accommodate other Senators if there is some understanding of what the order is going to be.

Mr. DOLE. I think the order is, after this, we go back to the Senator from North Dakota. If you do not have any objection, the Senator from Illinois would like to at least be heard on his amendment.

Mr. CONRAD. Actually, the previous agreement was the Senator from Illinois would be recognized, and we certainly want to accommodate that. But could we have an understanding with respect to what the order is then after that? If we can have a unanimous consent agreement, we certainly would be open to entering into a time agreement, whatever else, so there is some understanding, given the fact there are many Senators who are interested in this matter.

Mr. DOLE. I will just say, what we are trying to do is finish the bill. All these amendments would fall if cloture is invoked. We could go out and have the cloture vote at 9:30 in the morning. I am not certain cloture would be invoked.

I think there has been some agreement. We heard the Conrad amendment, the Lieberman second-degree amendment, some agreement on the Simon amendment. As far as I am concerned, it is up to the managers. I think they are prepared to vote on all three. I do not know what order.

Mr. PRESSLER. I make a plea again to my friend from North Dakota, let us go to the Dorgan amendment for 20 minutes and vote on it, and meanwhile have intense discussions so we can cover everyone's needs. That would allow us to accomplish one more amendment. I think we are in a very friendly position trying to work this out.

Mr. FORD. Mr. President, reserving the right to object.

The PRESIDING OFFICER. The Senator from Kentucky.

Mr. FORD. Mr. President, could we have the unanimous consent request agreed to by the chairman of the committee, the manager of the bill, that we go to Conrad-Lieberman and then go to Simon without putting a time limit on it?

I ask unanimous consent that following the motion by the distinguished chairman, that the Conrad-Lieberman amendment be next in order and the Simon amendment follow that with any second-degree amendment in regard to it.

Mr. PRESSLER. Reserving the right to object. I appreciate what the Senator is doing. We also have to work in an agreement for debate on the Simon-Dole amendment, if that is to occur.

Mr. FORD. There is no agreement as far as time is concerned. I recognize the majority leader would have the right to second-degree the sense of the Senate, if that is what he wants to do. You are getting a pecking order here. A time agreement has not been worked out. The majority leader would not need much time.

Mr. DOLE. If the Senator will yield, we can have the vote on the Dorgan amendment and work this out during the vote.

Mr. FORD. I was trying to work it out so my colleagues on this side will be accommodated. I know the majority leader is trying to do that. We want to get the bill finished as much as he does. If my friends from North Dakota and Illinois are satisfied, I will be glad to yield the floor.

Mr. CONRAD addressed the Chair.

The PRESIDING OFFICER. The Senator from North Dakota.

Mr. CONRAD. Mr. President, may I inquire, is there then before us a suggestion by the Senator from Kentucky that we hear from Senator Simon after the Dorgan amendment has been offered, and then we would vote on the Lieberman amendment, then we would vote on the Conrad amendment, then we would vote on whatever amendments will be offered by Senator Simon and Senator Dole?

Mr. PRESSLER. I do not know. We all need to have a little meeting about that and work that through. Is it possible to go to the Dorgan amendment for the 20 minutes, get that voted on, and during that time, when people are speaking on it, we will try to work all this out in good faith? And I will act in very good faith.

Mr. CONRAD. All right.

The PRESIDING OFFICER. Is there objection?

Mr. DORGAN. Reserving the right to object. I have not yet spoken on my amendment because I had to leave for another meeting. I am to speak for 10 minutes. I would like to reserve 5 minutes for Senator Helms as a cosponsor. He is not in the Chamber at the moment, but I think he would like some time.

The PRESIDING OFFICER. Is there objection?

Mr. PRESSLER. He is in the Cloakroom and ready to go.

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

The Senator from North Dakota.

Mr. DORGAN. My understanding is we have a unanimous-consent agreement for 20 minutes. My understanding is I will take 10 minutes and 5 minutes is reserved for the Senator from North Carolina, Mr. Helms.

AMENDMENT NO. 1278

Mr. DORGAN. Mr. President, my amendment is very simple. The legislation that comes to the floor of the Senate changes the ownership rules with respect to television stations. We now have a prohibition in this country for anyone to own more than 12 television stations comprising more than 25 percent of the national viewing audience.

My amendment restores the 12-television-station limit and the 25-percent-of-the-national-audience limit. Why do I do that? Because I think the proper place to make that decision is at the Federal Communications Commission. They are, in fact, studying those limits, and I have no objection to those studies. I think that they are useful to do because we ought to determine when is there effective competition or when would there be control or concentration such that it affects competition in a negative way.

But I do not believe that coming out here and talking about competition,

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competition being something that benefits the American people in this legislation on telecommunications, and then saying, "By the way, we will essentially restrict competition by allowing for great concentration in ownership of television stations," represents the public interest.

I can understand why some want to do it. I can understand that we will end this process with five, six, or eight behemoth corporations owning most of the television stations in our country. But, frankly, that will not serve the public interest.

Mr. President, I respectfully tell you the Senate is not now in order.

The PRESIDING OFFICER. Will the Senate please come to order? We will not continue until the Senate has come to order. The Senator from North Dakota will proceed.

Mr. DORGAN. Mr. President, the Senate is not yet in order. I do not intend to proceed until the Senate is in order.

The PRESIDING OFFICER. Those wishing to continue their conversations, please take them off the floor. The Senator from North Dakota.

Mr. DORGAN. Thank you, Mr. President.

Mr. President, raising the national ownership limits on television stations resulting in concentration of corporate ownership of television stations in this country will represent, in my judgment, a dramatic shift in power from the local affiliates in our television industry to the national networks. The provision in this bill threatens, in my judgment, local media control, both in terms of programming and in terms of news content, in favor of national control.

One of the amendments that will follow me will be an amendment on television violence. I will tell you how to make television more violent, especially in terms of the local markets, and that is have your local television station sold to the networks, and there will not be any local control or discussion about what they are going to show on that local television station, because it will not be a local station anymore. You will remove local control, you will remove local decisionmaking, you will concentrate ownership in the hands of a few and, in my judgment, that is simply not in the public interest.

These changes will result in a nationalization of television programming and the demise of localism and program decisions made at home in local areas.

The bill changes of broadcast ownership rules that now exist at the Federal Communications Commission will lead to greater concentration and less diversity. I, for the life of me, cannot understand being on the floor of the Senate for 5 or 6 days talking about competition and deregulation being the engine of competition in our country and then seeing a provision in a bill like this that says, "Oh, by the way, you know that limit that limits somebody to no more than 12 television stations, you can own no more than 12 television stations in the country; by the way, that limit is gone. You can own 25 television stations; in fact, buy 50 of them if you wish; just fine."

Well, it is not fine with me.

Concentration does not serve the public interest. Go read a little about Thomas Jefferson. Read a little about what he thought served the public interest in this country—broad economic ownership serves the public interest in America. Broad economic ownership serves the free market and serves the interests of competition. Not concentration. Not behemoth corporations buying up and accumulating power and centralizing power, especially not in this area.

I know outside of our doors are plenty of people who want this provision. It is big money and it is big business. I am telling Senators the country is moving in the wrong direction when it does this.

There are not many voices that cry out on issues of antitrust or issues of concentration. There are not many voices raised in the public interest on these issues. I just cannot for the life of me understand people who chant about competition and chant about free markets, who so blithely ignore the threats to the free market system that come from concentration of ownership. I feel very strongly that the provision in this bill that eliminates the restriction on ownership is a provision that is bad for this country.

Senator SIMON from Illinois, I know, has probably spoken on this, and is a cosponsor of this amendment; and Senator HELMS from North Carolina. Maybe we are appealing to the schizophrenics today. Somebody on that side of the aisle who has a vastly different political outlook on things than I do, but, frankly, my interest in this is not the economic interests of this conglomerate or that conglomerate or that group, it is the interest of the public.

The public interest is served in America when there is competition and broad-based ownership. The public interest, in my judgment, is threatened in this country, especially in this area, when we decide it does not matter how much you own or who owns it.

We have always served the interests of our country in this area by limiting ownership. I think we serve the interests again if we pass my amendment and restore those sensible provisions in communication law that restrict the ownership of television stations to no more than 12, reaching no more than 25 percent of the American populace.

Mr. President, I have agreed to a time limit. This is a piece of legislation that on its own should command a day's debate. It is that important to our country. Yet it is reduced to 20 minutes because we are in a hurry and we are busy.

My hope is that people who look at this will understand the consequences of what we are doing. I am delighted that the Senator from North Carolina and some others feel as I do, that there is a way to restore a public interest dimension to this bill by passing this amendment this afternoon.

I yield the floor.

I yield 5 minutes to the Senator from North Carolina.

The PRESIDING OFFICER. The Senator from North Carolina controls 5 minutes.

Mr. HELMS. Mr. President, as a former executive at a television station, I am an enthusiastic supporter of the Dorgan amendment which is now pending. This amendment would ensure that local television news and programming decisions remain in the hands of local broadcasters.

It is a worthy amendment. The Senate ought not to hasten to vote to table it. I will tell Senators why.

There is now a delicate balance of power between the network and their affiliates. I am concerned that if we allow the networks to acquire even more stations, the balance will be unwisely tilted. Media power should not be concentrated in the hands of network broadcasters. I say this as a former broadcaster who has been there.

The networks will kick the dickens out of an affiliate if the affiliates do not toe the line. On one occasion, my television station switched networks because of the dominance of an overbearing network. It was one of the smartest decisions we ever made. This bill increases what is known as the national audience cap from the current 25 percent to 35 percent. I oppose this increase, because it will allow the networks to acquire more stations. This, in turn, could very well increase domination by the networks and enhance their ability to exercise undue control of television coverage on local events and news reports.

Mr. President, I am also concerned about the negative impact of allowing cable companies to buy television stations. Consider, if you will, the possibility that Time Warner might buy up local cable station companies and local television stations.

The Dorgan amendment, which I cosponsor, restores, one, the 25 percent audience cap; and two, the restriction on cable broadcast cross-ownership.

If Congress increases the audience cap and thus the number of stations a network can acquire, it will be more difficult for a local affiliate to preempt a network program.

Mr. President, affiliates serve as a very good check against the indecent programs being proliferated these days by the networks. The "NYPD Blue" program is an example. Many affiliates consider this show to be too violent and otherwise unacceptable because of its content of offensive material. When the affiliates objected to the program, the network lowered the boom. There are too many indecent, sexually explicit programs on television already.

Some time back, Mr. President, I sponsored an amendment to restrict

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the level of indecent material on television. Guess who fought that amendment down to the ground and fought it in the courts? Of course, the networks. The networks resent being limited in the amount of indecent material they can pump out over the airwaves. Do we really want to give the networks more power? I say no, and the Dorgan amendment says no.

The children of America, have spoken out about indecent material. In a recent survey, 77 percent of the children polled said TV too often portrays extramarital sex, and 62 percent said sex on television influences children in that direction.

Mr. President, affiliate stations often preempt programming and carry instead regional college sports and such things as Billy Graham's Crusade. These are important programs, and they should not be inhibited by network power.

We should not concentrate too much power in the hands of four national networks. The current provision in S. 652 would make possible just that kind of concentration. If this ownership rule had not been in place 10 years ago, the Fox Network could never have been created.

Local stations must have the freedom in the future to create and select and control programming, other than programming provided by the networks.

I urge Senators to support this amendment to restore local control of broadcasting decisions. I reserve the balance of my time.

Mr. PRESSLER. Mr. President, I rise in opposition to this amendment.

I believe we have reached a point where, through competition, we can achieve more than by Government regulation to keep certain competitors down.

I rather doubt that any one competitor is going to get a huge dominance in the American television market, because we have so many competitors. We have an increasing number.

When we have dial video, cable, PBS, the networks, I have here listed before me, the percentage of national coverage now by the top TV groups, they will face increasing competition.

Frequently, business comes to Washington seeking regulation to avoid competition. To those people who want to put arbitrary limits on how much success one company can have, I would say that they should be prepared to compete.

Now, a 25-percent limitation may well force some groups or individuals or companies to operate regionally, or to seek a niche market.

I believe we have enough competition to give a variety of voices. That is particularly true if we pass this bill. There will be an explosion of new services and alternatives.

In fact, I would even raise the limit to 50 percent or higher if I were doing it myself. The Commerce Committee worked out a 35-percent compromise—the Democrats and Republicans—on the committee, as well as in consultation with many other Senators.

I think 35 percent is a good compromise for the Senate. I expect that the House will probably come with 50 percent. I look upon going back to 25 percent as a move away from competition.

Why not 20 percent? Why not 10 percent? Why not 15 percent? All these percentages are anticompetitive, because it is businessmen coming to Washington who are seeking regulation to keep their competitors out. What they need to do is to compete, and they will find that they will do well.

Mr. President, the broadcasters in cable are not the only means by which video programming, for example, is distributed to consumers. More than 2 million households receive programming utilizing backyard dishes, availing them of numerous free services.

SMATV services are utilized by another million subscribers, wireless cable has attracted over half a million subscribers.

Recently direct broadcast satellite systems began offering very high-quality services. It is estimated that these services will attract more than 1 million subscribers in 1995.

Looming large on the fringes of the market are the telephone companies. The telephone companies pose a very highly credible competitive threat because of their specific identities, the technology they are capable of deploying, the technological evolution their networks are undergoing for reasons apart from video distribution, and, last but by no means least, their financial strength and perceived staying power. In 1993, the seven regional Bell operating companies [RBOC's] and GTE had combined revenues in excess of $100 billion. All of the major telephone companies in the United States have plans to enter the video distribution business, and several are currently striving mightily to do so in the face of heavy cable industry opposition, opposition which speaks for itself in terms of the perceived strength of the competition telephone companies are expected to bring to bear.

Recently three of the RBOC's—Bell Atlantic, Nynex, and Pacific Telesis—announced the formation of a joint venture, capitalized initially to the tune of $300 million, for the express purpose of developing entertainment, information and interactive programming for new telco video distribution systems. This group has hired Howard Stringer, formerly of CBS, to head the venture and Michael Ovitz of Creative Artists Agency of Los Angeles to advise on programming and technology. A key aspect of this effort is development of navigator software that eventually could replace VCR's and remote control units to help customers find programs and services. Three other RBOC's—BellSouth, Ameritech, and SBC Communications are forming a joint venture with Disney, with a combined investment of more than $500 million during the next 5 years. The goal of this venture is specifically to develop, market and deliver video programming.

On top of all this activity involving the creation of new distribution paths and delivery of new entertainment and information services to the home, there has been a simultaneous revolution in the sophistication of the communications equipment employed in the home. Today more than 84 million U.S. households have VCR's. In 1994, U.S. households spent as much money purchasing and renting videos, $14 billion, as the combined revenues of all basic cable, $4.6, and the three established broadcast networks, $9.4, in 1993. In 1994, 37 percent of U.S. households owned personal computers. In 1993, estimated retail sales of North American computer software sales were $6.8 billion.

The PRESIDING OFFICER. The time of the Senator has expired.

Mr. PRESSLER. Mr. President, I move to table the amendment.

The PRESIDING OFFICER. Time remains to the sponsors.

Mr. HELMS. Mr. President, all time has not been yielded back.

The PRESIDING OFFICER. The Senator from North Carolina is correct.

Mr. PRESSLER. I move to table the amendment.

Mr. HELMS. I wish to speak for 60 seconds.

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

Mr. HELMS. Mr. President, I ask unanimous consent the aspect of the unanimous consent requiring a tabling motion be vitiated and that we have an up-or-down vote on this amendment.

The PRESIDING OFFICER. Is there objection?

Mr. PRESSLER. I object.

The PRESIDING OFFICER. Objection is heard.

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

The PRESIDING OFFICER. The Senator from North Carolina does not control sufficient time to do that. All time must be yielded back at this point for a quorum call to be in order.

Mr. HELMS. Please repeat that.

Mr. PRESSLER. I move to table.

The PRESIDING OFFICER. The Senator from North Carolina does not control sufficient time to call for a quorum. All time would have to be yielded back in order for a quorum call.

Mr. HELMS. I did not use all of my time, that 60 seconds. I reserve that so I can suggest the absence of a quorum at that time.

The PRESIDING OFFICER. The Senator from North Dakota has 2 minutes 55 seconds remaining.

Mr. DORGAN. Mr. President, I yield 1 minute to the Senator from Illinois, Senator SIMON.

Mr. SIMON. Mr. President, I support the Dorgan amendment for the reason Senator DORGAN and Senator HELMS

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have outlined, but one other important reason. Economic diversity is important, but diversity in terms of news sources for the American people is extremely important.

I used to be in the newspaper business. Fewer and fewer people own the newspapers of this country. We are headed in the same direction in television. It is not a healthy thing for our country. I strongly support the Dorgan amendment and agree completely—it is not often I can stand up on the Senate floor and say I agree completely with Senator JESSE HELMS, but I certainly do here today.

Mr. HELMS. Right on.

The PRESIDING OFFICER, The Senator from North Carolina.

Mr. HELMS. Has all time been yielded back except for my time?

The PRESIDING OFFICER. The Senator has 14 seconds remaining.

Mr. HELMS. Is there any other time outstanding?

The PRESIDING OFFICER. The Senator from North Dakota has 2 minutes remaining.

The Senator from North Dakota.

Mr. DORGAN. Let me use just a minute of that. If the Senator from North Carolina needs another minute, I will be happy to yield to him. There is not much remaining to be said.

As I indicated earlier, this could be a discussion that should take a day and we are going to compress it into 20 minutes. If you look at the landscape of ownership of our television stations 10 years or 20 years from now, you will, in my judgment, if you vote against this amendment, regret the vote. Because I think what you will see is that at a time when we brought a bill to the floor talking about deregulation and competition, we included a provision in this bill that will lead to concentration of ownership in an enormously significant way in the television industry in this country, and I do not think it is in the public interest.

That is the position the Senator from Illinois took, the position the Senator from Nebraska discussed, and the Senator from North Carolina, too. I feel so strongly this is a mistake I just hope my colleagues will take a close, hard look at this and ask themselves, if they are talking about competition, if they are talking about local control, if they are talking about diversity, do they not believe it is in the public interest to have broad-based economic ownership of television stations spread around this country? Of course they do.

Do they want to see a future in which a half dozen companies in America own all the television stations and local control is gone, diversity is gone? I do not think so. And that is exactly what will happen if my amendment is not enacted.

So I very much hope my colleagues will understand the importance of this amendment despite the brevity of the debate.

Does the Senator from North Carolina need additional time?

Mr. PRESSLER. Mr. President, I ask unanimous consent the request to table this amendment be vitiated.

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

Mr. HELMS. No, no. What was the unanimous consent request?

The PRESIDING OFFICER. To vitiate the motion to table.

Mr. PRESSLER. Mr. President, I ask unanimous consent—the Senator from Montana has just arrived. He wishes to speak on this. All of my time is used, but I ask unanimous consent Senator BURNS be given 5 minutes to speak on this.

I have made the request to vitiate the yeas and nays.

Mr. HELMS. I thank the Senator.

Mr. PRESSLER. The Senate will vote in 5 minutes, but I also ask unanimous consent Senator SIMON be recognized—following this upcoming vote, Senator SIMON be recognized to speak for up to 10 minutes.

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

Mr. PRESSLER. I have more to it. I will go on. I was hoping to get that approved. Relax. It is coming.

I ask unanimous consent that following the remarks of Senator SIMON, the Senate resume consideration of the Conrad amendment No. 1275 and there be 20 minutes for debate to be equally divided in the usual form; and that following the conclusion or yielding time, I be recognized to make a motion to table the Conrad amendment.

Mr. DORGAN. Mr. President, reserving the right to object, may I inquire, is there additional time left on my original time allocation?

The PRESIDING OFFICER. The Senator from North Dakota still controls 15 seconds. The Senator from North Carolina has 14 seconds left.

Mr. DORGAN. Mr. President, if the Senator from Montana is going to be given by unanimous consent 5 minutes to address this subject in opposition to this amendment, then I ask we be added an additional 5 minutes.

Mr. PRESSLER. I point out as manager of the bill I cut my time down to about 4 minutes to speak against it, to try to keep things moving. But I think the Senator from Montana is so eloquent that his argument——

Mr. DORGAN. If the Senator from Montana wishes to speak in favor of my amendment, I would have no objection.

Mr. SIMON. Parliamentary inquiry. Have we disposed of the unanimous consent request of Senator PRESSLER?

Mr. PRESSLER. I further ask that Senator SIMON be recognized following the disposition of the Conrad amendment No. 1275. Does that take care of the Senator? Then we have all the problems taken care of.

Mr. LEAHY. Reserving the right to object, I note for Senators it is customary if at the time—it has been a long custom here—if all time has expired and somebody asks for additional time to speak on something that is about to be voted on, it is customary to ask for an equal amount of time for somebody on the other side. They may or may not use it, but that is the customary practice.

Mr. PRESSLER. Fine. I will point out I gave the opposition 15 minutes. I just took 5 to try to move this thing along. But, fine, we will give each side 5 more minutes.

I ask unanimous consent that occur.

The PRESIDING OFFICER. Without objection, it is so ordered. Is that to be added to the 14 seconds remaining of the Senator from North Carolina and the 15 seconds remaining to the Senator——

Mr. PRESSLER. To the 14 seconds and 15 seconds.

The PRESIDING OFFICER. Without objection, it is so ordered. The Senator from Montana.

Mr. DOMENICI addressed the Chair.

The PRESIDING OFFICER. The Senator from New Mexico.

Mr. DOMENICI. Did we also grant the unanimous consent request for the rest of the sequencing that the Senator indicated? That was done also?

The PRESIDING OFFICER. Yes, it was.

Mr. BURNS. I ask the Senator from New Mexico, did he want to speak in opposition to this?

Mr. DOMENICI. No; I am afraid if I were to speak, I might not speak in opposition, so I do not choose to speak.

Mr. BURNS. That is fine.

The PRESIDING OFFICER. The Senator from Montana has 5 minutes.

Mr. BURNS. Mr. President, I shall not take 5 minutes. I would say the way the trend has been in radio and television station ownership in the last 5 or 10 years, this actually, I think, would stymie any development of further stations in the market.

I rather doubt that any one owner wants to own both radio stations or three television stations in the market of Billings, MT. I do not think they want to own all of them. We are not talking about just network stations; we are talking about independent stations. We are talking about stations that are not affiliated with any kind of a network on the limits of ownership that you can have in a specific market but across the Nation.

So, I am going to yield my time back. I am opposed to this amendment just for the simple reason of its effect on the sale of a station. When one retires or wants to sell a station, then you are going to have to go over and maybe you have a willing buyer that will give so much money for it and then that is closed out because he already owns too many stations? Maybe nobody else wants to get into the broadcast business. This also limits your ability to market a station, if you are lucky enough to own one.

This does not pertain just to television stations. This also pertains to radio stations, radio stations as well as television stations.

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So I would oppose this amendment and I ask my colleagues to oppose it also.

I yield the floor and reserve the remainder of my time.

EXECUTIVE SESSION

EXECUTIVE CALENDAR

Mr. PRESSLER. Mr. President, in executive session, I ask unanimous consent that the Senate immediately proceed to the consideration of the following Executive Calendar nominations:

Calendar No. 175, Robert F. Rider; Calendar No. 176, John D. Hawke, and Calendar No. 177, Linda Lee Robertson.

I further ask unanimous consent that the nominations be considered en bloc, the motions to reconsider be laid upon the table en bloc, that any statements relating to the nominations appear at the appropriate place in the RECORD, that the President be immediately notified of the Senate's action, and that the Senate then return to legislative session.

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

The nominations were considered and confirmed en bloc, as follows:

U.S. POSTAL SERVICE

Robert F. Rider, of Delaware, to be a Governor of the United States Postal Service for the term expiring December 8, 2004. (Reappointment)

DEPARTMENT OF THE TREASURY

John D. Hawke, Jr., of New York, to be Under Secretary of the Treasury.

Linda Lee Robertson, of Oklahoma, to be a Deputy Under Secretary of the Treasury.

LEGISLATIVE SESSION

The PRESIDING OFFICER. Under the previous order, the Senate will now return to legislative session.

THE TELECOMMUNICATIONS COMPETITION AND DEREGULATION ACT

The Senate resumed with the consideration of the bill.

AMENDMENT NO. 1278

Mr. DORGAN. Mr. President, I yield 2 minutes to the Senator from Nebraska, Senator KERREY.

The PRESIDING OFFICER. The Senator from Nebraska.

Mr. KERREY. Mr. President, thank you.

As I indicated earlier, this amendment simply conforms with the underlying theme of S. 652 which is that if we have competition the consumers will benefit. The current language of the bill moves us in the direction of less competition. You cannot go from 25 percent ownership of stations in a service area to 35 percent without decreasing the competition. Inescapably the consequence is decreasing the number of broadcast owners in a particular area.

So, in addition to the localism argument, which was very eloquently made by both the Senator from Illinois and the Senator from North Carolina, the important issue when you are dealing with news—I point out a very important issue—when you are dealing with the question of how does the electorate, how does the public, how do the citizens themselves acquire information, is the issue of concentration of ownership. That is a very important issue.

So in addition to the idea that this shifts us away from local control of stations, there is also the very important idea of concentration in the industry, and lack of competition. It is highly likely that companies that we currently see as networks, or companies that we currently see as broadcasters, will be coming in at the local level saying we would like to provide what we previously regarded as dial tone and vice versa. This whole thing is going to get jumbled up in a hurry. As the Senator from South Dakota said several times, we allow people to get into each other's business. That is basically what the bill does.

So I hope Members who want competition, who want the consumers to benefit from that competition, will support the Dorgan amendment.

Mr. DORGAN. Mr. President, I will not use all of the remaining time. I am going to send a modification to the desk.

If I might have the attention of the Senator from South Dakota, who I think is now looking at the modification, the modification is purely technical in order to conform the amendment to the manner in which the underlying bill is drafted.

The PRESIDING OFFICER. Is there objection?

Mr. DORGAN. I have a right to modify the amendment without consent.

Mr. PRESSLER. We have a problem with one portion, which is to modify or remove such national or local ownership of radio and television broadcasting.

Mr. DORGAN. Radio has never been a part of the amendment that we offered today. It was not intended to be a part. I described the amendment earlier today as only affecting television stations. That is the intent of the amendment.

Mr. PRESSLER. In the amendment we have national or local ownership of radio and television broadcasting.

Mr. DORGAN. It is not the intent of the amendment to include radio. It is the intent to only include television, and that is the way I described it earlier today just after the noon hour.

Mr. PRESSLER. As I understand it, every Senator can modify his amendment at any time. That changes the amendment based on my understanding. The amendment I have in my hand reads radio and television broadcasting.

Mr. DORGAN addressed the Chair.

Mr. PRESSLER. A Senator has a right to modify his amendment.

The PRESIDING OFFICER. The Senator from North Dakota needs to ask unanimous consent in order to modify his amendment.

Mr. PRESSLER. In view of the fact that the amendment I have in my hand is to modify or remove such national or local ownership of radio and television broadcasting, and just on the very moment of the vote to take out radio, and I want to consult with some of my colleagues, 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. DORGAN. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

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

Mr. DORGAN. Mr. President, my understanding of the parliamentary situation is that once all time is yielded back, under the unanimous-consent request, I would then be allowed to modify my amendment, which I sought to do. Is that correct?

The PRESIDING OFFICER. It still would require unanimous consent to proceed under that scenario.

AMENDMENT NO. 1278, AS MODIFIED

Mr. DORGAN. Mr. President, I ask unanimous consent that I be allowed to modify my amendment, and I send the modification to the desk.

The PRESIDING OFFICER. Is there objection?

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

I have 2 minutes remaining. In order to accommodate my friend from North Dakota, I would yield back the remainder of my time so that will put his request to modify in correct parliamentary procedure. Is that a correct assumption?

The PRESIDING OFFICER. It will not be necessary for the Senator to yield back time in order for the unanimous-consent modification of the amendment.

Mr. BURNS. Then I reserve the remainder of my time.

I thank the Chair.

The PRESIDING OFFICER. Is there objection to the request to modify the amendment? Without objection, it is so ordered.

The amendment (No. 1278), as modified, is as follows:

Strike paragraph (1) of subsection (b) of Section (207) and insert in lieu thereof the following:

"(1) REVIEW AND MODIFICATION OF BROADCAST RULES.—The Commission shall:

"(A) modify or remove such national and local ownership rules only applying to television broadcasters as are necessary to ensure that broadcasters are able to compete fairly with other media providers while ensuring that the public receives information from a diversity of media sources and localism and service in the public interest is protected taking into consideration the economic dominance of providers in a market and

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"(B) review the ownership restriction in section 613(a)(1)."

Mr. DORGAN. Mr. President, I have 2 minutes remaining?

The PRESIDING OFFICER. The Senator has 2 minutes remaining.

Mr. DORGAN. Mr. President, I shall not use the entire 2 minutes. Let me just say that when I proposed this amendment earlier today, I indicated the amendment was about removing the provision in the bill that eliminates the restrictions on broadcast ownership on television stations. The bill is drafted that way. The first two sentences strike those provisions dealing with television stations and there was some ancillary language that relates to the rules that will have to be redrawn at the FCC. That referred to the set of rules in which they were dealing with both television and radio stations, so the word "radio" was there but it had nothing to do with the strike. So we have since corrected that so that no one can misunderstand what the discussion is.

The discussion is that we believe the elimination of the ownership rules, the ownership restrictions, 12 stations and 25 percent of the market, the elimination is not in the public interest, and we believe very much that the provision that strikes those prohibitions ought to be taken out of this bill, and the provisions of the 12 television stations and 25 percent of the market ought to remain. That is the purpose of it. I already described what I think is the importance of it, and in the interest of my friend from South Dakota, who has been very cooperative on this, in the interest of his moving this along, I would yield back the remainder of my time.

The PRESIDING OFFICER. Who yields time?

Mr. BURNS addressed the Chair.

The PRESIDING OFFICER. The Chair recognizes the Senator from Montana.

Mr. BURNS. When you start talking about, I guess, broadcast companies, I find it unlikely, coming out of that business, that any one company would come to buy all the broadcast stations, especially in television, in a specific market.

Now, we have limited it nationally to 25 percent by law under the cable rereg bill, 25 percent of the market to a specific company, but we did not say that you were limited to a certain amount of cable systems. In other words, you just do not own so many cable systems if that adds up to 25 percent.

What we are saying here is that you are limited not only as to the number of stations you can own but also a limit on the number of listeners or people who might be in that specific market nationally.

So I just think it is bad policy right now. We do not limit any other media on the amount of ownership nationally across this country.

The local station, if it is owned locally, does a much better job in competing against an absentee owner. And that question came up in the hearings. I said even though I might do business in Georgia—and there was a Georgia businessman who owned a station in my State of Montana—it is still tough to do business against a local owner of a local station whenever the investment is there and the money is spent there.

So again I would say that even the marketplace itself limits ownership in television and, of course, I am objecting to any kind of an ownership restriction on radio stations altogether.

I reserve the remainder of my time. I yield the floor.

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

The PRESIDING OFFICER. Is there a sufficient second?

There is a sufficient second.

The yeas and nays were ordered.

The PRESIDING OFFICER. Is all time yielded back?

Mr. BURNS. I yield the remainder of my time.

The PRESIDING OFFICER. Does the Senator from North Carolina yield back his time?

Mr. HELMS. I certainly do. Yes.

The PRESIDING OFFICER. All time is yielded back. The question is on agreeing to amendment No. 1278, as modified. 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.

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

The result was announced—yeas 51, nays 48, as follows:

[Rollcall Vote No. 253 Leg.]

YEAS—51

Akaka	Faircloth	Kohl
Baucus	Feingold	Lautenberg
Biden	Feinstein	Leahy
Bingaman	Glenn	Levin
Boxer	Gorton	Lieberman
Bradley	Graham	McConnell
Bumpers	Grams	Mikulski
Byrd	Grassley	Moseley-Braun
Campbell	Harkin	Murray
Conrad	Hatfield	Pell
D'Amato	Heflin	Pryor
Daschle	Helms	Reid
DeWine	Johnston	Rockefeller
Dodd	Kassebaum	Sarbanes
Domenici	Kennedy	Simon
Dorgan	Kerrey	Thomas
Exon	Kerry	Wellstone

NAYS—48

Abraham	Frist	Nickles
Ashcroft	Gramm	Nunn
Bennett	Gregg	Packwood
Bond	Hatch	Pressler
Breaux	Hollings	Robb
Brown	Hutchison	Roth
Bryan	Inhofe	Santorum
Burns	Inouye	Shelby
Chafee	Jeffords	Simpson
Coats	Kempthorne	Smith
Cochran	Kyl	Snowe
Cohen	Lott	Specter
Coverdell	Lugar	Stevens
Craig	McCain	Thompson
Dole	Moynihan	Thurmond
Ford	Murkowski	Warner

ANSWERED "PRESENT"—1

Mack

So the amendment (No. 1278), as modified, was agreed to.

Several Senators addressed the Chair.

The PRESIDING OFFICER. The majority leader.

Mr. DOLE. 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. D'AMATO. 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. D'AMATO. Mr. President, I move to reconsider the vote by which the amendment, as modified, was agreed to.

Mr. DOLE. I ask for the yeas and nays on the motion to reconsider.

The PRESIDING OFFICER. Is there a sufficient second?

There is a sufficient second.

The yeas and nays were ordered.

Mr. DORGAN. Mr. President, I move to table the motion, 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.

VOTE ON MOTION TO TABLE THE MOTION TO RECONSIDER

The PRESIDING OFFICER. The question is on agreeing to the motion to lay on the table the motion to reconsider. On this question, the yeas and nays were ordered, and the clerk will call the roll.

The bill clerk called the roll.

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

The result was announced—yeas 48, nays 52, as follows:

[Rollcall Vote No. 254 Leg.]

YEAS—48

Akaka	Feingold	Lautenberg
Baucus	Feinstein	Leahy
Biden	Ford	Levin
Bingaman	Glenn	Lieberman
Boxer	Gorton	McConnell
Bradley	Graham	Mikulski
Bumpers	Grassley	Moseley-Braun
Byrd	Harkin	Murray
Campbell	Heflin	Pell
Conrad	Helms	Pryor
Daschle	Inouye	Reid
DeWine	Johnston	Robb
Dodd	Kennedy	Rockefeller
Dorgan	Kerrey	Sarbanes
Exon	Kerry	Simon
Faircloth	Kohl	Wellstone

NAYS—52

Abraham	Gramm	Nickles
Ashcroft	Grams	Nunn
Bennett	Gregg	Packwood
Bond	Hatch	Pressler
Breaux	Hatfield	Roth
Brown	Hollings	Santorum
Bryan	Hutchison	Shelby
Burns	Inhofe	Simpson
Chafee	Jeffords	Smith
Coats	Kassebaum	Snowe
Cochran	Kempthorne	Specter
Cohen	Kyl	Stevens
Coverdell	Lott	Thomas
Craig	Lugar	Thompson
D'Amato	Mack	Thurmond
Dole	McCain	Warner
Domenici	Moynihan	
Frist	Murkowski	

So, the motion to lay on the table was rejected.

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Mr. DOLE addressed the Chair.

The PRESIDING OFFICER. The majority leader.

Mr. DOLE. Madam President, I ask unanimous consent that the yeas and nays be vitiated on the motion to reconsider.

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

Mr. DOLE. So then the vote will be, again, on the issue. We can adopt the motion to reconsider by voice vote.

VOTE ON MOTION TO RECONSIDER

The PRESIDING OFFICER. The question now is on agreeing to the motion to reconsider the vote by which the Dorgan amendment was agreed to.

So the motion was agreed to.

VOTE ON AMENDMENT NO. 1278, AS MODIFIED, UPON RECONSIDERATION

The PRESIDING OFFICER. The question is on agreeing to the Dorgan amendment No. 1278, as modified, upon reconsideration.

Mr. DORGAN. Madam President, I ask for the yeas and nays.

The PRESIDING OFFICER. The yeas and nays have already been ordered. The clerk will call the roll.

The assistant legislative clerk called the roll.

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

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

The result was announced—yeas 47, nays 52, as follows:

[Rollcall Vote No. 255 Leg.]

YEAS—47

Akaka	Faircloth	Lautenberg
Bancus	Feingold	Leahy
Biden	Feinstein	Levin
Bingaman	Glenn	Lieberman
Boxer	Gorton	McConnell
Bradley	Graham	Mikulski
Bumpers	Grassley	Moseley-Braun
Byrd	Harkin	Murray
Campbell	Heflin	Pell
Conrad	Helms	Pryor
Daschle	Inouye	Reid
DeWine	Johnston	Rockefeller
Dodd	Kennedy	Sarbanes
Domenici	Kerrey	Simon
Dorgan	Kerry	Wellstone
Exon	Kohl	

NAYS—52

Abraham	Gramm	Nunn
Ashcroft	Grams	Packwood
Bennett	Gregg	Pressler
Bond	Hatch	Robb
Breaux	Hatfield	Roth
Brown	Hollings	Santorum
Bryan	Hutchison	Shelby
Burns	Inhofe	Simpson
Chafee	Jeffords	Smith
Coats	Kassebaum	Snowe
Cochran	Kempthorne	Specter
Cohen	Kyl	Stevens
Coverdell	Lott	Thomas
Craig	Lugar	Thompson
D'Amato	McCain	Thurmond
Dole	Moynihan	Warner
Ford	Murkowski	
Frist	Nickles	

ANSWERED "PRESENT"—1

Mack

So the amendment (No. 1278), as modified, was rejected.

The PRESIDING OFFICER. The Senator from South Dakota.

Mr. PRESSLER. Madam President, I thank my colleagues. I think we are holding the committee bill together and moving forward.

There is now, under the unanimous consent as I understand it, to be a speech from Senator SIMON, which he has been waiting to give. He is prepared to go.

The PRESIDING OFFICER. May we have order in the Chamber, please?

The Senator from Illinois.

AMENDMENT NO. 1347 TO AMENDMENT NO. 1275

Mr. SIMON. Madam President, I rise in opposition to the amendment offered by my friend and colleague from North Dakota and the Senator from Connecticut, Senator LIEBERMAN. I do this reluctantly, in part because I agree with them in terms that we have a real problem and we have to confront that problem. The question is how we confront it.

Let me commend him, Senator CONRAD, Senator DORGAN, also from North Dakota, and Senator LIEBERMAN, in terms of video games and what he has been able to do there. Senator HOLLINGS has been a leader in this. Senator HUTCHISON has shown leadership. The problem is real and there are those in the industry, just like there are those in the cigarette industry, who deny there is a real problem. But the research is just overwhelming. There is no question that a cause—not the cause, because there are many causes—but a cause of violence in our society is the violence people see on entertainment television.

I stress entertainment television because on news television —sometimes it is more violent than I would like—but on news television when you see that scene from Bosnia, you see relatives crying, you see violence in its grimness. In entertainment television, there is a tendency to glorify violence.

When even the President of the United States uses a phrase like "make my day," using it against Saddam Hussein, what he is saying is violence is a way of solving problems and violence is fun. Those are precisely the wrong messages.

We have been working on this for some time. This body, I am pleased to say, unanimously passed a bill saying the industry can get together without violating the antitrust laws to deal with the problem of violence. Since that has happened, there have been steps—major steps, frankly, by the broadcast industry; very small steps by the cable industry—in moving in a more positive direction. That ultimately is going to have an effect on our society.

If you look back at the old television series and movies, you will see our heroes and heroines smoking a great deal, drinking very heavily. That just quietly changed. The same thing is happening on broadcast television, but it is not happening, frankly, in the cable field as much as we would like. I applaud the steps that have been taken, but we need to do more.

I am also very reluctant to see Government get excessively into this problem. I spoke in Los Angeles in August 1993 to a unique gathering of 800 television and movie producers and talked about this issue of violence in our films. It was received about as favorably out there as Senator Bob DOLE's recent comments. Let me just add that I agree with the general thrust of Senator DOLE's comments.

But one of the things I said in August 1993 was, if the industry was willing to set up monitoring where we could find out what is happening, independent monitoring that is recognized as solid, I would oppose any legislative answers. At first we got a very negative response from the industry. Finally, both the broadcast and cable industries have established—or have contracted with respected entities, UCLA and Mediascope, to do this. The first report on broadcast will come in September. The report on cable will come in January. And tentatively we will have that for 3 years.

I think it is important that we let the industry try to correct its problems on its own, that we applaud the steps that have been taken, that we say more steps are needed. I have a sense-of-the-Senate resolution which will be voted upon immediately after we vote on the Conrad-Lieberman amendment—it is cosponsored by Senator DOLE and Senator PRESSLER—which urges the industry to do more in this area but does not get the Federal Government involved directly. When you start moving in the direction of getting the Federal Government involved—for example this deals with "the level of violence or objectionable content." When you talk about "objectionable content," you are talking about something that is not very precise. When you talk about content, I think the Federal Government has to be very, very careful.

If the industry on its own gets into this V-chip field, I applaud that. I welcome that. I am reluctant to have the Federal Government start moving into this field of content.

Let me add, it is not a substitute for the industry policing itself and having good programming, positive programming. Even if this is agreed to, we will still face the reality, for example, that in the high crime areas of our country young people watch a great deal more television than they do in the suburbs and rural areas of our country. And they are going to continue to see much too much violence and programs that I think are objectionable.

So my hope is that, frankly, we will defeat the Conrad-Lieberman amendment because we do not want the Federal Government getting its fist in there too heavily. I think we have to be careful. But let us pass the sense-of-the-Senate resolution, which will send a signal, a very clear signal, a sense-of-the-Senate resolution that I assume will pass unanimously, that sends a signal to the industry: Let us do better. We have serious concerns.

Madam President, I reserve the remainder of my time.

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Mr. PRESSLER. Will the Senator yield?

The PRESIDING OFFICER. The Chair recognizes the distinguished Senate majority leader.

Mr. DOLE. Madam President, I will just take a few minutes, I say to Senator SIMON.

First, I ask unanimous consent the vote on the motion to table the Conrad amendment occur at 8:10 p.m. to be followed immediately by a vote on the Simon amendment.

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

Mr. DOLE. Mr. President, I support the goals of the amendments offered by my distinguished colleagues, Senator CONARD and Senator LIEBERMAN.

Both Senators are absolutely right to criticize the television industry for programming that too often glorifies mindless violence and casual sex. One recent study commissioned by USA Weekend magazine recorded 370 instances of "crude language or sexual situations" during a 5-night period of prime-time programming, or 1 every 8.9 minutes; 208 of these incidents occurred between 8 and 9 p.m., the so-called family hour.

According to one study, children will have been exposed to nearly 18,000 televised murders and 800 televised suicides by the time they reach the ripe old age of 18.

Clearly, on the issue of violent and sexually oriented programming, the television industry has much, much to explain to concerned parents throughout the country.

So, Mr. President, Senator CONARD, Senator LIEBERMAN, and I are in total agreement when it comes to identifying the problem that his amendment seeks to address. We part ways, however, when it comes to how best to resolve this problem in a way that is both effective and consistent with our free-speech traditions.

Senator CONRAD's amendment, as modified by the Lieberman second-degree, may not amount to censorship, but by establishing a 5-member Presidential Commission to create a "violence rating system," it takes us one step closer to government control over what we see and hear on television. As I have said on numerous occasions, we have more to lose than to gain from putting Washington in charge of our culture.

I am also concerned about the provisions in Senator CONRAD's amendment that would direct TV stations to transmit the ratings developed by the Presidentially appointed Commission as well as require that all TV sets be equipped with chip technology in order to block out programming found objectionable under the government-rating system.

These provisions are inconsistent with the general deregulatory approach of this bill—that less government control, less government regulations are what is needed most for a strong, competitive, consumer-oriented telecommunications industry.

The real solution to the problem of television's corrosive impact on our culture lies with concerned parents, informed consumers who have the good sense to turn off the trash, and corporate executives within the entertainment industry who are willing to put common decency above corporate profits.

That is why I have cosponsored the sense of the Senate amendment offered by my distinguished colleague from Illinois, Senator SIMON. This amendment is right-on-target: It states that "self-regulation by the private sector is * * * preferable to direct regulation by the Federal Government." And it urges the entertainment industry "to do everything possible" to limit the amount of violent and aggressive programming, particularly during the hours when children are most likely to be watching.

In other words: No regulation. No government involvement. No censorship. Just focusing the moral spotlight where it is needed most.

Mr. President, the television industry has tremendous power. In fact, television is perhaps the most dominant cultural force in America today. But with this power comes responsibility. It is my hope, and it is the hope of millions of Americans across this great country, that the television industry will finally get the message and preform a much-needed and urgent house-cleaning.

Let me also add that when I made a statement about the entertainment industry a couple of weeks ago it did get the attention of a lot of people. But I notice in all the surveys that followed that speech there were about as many people concerned about Government censorship as there were about the violence, the mindless violence, and casual sex in movies and TV.

I have been criticized, maybe with some justification, by some who say, "BOB DOLE, Senator DOLE, wants censorship." I never suggested censorship. I did not suggest the Government do anything. I suggested that shame is a powerful weapon, and that it ought to be used.

I also suggested that, while the entertainment industry has its first amendment rights, we have our first amendment rights to express outrage, as the Senator from Illinois has done, the Senator from New Jersey, Senator BRADLEY, and many others, in this Senate.

So I would hope that we would not let the Government take one inch, make one effort that would indicate that we are headed towards Government regulation, Government involvement, censorship, if you will, and give the industry a chance to clean up its act. The last thing we want is more Government, particularly in a bill. As I have suggested, we are trying to deregulate and be more competitive.

I hope that the Conrad amendment and the underlying amendment will be tabled, and that the amendment of the Senator from Illinois would then be adopted.

The PRESIDING OFFICER. Does the Senator from Illinois wish to use his final minutes?

Mr. SIMON. Madam President, I would like to reserve the 2 minutes for later, if I could.

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

Mr. CONRAD addressed the Chair.

The PRESIDING OFFICER. The Senator from North Dakota.

Mr. CONRAD. I ask that Senator LIEBERMAN, Senator EXON, Senator BYRD, Senator NUNN, and Senator FEINSTEIN be shown as cosponsors of my amendment.

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

Mr. CONRAD. I thank the Chair.

Madam President, the amendment that I am offering is not governmental choice in television. It is parental choice in television. There is a world of difference, and it is an important difference.

The amendment that I am offering provides for choice chips in new television sets so that parents can decide what comes into their homes—not the Government; parents. That is what the American people want, and that is what this amendment provides. It says when we start building new television sets let us include the new technology that will permit parents to decide what their children see—no Government bureaucrat, no Government agency; parents. That is precisely where the choice ought to lie.

Madam President, we do not dictate when the industry should provide the choice chip. We provide that there should be consultation between the industry and the FCC to determine the appropriate time for the choice chip to be included in new television sets. But we did say those chips ought to be available, and ought to be included in new sets, whether they are manufactured abroad or in this country for use in America. The American people want to be able to make these decisions.

I would direct my colleagues' attention to a USA Today poll that was taken on June 2 through the 4th. They asked the question:

Should "V-chips" be installed in TV sets so parents could easily block violent programming?

Yes. 90 percent; 90 percent said yes. They want to have the ability to choose. They want to have the ability to make the determination about what their kids see—not Government, parents.

This amendment empowers parents. Let parents decide. It leaves the decision where it belongs, with American families—not some Government agency, not some Government authority, but the American parents.

Second it provides for a rating system.

Mr. BREAUX. Will the Senator yield?

Mr. CONRAD. I would prefer not to. I would like to conclude my statement because I have very limited time.

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Consumers would like to know the content of programming. So we provide for a rating system. In my amendment, it is not determined by any Government board. It is determined by industry getting together with all interested parties. They are given 1 year on a voluntary basis to determine a rating system—not some Government fiat, not some Government dictate, but the industry working together with all interested parties on a voluntary basis for 1 year to establish a rating system.

Do you know? I believe they could do it without any Government interference, without any Government involvement. But if they fail after 1 year, then, yes. We provide that the FCC step in and oversee the creation of the rating system.

Do you know what? We have seen this done in other industries. We asked the industry that is involved with recreational software to develop on a voluntary basis a rating system. They did it. They did an excellent job. This is what they came up with—a thermometer that shows levels of violence, shows sexual activity, shows language so that people can make a judgment for themselves. That is what we are calling for here—parental choice, not governmental choice.

Madam President, I ask my colleague, Senator LIEBERMAN, for his comments.

The PRESIDING OFFICER. The Senator from Connecticut.

Mr. PRESSLER. Madam President, how much time remains, and who is it allocated to?

The PRESIDING OFFICER. The Senator from South Dakota has 9 minutes, and the Senator from North Dakota has 4 minutes and 40 seconds.

Mr. CONRAD. I give 3 minutes to my colleague from Connecticut.

The PRESIDING OFFICER. The Senator from Connecticut.

AMENDMENT NO. 1347, AS MODIFIED, TO AMENDMENT NO. 1275

Mr. LIEBERMAN. I thank the Chair.

Madam President, I first want to exercise my ability to send a modification of my second-degree amendment to the desk.

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

Mr. LIEBERMAN. I thank the Chair.

The PRESIDING OFFICER. The amendment is so modified.

Mr. LIEBERMAN. This is a technical amendment which in part——

Mr. PRESSLER. Reserving the right to object——

The PRESIDING OFFICER. The Senator from South Dakota.

Mr. LIEBERMAN. Madam President, I exercised, I say to the chairman of the committee, my right to modify my second-degree amendment. It is a technical modification which in part responds to the suggestion of the ranking member of the committee to remove the section of the original amendment that would have established a system of fees to finance the grading board.

Mr. PRESSLER. What is the parliamentary situation? Does this take unanimous consent?

The PRESIDING OFFICER. It does require unanimous consent.

Does the Senator object?

Mr. PRESSLER. I must reserve the right to object.

Mr. LIEBERMAN. I am happy to proceed with my statement.

The PRESIDING OFFICER. The Senator from Connecticut.

Mr. LIEBERMAN. I thank the Chair.

Mr. PRESSLER. I withdraw my objection.

The PRESIDING OFFICER. The amendment is so modified.

The amendment (No. 1347), as modified, is as follows:

On page 3, strike out line 12 and all that follows through page 4, line 16, and insert in lieu thereof the following:

SEC. 503. RATING CODE FOR VIOLENCE AND OTHER OBJECTIONABLE CONTENT ON TELEVISION.

(a) SENSE OF CONGRESS ON VOLUNTARY ESTABLISHMENT OF RATING CODE.—It is the sense of Congress—

(1) to encourage appropriate representatives of the broadcast television industry and the cable television industry to establish in a voluntary manner rules for rating the level of violence or other objectionable content in television programming, including rules for the transmission by television broadcast stations and cable systems of—

(A) signals containing ratings of the level of violence or objectionable content in such programming; and

(B) signals containing specifications for blocking such programming;

(2) to encourage such representatives to establish such rules in consultation with appropriate public interest groups and interested individuals from the private sector; and

(3) to encourage television broadcasters and cable operators to comply voluntarily with such rules upon the establishment of such rules.

(b) REQUIREMENT FOR ESTABLISHMENT OF RATING CODE.—

(1) IN GENERAL.—If the representatives of the broadcast television industry and the cable television industry do not establish the rules referred to in subsection (a)(1) by the end of the 1-year period beginning on the date of the enactment of this Act, there shall be established on the day following the end of that period a commission to be known as the Television Rating Commission (hereafter in this section referred to as the "Television Commission"). The Television Commission shall be an independent establishment in the executive branch as defined under section 104 of title 5, United States Code.

(2) MEMBERS.—

(A) IN GENERAL.—The Television Commission shall be composed of 5 members appointed by the President, by and with the advice and consent of the Senate, of whom—

(i) three shall be individuals who are members of appropriate public interest groups or are interested individuals from the private sector; and

(ii) two shall be representatives of the broadcast television industry and the cable television industry.

(B) NOMINATION.—Individuals shall be nominated for appointment under subparagraph (A) not later than 60 days after the date of the establishment of the Television Commission.

(D) TERMS.—Each member of the Television Commission shall serve until the termination of the commission.

(E) VACANCIES.—A vacancy on the Television Commission shall be filled in the same manner as the original appointment.

(2) DUTIES OF TELEVISION COMMISSION.—The Television Commission shall establish rules for rating the level of violence or other objectionable content in television programming, including rules for the transmission by television broadcast stations and cable systems of—

(A) signals containing ratings of the level of violence or objectionable content in such programming; and

(B) signals containing specifications for blocking such programming.

(3) COMPENSATION OF MEMBERS.—

(A) CHAIRMAN.—The Chairman of the Television Commission shall be paid at a rate equal to the daily equivalent of the minimum annual rate of basic pay payable for level IV of the Executive Schedule under section 5314 of title 5, United States Code, for each day (including traveltime) during which the Chairman is engaged in the performance of duties vested in the commission.

(B) OTHER MEMBERS.—Except for the Chairman who shall be paid as provided under subparagraph (A), each member of the Television Commission shall be paid at a rate equal to the daily equivalent of the minimum annual rate of basic pay payable for level V of the Executive Schedule under section 5315 of title 5, United States Code, for each day (including traveltime) during which the member is engaged in the performance of duties vested in the commission.

(4) STAFF.—

(A) IN GENERAL.—The Chairman of the Television Commission may, without regard to the civil service laws and regulations, appoint and terminate an executive director and such other additional personnel as may be necessary to enable the commission to perform its duties. The employment of an executive director shall be subject to confirmation by the commission.

(B) COMPENSATION.—The Chairman of the Television Commission may fix the compensation of the executive director and other personnel without regard to the provisions of chapter 51 and subchapter III of chapter 53 of title 5, United States Code, relating to classification of positions and General Schedule pay rates, except that the rate of pay for the executive director and other personnel may not exceed te rate payable for level V of the Executive Schedule under section 5316 of such title.

(5) CONSULTANTS.—The Television Commission may procure by contract, to the extent funds are available, the temporary or intermittent services of experts or consultants under section 3109 of title 5, United States Code. The commission shall give public notice of any such contract before entering into such contract.

(6) FUNDING.—There is authorized to be appropriated to the Commission such sums as are necessary to enable the Commission to carry out its duties under this Act.

Mr. LIEBERMAN. I thank the chairman of the committee.

Madam President, again, I am privileged to join with my colleague from North Dakota in this amendment. The fact is that every study we have seen shows the extraordinary unacceptable amount of violence on television. It affects our children. It makes them more violent. The fact is that it is hard to believe that amount of inappropriate, objectionable material that the majority leader has referred to as casual sex on television which affects the violence of our kids.

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One survey I quoted in an earlier statement here said the kids themselves admitted that what they saw on television encouraged them to be involved in sexual activity earlier than they should have.

It is time finally in our society that we focus on some of the major forces that affect our values and our children's values. We are confronting the difficult question of the impact of the entertainment media which is so powerful on our values and on our lives in our society.

This amendment gives the Members of this Chamber the opportunity to do more than talk about this problem. This is an opportunity to do something about it—not to create censorship, far from it—but under the terms of this amendment to basically get the attention of the television industry.

Senator SIMON, our colleague, has been a leader in this. But the fact is, as I understand it, that it is because of his understanding of the television industry that he has offered his sense of the Senate. The fact is that the industry has not gotten the message.

The programs that our kids are seeing are giving them the wrong message, and it is affecting their behavior and challenging the ability of parents in this country to raise their kids the way *they want to raise them. This* amendment, modified by my second-degree amendment, simply gives the industry a year to create its own standards; if they do not, then sets up a rating board, two members from the industry, three from the public, to do the job.

The PRESIDING OFFICER. The Senator's time has expired.

Mr. LIEBERMAN. I thank the Chair. This Senate ought to act on this problem.

I yield the floor.

Mr. PRESSLER addressed the Chair.

The PRESIDING OFFICER. The Senator from South Dakota.

Mr. PRESSLER. Madam President, it is the intention of the Commerce Committee to hold hearings on this subject in the near future. Indeed, Senator HOLLINGS and many others have bills that they have filed, and they have been patiently waiting to have hearings so that we can start a legislative process.

For example, this amendment, before it was amended, said we would have had to look at the impact of assessing fees on broadcasters for funding a national commission on TV.

Now, that has been modified, but there still are many questions that I have about this. And I would inform Members that a Simon-Dole-Pressler amendment will be coming calling for renewed efforts by the broadcast industry to regulate violent programming. It is my strongest feeling that we should vote down the first amendment and adopt the sense-of-the-Senate amendment so that we can clearly state our views on this matter and proceed with legislation in a proper way with hearings and a markup.

I thought the Senator from Louisiana wished to speak. I would like to yield as much time as the Senator from Louisiana would consume.

Mr. BREAUX. I thank the chairman. I would just like to ask a question of the Senator who is the sponsor of the amendment. He spoke of the—what was it, the choice chip? It would seem to me that the TV sets already have choice chips. It is called the off and on switch, and when the parent thinks that the program is not proper for a small child in their home, they just go turn it off. And that is a choice chip by a different name. But they have the right to control what their children see right now.

I am not sure why we have to order companies to build some other kind of *switch to regulate what children see. It* is a parental responsibility, I think, to say this is a program that is suitable for my child or it is not. And if it is not, you take the little off-on switch and you go "flick" or you can take the remote control and go "push" and the program is gone—poof, it is gone, like we already have a choice chip on the TV right now.

I would like to ask, what is the problem with the existing chip?

Mr. CONRAD. The Senator asks a very good question, and the problem is very often the parents are not home to help participate in that choice. Millions of American families have both parents working. Millions of American families are so busy that they do not have a chance to monitor every minute of what their children are watching. And so what we are providing is when the parent is absent, they are able to program that television to exclude programming they find objectionable. Why not? Why should not parents have an ability to say that not just anyone can come into their home, uninvited, and give any message to their kid that they want to give without the parents being able to stop it?

Mr. BREAUX. I thank the Senator.

Mr. CONRAD. I think the American people want the chance to say no.

Mr. BREAUX. I think it is a valid response.

I thank the Senator for yielding. I thank the Chair. I yield the floor.

Mr. SIMON addressed the Chair.

The PRESIDING OFFICER (Mr. ASHCROFT). The Senator from Illinois.

AMENDMENT NO. 1349

Mr. SIMON. Mr. President, I would like to take my remaining time. I have an amendment at the desk I would offer.

The PRESIDING OFFICER. The clerk will report the amendment.

The legislative clerk read as follows:

The Senator from Illinois (Mr. SIMON), for himself, Mr. DOLE, and Mr. PRESSLER, proposes an amendment numbered 1349.

Mr. SIMON. 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:

At the appropriate place add the following.

SEC. : FINDINGS.

The Senate finds that—

Violence is a pervasive and persistent feature of the entertainment industry. According to the Carnegie Council on Adolescent Development, by the age of 18, children will have been exposed to nearly 18,000 televised murders and 800 suicides.

Violence on television is likely to have a serious and harmful effect on the emotional development of young children. The American Psychological Association has reported that children who watch "a large number of aggressive programs tend to hold attitudes and values that favor the use of aggression to solve conflicts." The National Institute of Mental Health has stated similarly that "violence on television does lead to aggressive behavior by children and teenagers."

The Senate recognizes that television violence is not the sole cause of violence in society.

There is a broad recognition in the U.S. Congress that the television industry has an obligation to police the content of its own broadcasts to children. That understanding was reflected in the Television Violence Act of 1990, which was specifically designed to permit industry participants to work together to create a self-monitoring system.

After years of denying that television violence has any detrimental effect, the entertainment industry has begun to address the problem of television violence. In the Spring of 1994, for example, the network and cable industries announced the appointment of an independent monitoring group to assess the amount of violence on television. These reports are due out in the Fall of 1995 and Winter of 1996, respectively.

The Senate recognizes that self-regulation by the private sector is generally preferable to direct regulation by the federal government.

SEC. : SENSE OF THE SENATE.

It is the Sense of the Senate that the entertainment industry should do everything possible to limit the amount of violent and aggressive programming, particularly during the hours when children are most likely to be watching.

Mr. SIMON. Mr. President, in closing the argument, let me say if the industry on its own moves in this direction, I will applaud the industry for doing it. But let us not make any mistake, we are moving beyond anything Government has ever done before. We are saying, if the industry in 1 year does not get this resolved, then a Government commission is going to determine violence and objectionable content. That is an intrusion that I hope we can avoid. And my reason for hoping we can avoid it is that, frankly, we are making some progress in the television industry. On the broadcast side, we are clearly making progress. No one denies that. On the cable side, frankly, very little progress has been made. And there I hope the industry can move ahead. But we are going to have monitoring. We are going to have our first report come in September of this year on broadcast, January of next year on cable. Let us let the industry try to resolve this matter on their own. It is a genuine problem. I agree with Senator CONRAD and Senator LIEBERMAN on that. But I think we have to be careful how far the Federal Government goes.

Mr. CONRAD addressed the Chair.

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The PRESIDING OFFICER. The Senator from North Dakota.

Mr. CONRAD. How much time do I have remaining?

The PRESIDING OFFICER. The Senator has 1 minute 29 seconds.

Mr. CONRAD. Mr. President, I just have to correct the record with respect to the statement Senator SIMON made. My amendment does not have any Government agency determining what is objectionable content. It is not a governmental decision. It is parental choice. Parents have a right to decide. The only involvement of Government is if the industry does not move forward with putting in chips, the choice chips that will allow parents to make these decisions, it will be required on new television sets.

Second, with respect to a rating system so that parents can determine what is coming into their homes, if the industry, together with all interested parties, does not reach a determination within 1 year, then a commission will determine a rating system. They will not determine that something is objectionable and should be blocked from people's homes. Not at all. People can produce anything they want, but parents will have a right to choose what comes into their homes.

Under the Dole-Simon amendment, they are saying that the networks can come into your home, talk to your children, say anything they want, and you cannot stop them. We say that is wrong. We say that parents ought to be able to choose what their children see.

I hope my colleagues will support this commonsense amendment that gives parents the right to decide what comes into their homes.

The PRESIDING OFFICER. The Senator's time has expired.

Mr. PRESSLER addressed the Chair.

The PRESIDING OFFICER. The Senator from South Dakota.

Mr. PRESSLER. How much time do I have remaining?

The PRESIDING OFFICER. The Senator from South Dakota has 3 minutes 50 seconds.

Mr. PRESSLER. I will use my time to urge Members to vote to table the Conrad amendment. And I urge Members to express their concern on this subject by voting for the Dole-Simon-Pressler amendment, which will be a sense-of-the-Senate, so Members will have an opportunity for a followup vote.

I urge all Members of the Senate to vote to table the Conrad amendment No. 1275.

Mr. BRADLEY. Will the Senator yield?

Mr. PRESSLER. The Senator from New Jersey wants 1 minute. Even though he is not on my side, I will give him 1 minute but then I want the floor to make my motion.

Mr. BRADLEY. I thank the distinguished Senator.

Mr. President, this is the opening round of a very important debate. Nobody disputes that too much violence is coming into the home. It is coming into the home because it sells, because the market works, because people buy it.

So the question is, how do you stop it from coming into the home? My first preference would be to shame those who are making money out of selling trash. But if that fails, Mr. President, then clearly there has to be another way to try to prevent the trash from coming into the home. The amendment offered by the distinguished Senators from South Dakota and Connecticut is the beginning of saying, well, what if the market will not be subject to shame? What if it will continue to put forth trash?

The PRESIDING OFFICER. The Senator's time has expired.

Mr. BRADLEY. Therefore, Mr. President, I think this is a very important Senate decision.

Mr. PRESSLER. Mr. President, I must now move to table the Conrad amendment. The hour of 8:10 has arrived. I know the Senator from Florida wanted 1 minute. I do not know that that can be worked out, but I do now move to table the Conrad amendment No. 1275, and I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second?

There appears to be a sufficient second.

The yeas and nays were ordered.

Mr. GRAHAM. Mr. President, I would like to ask if the Senator from South Dakota will yield 1 minute of his time to me.

Mr. PRESSLER. I do yield 1 minute.

The PRESIDING OFFICER. Without objection, the Senator from Florida is recognized for 1 minute.

Mr. GRAHAM. Mr. President, I ask unanimous consent to be listed as a cosponsor of the Conrad-Lieberman amendment.

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

Mr. GRAHAM. Mr. President, this is not an issue of censorship or excessive Government intrusion. This is essentially an issue of empowerment. We are empowering the parents of children to make an intelligent choice, which the children by their immaturity often are unable to make. Who better to ask in our society to be responsible for what comes into the minds of young people than those who love them the most and have the responsibility for their nurturing and upbringing?

I believe that we ought to be encouraging responsibility beyond just the pure dictates of the marketplace from many aspects of our society. I am very pleased that three Federal agencies —the Department of Defense, Amtrak, and the Postal Service—have joined together to establish some standards that will not place Federal advertising into programs that are excessively violent.

I hope that would be a standard of social responsibility that other sponsors would look to and that we would allow parents to exercise that responsibility by empowering them to control what their children see.

The PRESIDING OFFICER. The Senator's time has expired.

Mr. PRESSLER. I yield back all my time. This will be a vote on a motion to table.

VOTE ON MOTION TO TABLE AMENDMENT NO. 1275

The PRESIDING OFFICER. The question is on agreeing to the motion to lay on the table amendment No. 1275 offered by the Senator from North Dakota [Mr. CONRAD]. 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.

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

The result was announced—yeas 26, nays 73, as follows:

[Rollcall Vote No. 256 Leg.]

YEAS—26

Ashcroft	Glenn	Packwood
Burns	Grassley	Pell
Craig	Jeffords	Pressler
D'Amato	Kempthorne	Robb
Dodd	Kyl	Santorum
Dole	Leahy	Simon
Faircloth	Lott	Specter
Feingold	Moseley-Braun	Thomas
Frist	Moynihan	

NAYS—73

Abraham	Exon	Lieberman
Akaka	Feinstein	Lugar
Baucus	Ford	McCain
Bennett	Gorton	McConnell
Biden	Graham	Mikulski
Bingaman	Gramm	Murkowski
Bond	Grams	Murray
Boxer	Gregg	Nickles
Bradley	Harkin	Nunn
Breaux	Hatch	Pryor
Brown	Hatfield	Reid
Bryan	Heflin	Rockefeller
Bumpers	Helms	Roth
Byrd	Hollings	Sarbanes
Campbell	Hutchison	Shelby
Chafee	Inhofe	Simpson
Coats	Inouye	Smith
Cochran	Johnston	Snowe
Cohen	Kassebaum	Stevens
Conrad	Kennedy	Thompson
Coverdell	Kerrey	Thurmond
Daschle	Kerry	Warner
DeWine	Kohl	Wellstone
Domenici	Lautenberg	
Dorgan	Levin	

ANSWERED "PRESENT"—1

Mack

So the motion to lay on the table the amendment (No. 1275) was rejected.

VOTE ON AMENDMENT NO. 1347, AS MODIFIED, TO AMENDMENT NO. 1275

Mr. PRESSLER. Mr. President, I ask unanimous consent that the yeas and nays be vitiated on amendment No. 1347.

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

Several Senators addressed the Chair.

The PRESIDING OFFICER. The question occurs on the second-degree amendment No. 1347 offered by the Senator from Connecticut.

If there be no further debate, the question is on agreeing to the amendment.

The amendment (No. 1347), as modified, was agreed to.

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

Mr. PRESSLER. I ask for the yeas and nays on amendment No. 1349.

VOTE ON AMENDMENT NO. 1275, AS AMENDED

The PRESIDING OFFICER. The question occurs on amendment No. 1275 as amended.

The amendment (No. 1275), as amended, was agreed to.

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

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

The motion to lay on the table was agreed to.

Mr. PRESSLER adressed the Chair.

The PRESIDING OFFICER. The Senator from South Dakota.

VOTE ON AMENDMENT NO. 1349

Mr. PRESSLER. Mr. President, I ask for the yeas and nays on amendment No. 1349.

The PRESIDING OFFICER. Is there a sufficient second?

There is a sufficient second.

The yeas and nays were ordered.

The PRESIDING OFFICER. The question occurs on amendment No. 1349, offered by the Senator from Illinois [Mr. SIMON].

The yeas and nays have been ordered. The clerk will call the roll.

The bill clerk called the roll.

The result was announced, yeas 100, nays 0, as follows:

[Rollcall Vote No. 257 Leg.]

YEAS—100

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

So, the amendment (No. 1349) was agreed to.

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

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

The motion to lay on the table was agreed to.

Mr. PRESSLER addressed the Chair.

The PRESIDING OFFICER. The Senator from South Dakota.

Mr. PRESSLER. Mr. President, I have 2 or 3 unanimous consent requests.

AMENDMENT NO. 1335

Mr. President, I ask unanimous consent that the Senate now resume consideration of amendment 1335—it is the Kerrey of Nebraska amendment—the amendment be agreed to and the motion to reconsider be laid upon the table, all without any intervening action or debate.

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

So the amendment (No. 1335) was agreed to.

AMENDMENT NO. 1350

(Purpose: To assure that the national security is protected when considering grants of common carrier license to foreign entities and other persons)

Mr. PRESSLER. I ask that the pending amendments be laid aside, and I send an amendment to the desk on behalf of Senator EXON.

The PRESIDING OFFICER. Without objection, it is so ordered. The clerk will report.

The legislative clerk read as follows:

The Senator from South Dakota [Mr. PRESSLER], for Mr. EXON, for himself, Mr. DORGAN, and Mr. BYRD, proposes an amendment numbered 1350.

Mr. PRESSLER. 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 49, line 15 after "Government (or its representative)" add the following: "provided that the President does not object within 15 days of such determination"

On page 50 between line 14 and 15 insert the *following:*

"(c) THE APPLICATION OF THE EXON-FLORIO LAW.—Nothing in this section (47 U.S.C. 310) shall limit in any way the application of 50 U.S.C. App. 2170 (the Exon-Florio law) to any transaction."

Mr. EXON. Mr. President, I rise to offer an amendment related to the foreign ownership provisions of the telecommunications bill.

S. 652, the pending bill, adds new procedures to permit foreign ownership of common carrier licenses if the Federal Communications Commission [FCC] determines that the home country of the proposed foreign owner offers reciprocal and equivalent market opportunities to Americans.

The Exon-Dorgan-Byrd amendment clarifies that nothing in the new section limits or affects the application of the Exon-Florio law (50 App. 2170) which gives the President the power to investigate and if necessary prohibit or suspend a merger, takeover or acquisition of an American company by a foreign entity when the national security may be affected by such transaction.

Where the proposed FCC procedure would permit the foreign acquisition of a U.S. telecommunications company and its common carrier licenses, it is important to make clear that the new FCC procedure does not pre-empt existing law affecting foreign mergers, acquisitions and takeovers.

Most importantly, our proposed amendment would give the President 15 days to review actions of the FCC. Under this provision, the license could be granted only if the President does not object within 15 days. As Commander in Chief, and the conductor of foreign policy, there may be information available to a President which would not or should not be available to the FCC in making its findings under the proposed procedure in S. 652. The Exon-Dorgan-Byrd amendment assures that the President gets the final say if a common carrier license is granted to a foreign entity.

This amendment should be non-controversial and in no way undermines the foreign investment and ownership reforms of S. 652. It preserves important national security, foreign policy and law enforcement powers of the President.

I urge my colleagues to support this short but critically important amendment.

Mr. BYRD. Mr. President, I strongly support the amendment offered by the distinguished senior Senator from Nebraska [Mr. EXON], and am a co-sponsor of it along with the distinguished Senator from North Dakota [Mr. DORGAN]. The international marketplace in telecommunications equipment and service is a very robust, lucrative one, and the opportunities for U.S. companies abroad are vast. However, this marketplace is subject to many of the same kind of barriers to entry as has been the case for other American business sectors. Currently, the US Trade representative, Ambassador Kantor, has initiated a 301 case against the Japanese in the area of automobile parts, after years of frustration in trying to gain fair entry into the Japanese market. The Senate has strongly endorsed this action by a vote of 88–8 on a resolution offered by myself, the two leaders, and other Senators on both sides of the aisle.

Similar problems of access to foreign markets exist in the telecommunications sector, and the bill as reported from the Commerce Committee includes a provision to protect our country and our companies from unfair competition. The bill as reported by the Committee supports an incentives-based strategy for foreign countries to open their telecommunications markets to U.S. companies. It does this by conditioning new access to the American market upon a showing of reciprocity in the markets of the petitioning foreign companies. Current law, that is section 310 of the Communications Act of 1934, provides that a foreign entity may not obtain a common carrier license itself, and may not own more than 25 percent of any corporation which owns or controls a common carrier license. This foreign ownership limitation has not been very effective and has not prevented foreign carriers from entering the U.S. market. The FCC has had the discretion of waiving this limitation, if it finds that such action does not adversely affect the public interest.

HeinOnline -- 3 Bernard D. Reams, Jr. & William H. Manz, Federal Telecommunications Law: A Legislative History of the Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56 (1996) including the Communications Decency Act S8252 1997

Nevertheless, maintaining restrictions on foreign ownership is generally considered by U.S. industry to be useful as one way to raise the issue of unfair foreign competition and to maintain leverage abroad. Therefore, the bill established a reciprocal market access standard as a condition for the waiver of Section 310(b). It states that the FCC may grant to an alien, foreign corporation or foreign government a common carrier license that would otherwise violate the restriction in Section 310(b) if the FCC finds that there are equivalent market opportunities for U.S. companies and citizens in the foreign country of origin of the corporation or government.

Even though Section 310 has not prevented access into our market, the existence of the section has been used by foreign countries as an excuse to deny U.S. companies access to their markets. The provision in S. 652, applying a reciprocity rule, makes it clear that our market will be open to others to the same extent that theirs are open to our investment. This is as it should be.

The amendment offered by the distinguished Senator from Nebraska ensures that important factors of national security and the overall best interest of the U.S. from the perspective of law enforcement, foreign policy, the interpretation of international agreements, and national economic security are protected. The FBI has indicated to me its grave concerns over foreign penetration of our telecommunications market. Foreign governments whose interests are adverse to the U.S., foreign drug cartels, international criminal syndicates, terrorist organizations, and others who would like to own, operate, or penetrate our telecommunications market should be prohibited from doing so. Therefore, the Exon-Dorgan-Byrd amendment gives the president the authority to overturn an FCC decision to grant a waiver of the restrictions of Section 310. This is based, of course, on the superior information available to the President by virtue of the resources available to him across the board in the Executive branch. The president must have a veto in this field, and he should not hesitate to exercise this authority.

Mr. President, my second degree amendment provides that, in the event that the President should reject a recommendation by the FCC to grant a license to a foreign entity to operate in our market, the President shall provide a report to the Congress on the findings he has made in the particular case and the factors that he took into account in arriving at his determination. The Congress needs to be kept in the loop on the evolution of our telecommunications market. The reports can be provided in classified and/or unclassified form, as appropriate, since many of the national security factors that might pertain in a particular case are sensitive and should be protected.

In addition, Mr. President, my amendment has a second section which deals with the issue of the actual nature of the foreign telecommunications market place. Given the highly lucrative nature of the telecommunications marketplace, the stakes of gaining access to foreign markets are high. It should be no surprise that securing effective market access to many foreign markets, including those of our allies, such as France, Germany and Japan, has been very difficult. Those markets remain essentially closed to our companies, dominated as they are by large monopolies favored by those governments. In fact, most European markets highly restrict competition in basic voice services and infrastructure. A study by the Economic Strategy Institute, in December 1994, found that "While the U.S. has encouraged competition in all telecommunication sectors except the local exchange, the overwhelming majority of nations have discouraged competition and maintained a public monopoly that has no incentive to become more efficient. U.S. firms, as a result of intense competition here in the U.S., provide the most advanced and efficient telecommunications services in the world, and could certainly compete effectively in other markets if given the chance of an open playing field." The same study found that "U.S. firms are blocked from the majority of lucrative international opportunities by foreign government regulations prohibiting or restricting U.S. participation and international regulations which intrinsically discriminate and overcharge U.S. firms and consumers." This study found that the total loss in revenues to U.S. firms, as a result of foreign barriers, is estimated to be close to $100 billion per year between 1992 and the end of the century.

As my colleagues are aware, the negotiations which led to the historic revision of the GATT agreement, and which created the World Trade Organization, were unable to conclude an agreement on telecommunications services. Thus, separate negotiations are underway in Geneva today to secure such an agreement, in the context of the Negotiating Group on Basic Telecommunications. In the absence of such an agreement, we must rely on our own laws to protect our companies and to provide leverage over foreign nations to open their markets. To forego our own national leverage would do a great disservice to American business and would be shortsighted—the result of which would be not only a setback to our strategy to open those markets, but to pull the rug out from under our negotiators in Geneva seeking to secure a favorable international agreement for open telecommunications markets. Indeed, tough U.S. reciprocity laws are clearly needed by our negotiators to gain an acceptable, effective, market-opening agreement in Geneva in these so-called GATT (General Agreement on Trade in Services) negotiations.

The standard for access into the American market in the reported bill requires that the FCC find that market opportunities in the home market of the applicant be equivalent to those desired in the U.S. in the specific telecommunications market segment involved. Thus, if an applicant wants to get into the American mobile telephone market, the mobile telephone market of the applicant must be open. I expect that the FCC will be very tough, and the President will be very tough, as provided for in the underlying amendment pending here, in making a determination that the home market of the applicant is really open for our investment and/or operations. My second degree amendment would also require the FCC and the President to look beyond that specific telecommunications market segment, and make an evaluation of the accessibility of the whole range of telecommunications market segments for American investment and/or operations. This is because the telecommunications market between the U.S. and our trading partners is often very asymmetrical. For instance, if a German company wants to get into the U.S. mobile phone market, we might find, and indeed we would find, that the German mobile phone market is open to U.S. business access. But the rest of the German market is mainly closed up tighter than a dry drum to U.S. investment or entry. So we at least need to inform ourselves of the real nature of the international marketplace, and I would expect that these evaluations would be made available to the public, in detail and in a timely way. Over the long run, if we determine a persistent pattern of imbalance and unfairness, as a whole, exists in telecommunications markets, further action to force foreign markets open will have to be considered.

Mr. President, this is an effort to advance our understanding of the nature of the evolving international marketplace for the range of exploding technologies in the telecommunications field, and to ensure that America is treated fairly and in a reciprocal manner. I congratulate the committee for the reciprocity provision and I hope that the modest contribution that Senators EXON, DORGAN, and I make with this amendment will add something of value to that provision.

AMENDMENT NO. 1351 TO AMENDMENT NO. 1350

(Purpose: To require a report on objections to determinations of the Federal Communications Commission for purposes of termination of foreign ownership restrictions and to revise the determinations of market opportunities for such purposes)

Mr. PRESSLER. I send a second-degree amendment to the desk on behalf of Senator BYRD.

The PRESIDING OFFICER. The clerk will report the amendment.

The legislative clerk read as follows:

The Senator from South Dakota [Mr. PRESSLER], for Mr. BYRD, for himself and Mr. EXON, proposes an amendment numbered 1351.

HeinOnline -- 3 Bernard D. Reams, Jr. & William H. Manz, Federal Telecommunications Law: A Legislative History of the Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56 (1996) including the Communications Decency Act S8253 1997

Mr. PRESSLER. 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 1 of the amendment, line 4, strike out "determination." and insert in lieu thereof the following: "determination. If the President objects to a determination, the President shall, immediately upon such objection, submit to Congress a written report (in unclassified form, but with a classified annex if necessary) that sets forth a detailed explanation of the findings made and factors considered in objecting to the determination."

On page 49, line 17, insert after the period the following: "While determining whether such opportunities are equivalent on that basis, the Commission shall also conduct an evaluation of opportunities for access to all segments of the telecommunications market of the applicant."

Mr. EXON. Mr. President, I am pleased to support and cosponsor Senator BYRD's amendment to the Exon-Dorgan-Byrd foreign investment amendment. This friendly amendment would require the President to report to the Congress in a classified and unclassified form.

This report mirrors the reporting provisions of the 1993 Exon-Byrd amendment to the Exon-Florio law. I am pleased to lend my full support to my friend and colleague from West Virginia.

Mr. PRESSLER. I ask unanimous consent that the amendment be agreed to and the motion to reconsider be laid on the table.

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

So the amendment (No. 1351) was agreed to.

Mr. PRESSLER. Mr. President, I ask unanimous consent that the Exon amendment be agreed to and the motion to reconsider be laid upon the table.

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

So the amendment (No. 1350), as amended, was agreed to.

Mr. PRESSLER. Mr. President, I believe that that brings our activities on the telecommunications bill to a close today. I think we have made good progress, and I think the committee bill has held together. I know there are Senators present with speeches, but I wish to thank all Senators.

The PRESIDING OFFICER. The Senator from Mississippi.

CLOTURE MOTION

Mr. COCHRAN. Mr. President, I send a cloture motion to the desk.

The PRESIDING OFFICER. The cloture motion having been presented under rule XXII, the Chair directs the clerk to read the motion.

The bill clerk read as follows:

CLOTURE MOTION

We, the undersigned Senators, in accordance with the provisions of rule XXII of the Standing Rules of the Senate, do hereby move to bring to a close debate on Calendar No. 45, S. 652, the telecommunications bill:

Trent Lott, Larry Pressler, Judd Gregg, Don Nickles, Rod Grams, Rick Santorum, Craig Thomas, Spencer Abraham, Bob Dole, Ted Stevens, Larry Craig, Mike DeWine, John Ashcroft, Robert Bennett, Hank Brown, and Conrad Burns.

MESSAGES FROM THE PRESIDENT

Messages from the President of the United States were communicated to the Senate by Mr. Thomas, one of his secretaries.

EXECUTIVE MESSAGES REFERRED

As in executive session the Presiding Officer laid before the Senate messages from the President of the United States submitting sundry nominations which were referred to the appropriate committees.

(The nominations received today are printed at the end of the Senate proceedings.)

REPORT OF THE DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT FOR CALENDAR YEARS 1993—MESSAGE FROM THE PRESIDENT—PM 55

The PRESIDING OFFICER laid before the Senate the following message from the President of the United States, together with an accompanying report; which was referred to the Committee on Banking, Housing, and Urban Affairs.

To the Congress of the United States:

Pursuant to the requirements of 42 U.S.C. 3536, I transmit herewith the 29th Annual Report of the Department of Housing and Urban Development, which covers calendar year 1993.

WILLIAM J. CLINTON.

THE WHITE HOUSE, *June 13, 1995.*

EXECUTIVE AND OTHER COMMUNICATIONS

The following communications were laid before the Senate, together with accompanying papers, reports, and documents, which were referred as indicated:

EC-969. A communication from the Director of the Institute of Museum Services, transmitting, pursuant to law, the report under the Federal Managers' Financial Integrity Act; to the Committee on Governmental Affairs.

EC-970. A communication from the Comptroller General of the United States, transmitting, pursuant to law, notice of the reports and testimony for April 1995; to the Committee on Governmental Affairs.

EC-971. A communication from the Executive Director of the Federal Retirement Thrift Investment Board, transmitting, a draft of proposed legislation to amend Title 5, United States Code, to provide additional investment funds for the thrift savings plan; to the Committee on Governmental Affairs.

EC-972. A communication from the Director of the Office of Personnel Management, transmitting, a draft of proposed legislation entitled "The Federal Employees Emergency Leave Transfer Act of 1995"; to the Committee on Governmental Affairs.

EC-973. A communication from the Director of the Office of Personnel Management, transmitting, pursuant to law, the report under the Chief Financial Officers Act of 1990; to the Committee on Governmental Affairs.

EC-974. A communication from the Chief Operating Officer/President of the Resolution Funding Corporation, transmitting, pursuant to law, a report relative to internal controls for 1993 and 1994; to the Committee on Governmental Affairs.

EC-975. A communication from the Chair of the Federal Energy Regulatory Commission, transmitting, pursuant to law, the 1994 annual report under the Government in the Sunshine Act; to the Committee on Governmental Affairs.

EC-976. A communication from the Executive Director of the Neighborhood Reinvestment Corporation, transmitting, pursuant to law, the 1994 annual report under the Government in the Sunshine Act; to the Committee on Governmental Affairs.

EC 977. A communication from the chairman of the Council of the District of Columbia, transmitting, pursuant to law, copies of D.C. Act 11-51, adopted by the Council on May 2, 1995; to the Committee on Governmental Affairs.

EC 978. A communication from the chairman of the Council of the District of Columbia, transmitting, pursuant to law, copies of D.C. Act 11-52, adopted by the Council on May 2, 1995; to the Committee on Governmental Affairs.

EC 979. A communication from the chairman of the Council of the District of Columbia, transmitting, pursuant to law, copies of D.C. Act 11-53, adopted by the Council on May 2, 1995; to the Committee on Governmental Affairs.

EC 980. A communication from the chairman of the Council of the District of Columbia, transmitting, pursuant to law, copies of D.C. Act 11-54, adopted by the Council on May 2, 1995; to the Committee on Governmental Affairs.

EC 981. A communication from the chairman of the Council of the District of Columbia, transmitting, pursuant to law, copies of D.C. Act 11-55, adopted by the Council on May 2, 1995; to the Committee on Governmental Affairs.

EC 982. A communication from the chairman of the Council of the District of Columbia, transmitting, pursuant to law, copies of D.C. Act 11-56, adopted by the Council on May 2, 1995; to the Committee on Governmental Affairs.

EC 983. A communication from the chairman of the Council of the District of Columbia, transmitting, pursuant to law, copies of D.C. Act 11-59, adopted by the Council on May 2, 1995; to the Committee on Governmental Affairs.

INTRODUCTION OF BILLS AND JOINT RESOLUTIONS

The following bills and joint resolutions were introduced, read the first and second time by unanimous consent, and referred as indicated:

By Mr. DOMENICI (for himself and Mr. BOND):

S. 917. A bill to facilitate small business involvement in the regulatory development processes of the Environmental Protection Agency and the Occupational Safety and Health Administration, and for other purposes; to the Committee on Small Business.

By Mr. EXON:

HeinOnline -- 3 Bernard D. Reams, Jr. & William H. Manz, Federal Telecommunications Law: A Legislative History of the Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56 (1996) including the Communications Decency Act S8254 1997

Document No. 46

HeinOnline -- 3 Bernard D. Reams, Jr. & William H. Manz, Federal Telecommunications Law: A Legislative History of the Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56 (1996) including the Communications Decency Act [ciii] 1997

HeinOnline -- 3 Bernard D. Reams, Jr. & William H. Manz, Federal Telecommunications Law: A Legislative History of the Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56 (1996) including the Communications Decency Act [civ] 1997