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April 25, 1997

VIA HAND DELIVERY

David Waddell, Executive Secretary
Tennessee Regulatory Authority
460 James Robertson Parkway
Nashville, TN 37238

Re: *BellSouth Telecommunications, Inc.'s Entry Into Long Distance (InterLATA) Service in Tennessee Pursuant to Section 271 of the Telecommunications Act of 1996*
Docket No. 97-00309

Dear Mr. Waddell:

Enclosed are the original and thirteen copies of BellSouth Telecommunications, Inc.'s Prehearing Brief in the above-referenced matter. A copy has been provided to counsel of record.

Very truly yours,

Guy M. Hicks

GMH:ch
Enclosure

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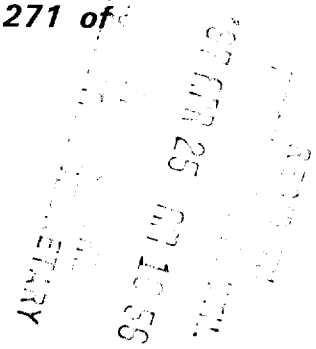
BEFORE THE TENNESSEE REGULATORY AUTHORITY
Nashville, Tennessee

In Re: ***BellSouth Telecommunications, Inc.'s Entry Into Long Distance (InterLATA) Service in Tennessee Pursuant to Section 271 of the Telecommunications Act of 1996***

Docket No. 97-00309



BELLSOUTH TELECOMMUNICATIONS, INC.'S PREHEARING BRIEF

I. INTRODUCTION

At the April 3, 1997 status conference in this matter, the parties were directed to file legal briefs addressing two questions: (1) whether BellSouth Telecommunications, Inc. ("BellSouth") is precluded from obtaining authorization to provide interLATA services in Tennessee under Section 271(c)(1)(B) or so-called "Track B" and, instead, must proceed under Section 271(c)(1)(A) or so-called "Track A"; and (2) whether BellSouth must wait until "permanent" cost based rates have been set by the Tennessee Regulatory Authority ("TRA") before obtaining interLATA authority in Tennessee. BellSouth asserts that both of these questions must be answered in the negative and respectfully submits this Brief in support of its position.

II. STATEMENT OF APPLICABLE LAW

A. Overview Of Section 271

Section 271 of the Telecommunications Act of 1996 ("1996 Act") is a critical part of Congress's "pro-competitive, de-regulatory national policy

framework" to "open telecommunications markets to competition." S. Rep. No. 230, 104th Cong., 2d Sess. 1 (1996) ("Conference Report") (excerpts attached as Exhibit 1). Section 271 was designed to create head-to-head competition between long distance carriers and the Bell Operating Companies ("BOCs") in both the local and long distance markets by ending the old regime established under the Modification of Final Judgment, which had artificially divided local and long distance markets into two separate spheres. Congress intended to create a situation that would allow "everyone to compete in each other's business," which would bring consumers "low cost integrated service with the convenience of having only one vendor and one bill to deal with." 142 Cong. Rec. S713, S714 (daily ed. Feb. 1, 1996) (statement of Sen. Harkin).[1]

The first step was opening local telecommunications markets. *See* 142 Cong. Rec. S688 (daily ed. Feb. 1, 1996) (statement of Sen. Hollings) (Bell companies must "open their networks to competition prior to their entry into long distance"). Congress set out specific requirements for opening local markets in Sections 251-253 of the Act and made entry into long distance under Section 271 conditional upon the BOCs doing so. 141 Cong. Rec. S8138 (daily ed. June 12, 1995) (statement of Sen. Kerrey); *see* 141 Cong. Rec. S8152-8153 (daily ed. June 12, 1995) (statement of Sen. Breaux) (BOCs allowed to sell long distance and required the opening of local exchange markets).

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[1] Copies of excerpts from the daily edition of *The Congressional Record* are attached as Collective Exhibit 2.

Section 271 thus ensures that opening the local markets would not only allow local competition but would also enhance competition in the "oligopolistic" long distance business through BOC entry. 141 Cong. Rec. S7881 (daily ed. June 7, 1995) (statement of Sen. Pressler); 142 Cong. Rec. S686-87 (daily ed. Feb. 1, 1996) (statement of Sen. Pressler) (Act "will lower prices on long-distance calls through competition"). Section 271 was *not* enacted to give incumbent interexchange carriers the means to postpone such competition. 141 Cong. Rec. S7881, S7889 (daily ed. June 7, 1995) (statement of Sen. Pressler). As one congressman observed:

> This will tell anyone who studies rates and competition that there is no competition in the long distance market. What is causing the vast objection from AT&T, MCI and Sprint is the fact that they want to continue this cozy undertaking without any competition from the Baby Bells or from anybody else.

141 Cong. Rec. H8463 (daily ed., Aug. 4, 1995) (statement of Rep. Dingell).

Congress created two different routes for BOCs to begin competing for long distance customers -- Track A under Section 271(c)(1)(A) and Track B under Section 271(c)(1)(B). Under either route, a BOC can obtain approval for entry into the long distance market if that entry is in the public interest and other statutory requirements are fulfilled. However, unlike Track A, which allows a BOC to apply for long distance authority immediately, Track B requires that the BOC wait ten months from the enactment of the Act before applying.[2]

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[2] Which route to follow depends largely on the relevant market facts existing at the time a BOC files its application at the FCC. Until an application is filed at the FCC, no conclusive judgment is possible about the routes that are open. After the FCC receives the BOC's filing, Section 271(d)(2)(B) requires the FCC to consult

1. Track A route

Track A is titled "Presence of a Facilities-Based Competitor." No dispute exists that it requires the presence of a qualifying facilities-based competitor. Track A defines a qualifying facilities-based provider as one that is: (1) an "unaffiliated competing provider" (2) "of telephone exchange service" (3) "to residential and business subscribers" (4) "exclusively" or "predominately" over its own facilities. 47 U.S.C. § 271(c)(1)(A). Furthermore, the facilities-based provider under Track A must have "implemented" the interconnection agreement and must be "operational." Conference Report at 148; *see also* Conference Report at 147 ("[t]he competitor must *offer* telephone exchange service") (emphasis added). The requirements of the Track A facilities-based provider were carefully considered. The Track A/Track B approach came "virtually verbatim from the House," which specifically considered how to describe the facilities-based competitor in new subsection 271(c)(1)(A)." Conference Report at 147-148.

Track A arose from Congress's belief that cable companies would emerge quickly as facilities-based competitors. The Conference Report concluded that "[s]ome of the initial forays of cable companies into the field of local telephony therefore hold the promise of providing the sort of local residential competition that has consistently been contemplated," citing one cable company that already had

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with the relevant state commission concerning whether the applying BOC meets the requirements of Section 271(c). At that time, the state commission may offer a timely assessment of how the BOC's application measures up to Section 271(c).

entered into an interconnection agreement with an incumbent BOC so that it could offer telephone service to 650,000 subscribers. *Id.* at 148.

Because of the possibility that cable companies would emerge quickly as facilities-based competitors to local telephone companies, Congress enacted Track A to permit an expedited route for BOCs to enter the long distance market (unlike Track B which required a ten month waiting period). *See, e.g.*, 142 Cong. Rec. S713 (daily ed. Feb. 1, 1996) (statement of Sen. Breaux) ("In some states these agreements have already been put in place with the approval of state public service commissions ... [i]n those instances, we see no reason why the FCC should not act immediately and favorably on a Bell company's petition to compete"). As one of the key authors of the Act explained:

> And, the biggest surprise to us was when Brian Roberts of Comcast Cable on behalf of the cable industry said that they wanted to be the competitors of the telephone companies in the residential marketplace. In fact, the next day, I called Brian and Jerry Levin of Time-Warner to have them reassure me that their intent was to be major players and competitors in the residential marketplace. After that discussion, I told my staff that we needed a checklist that would decompartmentalize cable and competition in a verifiable manner and move the deregulated framework even faster than ever imagined. And we came up with the concept of a facilities-based competitor who was intended to negotiate the loop for all within a State and it has always been within our anticipation that a cable company would in most instances and in all likelihood be that facilities-based competitor in most states.

142 Cong. Rec. H1149 (daily ed., Feb. 1, 1996) (statement of Rep. Fields).

Thus, it was Congress's intention that, under Track A, a facilities-based competitor could "negotiate the loop for all within a State." Because this competitor would be a real, facilities-based competitor with the capability and

incentive to quickly negotiate an interconnection agreement and begin providing service over its facilities, it would be a reliable negotiator for the market. Congress provided that this competitor's agreement would be available to others within the State under Section 252(i). Thus, Track A is a vehicle that allows a BOC to demonstrate that its local market is open to competition through an implemented agreement with a Track A competitor and, in return, gain the ability to seek entry into long distance.

2. Track B route

Track B sets forth the other route a BOC may follow to seek long distance authority. It allows a BOC to demonstrate that the local market is open to competition through a general statement of the terms and conditions for access and interconnection that has been approved or permitted to take effect by the State commission.

By its own terms, Track B is available, after the ten month waiting period, if "no such provider has requested the access and interconnection described in subparagraph (A)." 47 U.S.C. § 271(c)(1)(B). The "no such provider" language refers to the "competing provider" described in Track A. Thus, Track B remains open until there exists a facilities-based provider(s) of telephone exchange service to residential and business customers with whom an interconnection agreement has been reached and implemented. Without these requirements of Track A having been met, Track B is the only route available to a BOC.

B. Overview Of Section 252(d)

Section 252(d) of the 1996 Act is entitled "Pricing Standards"; it governs the establishment of the prices that a BOC may charge for interconnection, unbundled network elements, and transport and termination of traffic as well as the applicable wholesale discount. 47 U.S.C. § 252(d)(1) - (3). Under Section 252(d)(1), determinations by a State commission of the rate for interconnection and network elements "shall be" based on cost, be nondiscriminatory, and may include a reasonable profit. Under Section 252(d)(2), a State commission must find that the charges for transport and termination of traffic are cost based.

Congress required that a State commission ensure compliance with Section 252(d) in a multitude of proceedings. For example, in resolving any open issues in an arbitration proceeding and in imposing conditions upon the parties to that arbitration, a State commission "shall ... establish any rates for interconnection, services, or network elements according to [Section 252(d)]." 47 U.S.C. § 252(d)(2). Likewise, before approving an arbitrated interconnection agreement, a State commission must find that the agreement complies with Section 252(d); failure to do so is one of the few grounds for rejecting the agreement. Thus, in issuing its rulings in the various arbitrations proceedings involving BellSouth, the TRA had a statutory duty to ensure that the prices to be charged by BellSouth for interconnection, network elements, and termination and transport complied with Section 252(d).

III. DISCUSSION

A. BellSouth Is Not Foreclosed From Seeking In-Region InterLATA Authority In Tennessee Under Track B, As Several Parties Contend.

To BellSouth's knowledge, there is no facilities-based competitor providing telephone exchange service to residential and business subscribers exclusively or predominantly over its own facilities in Tennessee. While NEXTLINK is a facilities-based competitor in Tennessee, it serves only business customers in the State. Likewise, MCI, ACSI, and Brooks Fiber (as well as other providers) either are or soon will be serving business customers in Tennessee at least in part over their own facilities. Because a qualifying facilities-based provider does not presently exist in Tennessee, BellSouth cannot seek interLATA authority under Track A, but must instead proceed under Track B.

Those parties with the most to lose from BellSouth's entry into long distance -- particularly AT&T and MCI -- contend that Track B is not an option for BellSouth. These parties claim that a BOC is foreclosed from seeking interLATA authority under Track B if a potential competitor simply requests negotiations for access and interconnection with the BOC, even if the competitor does not have the facilities or residential and business customers required by Track A. At the same time, these carriers argue that Track A also is foreclosed until the potential competitor requesting negotiations actually signs and implements the agreement, invests in sufficient facilities to serve business and residential subscribers predominately over

its own facilities, and decides actually to provide service to both subscriber groups for some "commercially" significant period of time.

The TRA should reject this convoluted interpretation, which would only serve to delay full competition in the telecommunications market. Adopting AT&T and MCI's interpretation of the interplay between Track A and Track B would take the decision on opening the long distance market to competition out of the hands of the FCC, deny the TRA its role in the process, and put the timing of opening the Tennessee long distance market into the hands of BellSouth's competitors. These carriers could exploit the artificial no-man's land their interpretation creates by simply making a request to negotiate for access and interconnection (thereby foreclosing Track B under their reading of the statute), and then limiting facilities investments or limiting facilities-based service to only residential or business subscribers (thereby foreclosing Track A as well).

In fact, that is what would likely happen in Tennessee. None of the smaller companies currently providing or which will soon be providing local exchange service in Tennessee -- NEXTLINK and ACSI, for example -- have given any indication that they intend to be facilities-based providers of local service to residence customers. While AT&T and MCI have indicated in other proceedings that they intend to provide service to residence customers initially on a resale basis, they have refused to commit to deploying their own facilities to serve residence customers.

Indeed, under their interpretation of Section 271, AT&T and MCI have every incentive not to do so, if by deploying facilities to serve both residence and business customers, BellSouth is allowed to compete for long distance customers. At the very least, they would have an incentive to delay doing so until the restriction on their ability to joint market has lapsed or until new technologies that could be used to bypass the local network -- such as new wireless technology -- have been implemented. In the meantime, they could selectively deploy facilities to skim off BellSouth's profitable business customers, while using the resale provisions of the 1996 Act to serve residential customers. All the while, under AT&T and MCI's view, customers in Tennessee would be denied the benefit of BellSouth's entry into the long distance market and the corresponding increase in competition that would occur as a result.

Such a result runs counter to the language and intent of Congress, which sought to establish rules to open markets, not keep them closed or allow them to be kept closed. The legislative history is clear that the requirements tying Tracks A and B together serve Congress's goal of opening the long distance market to competition by keeping a route open for BOCs to seek long distance authority. The Conference Report makes the point that Track B "is intended to ensure that a BOC is not effectively prevented from seeking entry into the interLATA services market simply because *no facilities-based competitor that meets the criteria set out in new section 271(c)(1)(A) has sought to enter the market.*" Conference Report at 148 (emphasis added). That is, Congress believed that a general statement of terms

and conditions subject to state review would be at least as reliable a guarantor of open markets as the facilities-based competitor serving both business and residential customers pursuant to Track A.

The most detailed explanation of Track B's "no such provider" language was offered by Congressman Tauzin during the House debate. Congressman Tauzin made clear that "[s]ubparagraph (b) uses the words 'such provider' to refer back to the exclusively or predominantly facilities based provider described in subparagraph (A)." 141 Cong. Rec. H8457 (daily ed. Aug. 4, 1995) (statement of Rep. Tauzin). He gave several examples of how Track B would apply in practice. According to Congressman Tauzin, a BOC could file under Track B if: (i) "no competing provider of telephone exchange service with its own facilities or predominantly its own facilities has requested access and interconnection"; (ii) the BOC had only received interconnection requests from carriers that do not use predominantly or exclusively competitive facilities; or (iii) a facilities-based competitor had requested access, but it served only business customers. *Id.* In all these instances, the BOC would not have received an interconnection request that satisfies Track A's requirement of a request from a facilities-based "competing provide[r] of telephone exchange service ... to residential and business subscribers." *Id.* Congressman Tauzin's explanation is consistent with the plain language of the statute and is uncontradicted in the legislative history.

Congressman Tauzin's view that Track B remains open until a BOC has received a request for interconnection from a provider that meets each of the

requirements of Track A was affirmed by Congressman Hastert, a member of the Conference Committee and author of the provision which became Section 271(c)(1)(B). Congressman Hastert stated during the Conference Report debate that Track B remains open until a BOC has received a *"request for access and interconnection from a facilities-based competitor that meets the criteria in Section 271(c)(1)(A)."* 142 Cong. Rec. H1152 (daily ed., Feb. 1, 1996) (statement of Rep. Hastert) (emphasis added). According to Congressman Hastert, "Section 271(c)(1)(A) calls for an agreement with a carrier to provide this carrier with access and interconnection so that the carrier can provide telephone exchange service to both business and residential subscribers. *This carrier must also be facilities based; not be affiliated with the BOC; and must be actually providing the telephone exchange service through its own facilities or predominantly its own facilities." Id.*

Section 271(c)(1) and its legislative history are clear that Track B is open unless and until a competing provider is actually providing telephone exchange service to residential and business subscribers either exclusively or predominantly over its own telephone exchange service facilities. Because there is no such competing provider in Tennessee, BellSouth may seek long distance authority under Track B.[3]

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[3] In fact, a BOC may file with the FCC under Track B up to three months *after* it receives a request for access and interconnection from a competitor that meets the requirements of Track A. 47 U.S.C. § 271(c)(1)(B). This ensures that competitors cannot block an application for long distance authority by seeking interconnection after the BOC has started down the Track B route.

B. BellSouth Is Not Required To Wait Until "Permanent" Cost-Based Rates Have Been Established Before Obtaining InterLATA Authority In Tennessee.

The TRA should reject any argument that BellSouth cannot obtain interLATA authority in Tennessee until "permanent" cost-based rates have been established. Such an argument ignores the plain language of Section 252(d), which only requires that rates for interconnection, access, and transport and termination be "cost-based." *See* 47 U.S.C. § 252(d). The TRA had the statutory duty when acting as arbitrators -- a duty the TRA itself recognized -- to ensure that the rates it established through arbitration met the requirements of Section 252(d). The TRA presumably did not disregard its statutory duty when issuing its arbitration decisions (or in approving the various interconnection agreements with BellSouth). Because the TRA established rates in the arbitration proceedings that the TRA concluded satisfied the requirements of Section 252(d) for arbitration purposes, these rates necessarily satisfy the requirements of Section 252(d) for purposes of BellSouth's obtaining interLATA authority.

In its February 18, 1997 Report concerning BellSouth's anticipated request to provide interLATA services in Tennessee, the TRA Staff concluded that BellSouth has not met certain aspects of the 14-point competitive checklist because, according to the Staff, the rates for interconnection, access to network elements, access to pole attachments, and reciprocal compensation arrangements are interim rates not "based on cost." (Staff Report, Attachment 1 ¶¶ 1-3 & 13). The Staff Report concludes that "BellSouth should not be certificated as in

compliance with these items until the cost studies are complete, and permanent rates are set." (Staff Report at 4). The Staff's analysis, which has been embraced by the interexchange carriers anxious to delay BellSouth's entry into long distance, grossly underestimates the significance of the TRA's arbitration decisions and completely ignores the TRA's statutory obligation to ensure compliance with Section 252(d) in the arbitration proceedings.[4]

The standards for the TRA's conduct of the arbitration proceedings under the 1996 Act are set forth in Section 252(c). This provision expressly required the Commission in the arbitrations to "establish any rates for interconnection, services, or network elements according to subsection (d)...." 47 U.S.C. § 252(c)(2). The reference to subsection (d) is, of course, to the pricing standard in Section 252(d), which requires that rates for interconnection and unbundled network elements be cost-based and may include a reasonable profit.

In this regard, the 1996 Act is clear: in arbitrating disputed issues concerning the rates for interconnection and unbundled network elements, the TRA was required to ensure that such rates were consistent with Section 252(d). The TRA recognized as much, noting in its January 23 Order, that the resolution of the issues to be arbitrated, including the establishment of interim prices, "*complies with*

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[4] Notwithstanding the Staff's suggestion to the contrary, the rates established by the TRA in the arbitration proceedings for pole attachments, conduit, ducts, and rights-of-way were not "interim." (Order at 58). Furthermore, the TRA established rates for pole attachments, conduits, and ducts based on the FCC formula and for rights-of-way based on the lowest rates negotiated by BellSouth in Tennessee for existing license agreements, which are clearly "just and reasonable" rates based on cost, which is all the Act requires. *See* 47 U.S.C. § 224(d).

the provisions of the Act, and is supported by the record in this proceeding." (Order at 63) (emphasis added); *see also* November 14, 1996 Hearing TR at 114 ("We have fulfilled the intent of our State of Tennessee Legislature and *we have complied with the federal law*") (statement of Director Kyle) (emphasis added).

Thus, any suggestion that the rates the TRA adopted in the arbitration proceedings were not "cost-based rates under Section 252(d)" conflicts with the requirements of Section 252(c) and the TRA's statements that it was establishing rates in the arbitrations consistent with Section 252(d). The Staff Report makes no attempt to resolve this conflict. In fact, neither Section 252(c) nor the above-quoted language from the TRA's arbitration decision is even mentioned in the Staff Report.

That the interconnection agreements approved by the TRA and the January 23, 1997 Order of the Arbitrators contain interim prices that apply until permanent prices are established does not change this conclusion. (*See* Order at 9 & 18). Section 252(d) requires that the rates for interconnection, unbundled network elements, and transport and termination be cost based; it does not specify what methodology the TRA must use. If the TRA is concerned that it may adopt a different methodology in a subsequent proceeding, there is nothing in the 1996 Act that precludes the TRA from using one methodology in establishing initial cost-based rates, while utilizing a different methodology to establish other cost-based rates at a later date. In either instance, the rates would be cost based, which is all Section 252(d) requires.

The process followed by the TRA in the arbitration proceedings which resulted in the establishment of interim cost-based rates is analogous to that advocated by the FCC in its August 8, 1996 Local Interconnection Order. The FCC itself recognized the appropriateness of "interim arbitrated rates" that "might provide a faster, administratively simpler, and less costly approach to establishing prices ...." *First Report and Order*, Docket No. 96-325 ¶ 767 (August 8, 1996). The FCC examined cost data from a number of cost proxy models and other sources and set in place a schedule of proxy rates which State commissions were authorized to apply until a State commission could set rates "on the basis of an economic cost study ...." *Id.*, ¶ 787. These rates did not spring from a single source or a single methodology. Presumably, the FCC believed that these rates were permissible under the Act, since it expressly authorized State commissions to apply them in meeting their arbitration obligations under the 1996 Act.

The fallacy in any suggestion that the TRA did not adopt "cost-based rates" in the arbitration proceedings is further illustrated by the Arbitrators' January 23, Order, which reflects that the interim prices for interconnection and network elements "were based on one of two criteria: existing tariffs where available, with a preference for intrastate tariffs over interstate tariffs; or, where no tariff existed, a price which was logically consistent with the prices submitted by the parties." (Order at 52). In either case, the interim price was "cost based."

With respect to prices based on existing tariffs, these prices were set and approved by the Tennessee Public Service Commission and were established

consistent with the cost-based standard set forth in Section 252(d). (9/12/96 Prefiled Testimony of Robert C. Scheye, Docket No. 96-01152, at 34). Likewise, the prices proposed by BellSouth, AT&T, and MCI for new or unbundled services were all cost-based, and the parties submitted cost studies supporting such prices. (*Id.*) ("For new or additional unbundled elements, BellSouth proposes a price which covers cost, provides contribution to recovery of shared and common costs, includes a reasonable profit, and is not discriminatory"); (9/12/96 Prefiled Testimony of Wayne Ellison, Docket No. 96-01152, at 11-12) (AT&T's proposed rates "are based on compliant cost studies produced by the Hatfield Model" or "based on cost estimates provided by BellSouth"). Thus, the interim prices adopted by the TRA are "cost based."

In addition to being legally flawed, the Staff's apparent conclusion that BellSouth cannot satisfy Section 252(d) until new cost studies have been completed and permanent rates have been set is completely incompatible with Congress's desire to "open all telecommunications markets to competition." This process could take months, if not longer, particularly since, by tying BellSouth's entry into long distance to completion of the cost docket, the carriers with the most to lose from such entry -- AT&T, MCI, and Sprint -- now have a powerful incentive to delay the cost proceedings. All the while, consumers would be denied the substantial benefits associated with BellSouth's competing for long distance customers, and BellSouth would be forced to face competition in the local market without being able to compete in the long distance market. Congress did not intend

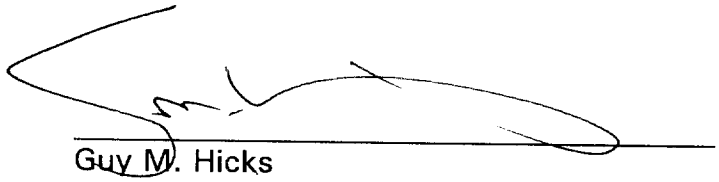
such a result or to put the timing of opening the Tennessee long distance market into the hands of BellSouth's competitors.

III. CONCLUSION

For the foregoing reasons, the TRA should find that BellSouth can seek interLATA authority in Tennessee under Track B and is not foreclosed from obtaining such authority until "permanent" cost-based rates have been established.

Respectfully submitted,

BellSouth Telecommunications, Inc.



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CERTIFICATE OF SERVICE

I hereby certify that on April 25, 1997, a copy of the foregoing document was served on the parties of record, via U. S. Mail, postage pre-paid, addressed as follows:

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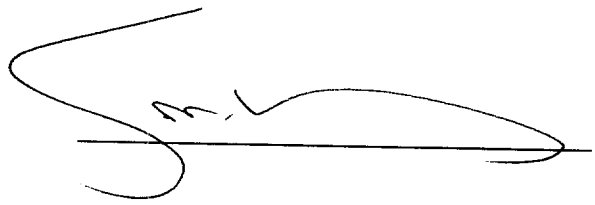

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EXHIBIT 1

104TH CONGRESS, 2d Session | HOUSE OF REPRESENTATIVES | REPORT 104–458

TELECOMMUNICATIONS ACT OF 1996

JANUARY 31, 1996. Ordered to be printed

Mr. BLILEY, from the committee of conference, submitted the following

CONFERENCE REPORT

[To accompany S. 652]

The committee of conference on the disagreeing votes of the two Houses on the amendments of the House to the bill (S. 652), to provide for a pro-competitive, de-regulatory national policy framework designed to accelerate rapidly private sector deployment of advanced telecommunications and information technologies and services to all Americans by opening all telecommunications markets to competition, and for other purposes, having met, after full and free conference, have agreed to recommend and do recommend to their respective Houses as follows:

That the Senate recede from its disagreement to the amendment of the House to the text of the bill and agree to the same with an amendment as follows:

In lieu of the matter proposed to be inserted by the House amendment, insert the following:

SECTION 1. SHORT TITLE; REFERENCES.

(a) SHORT TITLE.—This Act may be cited as the "Telecommunications Act of 1996".

(b) REFERENCES.—Except as otherwise expressly provided, whenever in this Act an amendment or repeal is expressed in terms of an amendment to, or repeal of, a section or other provision, the reference shall be considered to be made to a section or other provision of the Communications Act of 1934 (47 U.S.C. 151 et seq.).

SEC. 2. TABLE OF CONTENTS.

The table of contents for this Act is as follows:

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Section 245(f) prohibits a BOC from providing interLATA service, unless authorized by the Commission. Section 245(f) grandfathers any activity authorized by court order or pending before the court prior to the date of enactment. Section 245(g) creates exceptions for the provision of incidental services.

Section 245(g)(1) permits a BOC to engage in interLATA activities related to the provision of cable services. Section 245(g)(2) permits a BOC to offer interLATA services over cable system facilities located outside the BOC's region. Section 245(g)(3) allows a BOC to offer CMS, as defined in section 332(d)(1) of the Communications Act. Section 245(g)(4) allows a BOC to engage in interLATA services relevant to the provision of information services from a central computer. Section 245(g) (5) and (6) allow a BOC to engage in interLATA services related to signaling information integral to the internal operation of the telephone network.

Notwithstanding the dialing parity requirements of section 242(a)(5), as provided in section 245(i), a BOC is not required to provide dialing parity for intraLATA toll service ("short haul" long distance) before the BOC is authorized to provide long distance service in that State. Section 245(j) prohibits the Commission from exercising the general authority to forbear from regulation granted to the Commission under section 230 until five years after the date of enactment. Section 245(k) sunsets this section once the Commission and State commission, in the relevant local exchange market, determine that the BOC has become subject to full and open competition.

Conference agreement

The conference agreement adds a new section 271 to the Communications Act relating to BOC entry into the interLATA market. New section 271(b)(1) requires a BOC to obtain Commission authorization prior to offering interLATA services within its region unless those services are previously authorized, as defined in new section 271(f), or "incidental" to the provision of another service, as defined in new section 271(g), in which case, the interLATA service may be offered after the date of enactment. New section 271(b)(2) permits a BOC to offer out-of-region services immediately after the date of enactment.

New section 271(c) sets out the requirements for a BOC's provision of interLATA services originating in an in-region State (as defined in new section 271(i)). In addition to complying with the specific interconnection requirements under new section 271(c)(2), a BOC must satisfy the "in-region" test by virtue of the presence of a facilities-based competitor or competitors under new section 271(c)(1)(A), or by the failure of a facilities-based competitor to request access or interconnection (under new section 251) as required under new section 271(c)(1)(B). This test that the conference agreement adopts comes virtually verbatim from the House amendment.

With respect to the facilities-based competitor requirement, the presence of a competitor offering the following services specifically does *not* suffice to meet the requirement: (1) exchange access; (2) telephone exchange service offered exclusively through the resale of the BOC's telephone exchange service; and (3) cellular service. The competitor must offer telephone exchange service either exclusively

over its own facilities or predominantly over its own facilities in combination with the resale of another carrier's service.

This conference agreement recognizes that it is unlikely that competitors will have a fully redundant network in place when they initially offer local service, because the investment necessary is so significant. Some facilities and capabilities (*e.g.*, central office switching) will likely need to be obtained from the incumbent local exchange carrier as network elements pursuant to new section 251. Nonetheless, the conference agreement includes the "predominantly over their own telephone exchange service facilities" requirement to ensure a competitor offering service exclusively through the resale of the BOC's telephone exchange service does not qualify, and that an unaffiliated competing provider is present in the market.

The House has specifically considered how to describe the facilities-based competitor in new subsection 271(c)(1)(A). While the definition of facilities-based competition has evolved through the legislative process in the House, the Commerce Committee Report (House Report 104–204 Part I) that accompanied H.R. 1555 pointed out that meaningful facilities-based competition is possible, given that cable services are available to more than 95 percent of United States homes. Some of the initial forays of cable companies into the field of local telephony therefore hold the promise of providing the sort of local residential competition that has consistently been contemplated. For example, large, well established companies such as Time Warner and Jones Intercable are actively pursuing plans to offer local telephone service in significant markets. Similarly. Cablevision has recently entered into an interconnection agreement with New York Telephone with the goal of offering telephony on Long Island to its 650,000 cable subscribers.

For purposes of new section 271(c)(1)(A), the BOC must have entered into one or more binding agreements under which it is providing access and interconnection to one or more competitors providing telephone exchange service to residential and business subscribers. The requirement that the BOC "is providing access and interconnection" means that the competitor has implemented the agreement and the competitor is operational. This requirement is important because it will assist the appropriate State commission in providing its consultation and in the explicit factual determination by the Commission under new section 271(d)(2)(B) that the requesting BOC has fully implemented the interconnection agreement elements set out in the "checklist" under new section 271(c)(2).

New section 271(c)(1)(B) also is adopted from the House amendment, and it is intended to ensure that a BOC is not effectively prevented from seeking entry into the interLATA services market simply because no facilities-based competitor that meets the criteria set out in new section 271(c)(1)(A) has sought to enter the market. The conference agreement stipulates that a BOC may seek entry under new section 271(c)(1)(B) at any time following 10 months after the date of enactment, provided no qualifying facilities-based competitor has requested access and interconnection under new section 251 by the date that is 3 months prior to the date that the BOC seeks interLATA authorization. Consequently, it is important that the Commission rules to implement new sec-

EXHIBIT 2

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be conducted outside of Bosnia—in Croatia or Slovenia, for example.

Madam President, administration officials should quit fighting amongst themselves and begin real consultations with the Congress, consultations based on the facts and not on wild accusations or unrealistic scenarios. It is time to take sides—with the victims of this aggression. It is also high time for America to exercise leadership and end its participation in this international failure.

VETO OF RESCISSIONS BILL

Mr. DOLE. Madam President, I will just say that on the rescissions veto by the President today, it is highly regrettable President Clinton chose a bill cutting spending for the first veto. The $16.4 billion rescissions bill would have provided for $9 billion—$9 billion, a lot of money in real savings—an important downpayment in getting our country's financial house in order.

The President made a serious mistake in judgment in vetoing this measure. It would have provided funding to the Federal Emergency Management Agency for disaster relief, to Oklahoma for reconstruction, and debt relief for Jordan to support the peace process, money for California.

Speaker GINGRICH and I have previously said we met the administration more than halfway. The President asked for Jordan debt relief, we met his request. The President asked for FEMA funds for disaster relief in 40 States, and we met his request. The President threatened to veto if striker replacement language was included in the bill, we took it out. We left AIDS funding, breast cancer screening, childhood immunization, Head Start, and other programs untouched, and still we came up with $9 billion in net real savings.

We, in the Congress, held up our end of the bargain, but President Clinton missed a valuable opportunity—a golden opportunity—to join us cutting spending.

Now, with three-quarters of the fiscal year almost gone, we are losing the opportunity to enact real savings this year. In the face of the budget deficit that mortgages our children's future, we in the Congress will proceed to pass a budget that puts us on the path to balance by the year 2002. We owe it to our children, and we owe it to our grandchildren.

For the sake of generations to come, it is time for the President to stop being an obstacle in the road and join us in our responsibility to secure our Nation's economic future.

THE TELECOMMUNICATIONS COMPETITION AND DEREGULATION ACT

Mr. LOTT. Mr. President, I ask unanimous consent that the Senate proceed to the immediate consideration of calendar No. 45, S. 652, the telecommunications bill.

The PRESIDING OFFICER (Mr. BENNETT). The bill will be stated by title.

The legislative clerk read as follows:

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

The PRESIDING OFFICER. Is there objection to the immediate consideration of the bill?

There being no objection, the Senate proceeded to consider the bill.

Mr. PRESSLER. Mr. President, I rise to begin Senate floor consideration of S. 652—the comprehensive communications bill which the Committee on Commerce, Science, and Transportation overwhelmingly approved late last month on a vote of 17 to 2—The Telecommunications Competition and Deregulation Act of 1995.

The future of America's economy and society is inextricably linked to the universe of telecomunications and computer technology. Telecommunications and computer technology is a potent force for progress and freedom, more powerful than Gutenberg's invention of the printing press five centuries ago, or Bell's telephone and Marconi's radio in the last century.

This force has helped us reach today's historic turning point in America.

The telecommunications and computer technology of 21st-Century America will be hair-thin strands of glass and fiber below; the magical crackling of stratospheric spectrum above; and the orbit of satellites 23,000 miles beyond. With personal computers interconnected, telephones untethered, televisions and radios reinvented, and other devices yet to be invented bringing digitized information to life, the telecommunications and computer technology unleashed by S. 652 will forever change our economy and society.

At stake is our ability to compete and win in an international information marketplace estimated to be over $3 trillion by the close of the decade. The information industry already constitutes one-seventh of our economy, and is growing.

As chairman of the Committee on Commerce, Science and Transportation, the core of my agenda is to promote creativity in telecommunications and computer technology by rolling back the cost and reach of government. Costly big-government laws designed for another era restrain telecommunications and computer technology from realizing its full potential. My top priority this year is to modernize and liberalize communications law through passage of the bill before us today, S. 652: Telecommunications Competition and Deregulation Act of 1995.

A. THE ADVENT OF TELECOMMUNICATONS REGULATIONS

Most telecommunications policy and regulation in America is based upon the New Deal era Communications Act of 1934. The 1934 Act incorporated the premise that telephone services were a natural monopoly, whereby only a single firm could provide better services at a lower cost than a number of competing suppliers. Tight government control over spectrum based services was justified on a scarcity theory. Neither theory for big government regulation holds true today, if it ever did.

The 1934 Act was intended to ensure that AT&T and other monopoly telephone companies did not abuse their monopoly power. However, regulatory protection from competition also ensured that AT&T would remain a government-sanctioned monopoly. In exchange for this government-sanctioned monopoly, AT&T was to provide universal service. AT&T retained its government-sanctioned monopoly until antitrust enforcement broke up the Bell System and transferred the monopoly over local services to the Bell Operating Companies.

The Communications Act has become the cornerstone of communications law in the United States. The 1934 Act established the Federal Communications Commission, and granted it regulatory power over communications by wire, radio, telephone, and cable within the United States. The Act also charged the Federal Communications Commission with the responsibility of maintaining, for all the people of the United States, a rapid, efficient, Nationwide and worldwide wire and radio communications service with adequate facilities and reasonable charges.

Prior to 1934, communications regulation had come under the jurisdiction of three separate Federal agencies. Radio stations were licensed and regulated by the Federal Radio Commission; the Interstate Commerce Commission had jurisdiction over telephone, telegraph, and wireless common carriers; and the Postmaster General had certain jurisdiction over the companies that provided these services. As the number of communications providers in the United States grew, Congress determined that a commission with unified jurisdiction would serve the American people more effectively.

The 1934 Communications Act combined the powers that the Interstate Commerce Commission and the Federal Radio Commission then exercised over communications under a single, independent Federal agency.

The Communications Act of 1934 was based, in part, on the Interstate Commerce Act of 1888. For example, the requirement for approval of construction or extension of lines for railroads was taken directly from the ICC Act. Prior to 1934, wire communications were regulated by the same set of laws that regulated the railroads. Radio communications were regulated under the 1927 Federal Radio Act. In 1934, the Federal Communications Commission was created to oversee both the wireline communications and radio communications.

Eighth: Spectrum flexibility and regulatory reform for broadcasters:

If the FCC permits a broadcast television licensee to provide advanced television services, the bill requires the FCC to adopt rules to permit such broadcasters flexibility to use the advanced television spectrum for ancillary and supplementary services, if the licensee provides to the public at least one free advanced television program service. The FCC is authorized to collect an annual fee from the broadcaster if the broadcaster offers ancillary or supplementary services for a fee to subscribers.

A single broadcast licensee is permitted to reach 35 percent of the national audience, up from the current 25 percent. Moreover, the FCC is required to review all of its ownership rules biennially. Broadcast license terms are lengthened for television licenses from 5 to 10 years and for radio licenses from 7 to 10 years. Finally, new broadcast license renewal procedures are established.

Ninth. Obscenity and other wrongful uses of telecommunications:

The decency provisions in the reported bill modernize the protections in the 1934 act against obscene, lewd, indecent, and harassing use of a telephone. The decency provisions increase the penalties for obscene, harassing, and wrongful utilization of telecommunications facilities, protect families from uninvited cable programming which is unsuitable for children, and give cable operators authority to refuse to transmit programs or portions of programs on public or leased access channels which contain obscenity, indecency, or nudity.

The bill provides defenses to companies that merely provide transmission services, navigational tools for the Internet, or intermediate storage for customers moving material from one location to another. It also allows an on-line service to defend itself in court by showing a good-faith effort to lock out adult material and to provide warnings about adult material before it is downloaded.

G. THE DEREGULATORY NATURE OF S. 652

Ronald Reagan once joked—in the midst of a debate over the budget—that the only reason Our Lord was able to create the World in 6 days was that he didn't have to contend with the embedded base.

I have been wrestling with the communications issues since I came to Congress. We all have. This has become the congressional equivalent of Chairman Mao's famous "Long March."

Nothing in the field is easy. We are dealing with basic services—telephone, TV, and cable TV—that touch virtually every American family. We are dealing with massive investment—more than half a trillion dollars. We are dealing with industries which provide almost two million American jobs. We are dealing with high-tech enterprises that are critical to the future of the American economy, and our global competitiveness.

The stakes are high for everyone. And it is the sheer number of issues and concerns that accounts for the complexity of any legislation.

First. A major step forward:

But let me talk briefly about some of the major steps forward which are envisioned in this bill.

When the former head of the National Telecommunications & Information Administration testified before the Senate, he commented that, "Everything in the world is compared to what."

Well, virtually all of the bills which the Senate or the House has dealt with over the past generation took the concept of regulated monopoly as a given.

Whether we are talking about Congressman Lionel Van Deerlin's bill, H.R. 1315 in the House in the 1970's; or Senator PACKWOOD's effort back in 1981—S. 898: All of these bills assumed that monopoly, like the poor, would always be with us.

Second. A paradigm shift:

My bill changes that. Instead of conceding that concern, this bill:

Removes virtually all legal barriers to competition in all communications markets—local exchange, long distance, wireless, cable, and manufacturing.

It establishes a process that will require continuing justification for rules and regulations each 2 years. Every 2 years, in other words, all the rules and regulations will be on the table. If they don't make sense, there is a process established to terminate them.

It restores full responsibility to Congress and the FCC for regulating communications. Under the bill that the House passed last spring, for example, you would have still had a substantial, continuing involvement in communications policy on the part of the Justice Department and the Federal courts. This bill brings the troops home.

Third. Genuinely deregulatory:

I understand the concerns that some of my colleagues have raised. Senator MCCAIN has raised the question of whether this bill is deregulatory enough. Senator PACKWOOD has asked if we could not speed up the transition to full, unregulated competition. These are valid concerns.

But let me highlight some of the deregulatory steps which this bill makes possible now.

First, it will make it possible for the FCC immediately to forebear from economically regulating each and every competitive long-distance operator. The Federal courts have ruled that the FCC cannot deregulate. This bill solves that problem and makes deregulation legal and desirable.

Second, this bill envisions removing a whole chunk of unnecessary cable television price controls now. We leave the power to control basic service charges, until local video markets are more competitive. But the authority to regulate the nonbasic services, the expanded tiers, is peeled back. That represents a major step toward deregulation and more reliance on competitive markets.

Third, this bill contains a competitive checklist for determining Bell Co. entry into currently prohibited markets like long distance and manufacturing. After Bell companies satisfy all the requirements, the FCC must, in effect, certify compliance by making a public interest determination.

This is not—contrary to some allegations—more regulation. At least one of the Bell companies—NYNEX—can probably fulfill all the checklist's requirements very soon, because State regulators have already required that company to make the most of the necessary changes in the way it does business. The bill also explicitly says that the competitive checklist cannot be expanded.

So, if you read all the provisions in the bill in context, you will see that there simply is no broad grant of discretion to the Federal or State regulators here. We have essentially spelled out the recipe for competition, and it is incumbent on them to follow it.

Fourth.—Future orientation:

Let me mention another critical aspect of this bill, it is future oriented.

Too many of the earlier measures were focused on the status quo. What they basically did was rearrange existing markets and services. The 1984 and 1992 Cable Television Acts, for instance, did not take steps to encourage competition, it kept in place all the restrictions on telephone company and broadcast competition. Moreover, the 1984 Cable Act also maintained exclusive franchising for cable television.

This bill essentially seeks to change that focus. We assumed that cable television might become an effective competitor to local phone companies, for instance, so we sought to get rid of any regulations that would block that. We also assumed that local phone companies might be effective cable competitors, so we tried to get rid of restrictions on that kind of competition.

In the case of broadcasting, we recognized that this important industry is going to need much more flexibility to compete effectively in tomorrow's multichannel world. So, we will allow broadcasters to offer more than just pictures and sound as well as multiple channels of pictures and sound, if they so choose. Under this bill, they will have the flexibility they need to compete in evolving markets.

Fifth. Safeguarding core values:

This bill is aggressively deregulatory. It seeks to achieve genuine, long-term reductions in the level and intensity of Federal, State and local governmental involvement in telecommunications.

But this bill is also responsibly deregulatory. When it comes to maintaining universal access to telecommunications services, for instance, it does that. It establishes a process that will make sure that rural and

small-town America doesn't get left in the lurch.

This bill also maintains significant Federal oversight. Telecommunications, remember, isn't like trucking, or railroads, or airline transportation. The services we are talking about here are marketed and consumed directly by the public.

This bill seeks to advance core values. I know that the Exon Amendment—which places limits on obscene and indecent computer communications—has sparked controversy. All that amendment actually does is apply to computer communications the same guidelines and limitations which already apply to telephone communications.

Sixth. Further responsibility:

This bill also recognizes the fact that deregulation is always a gradual, transitional process—and that Congress has the responsibility to stay involved.

All of us know that good legislation is only one facet of the overall deregulatory process. Other requirements are careful scrutiny of budgets, of appointments to the FCC and other agencies, and effective Congressional oversight. No one should try to fool themselves into believing that we can get away on the cheap. We can't.

If we are serious about deregulating this marketplace and—more importantly—expanding the range of competitive choices available to the American public, Congress is going to have to stay a central player.

Seventh. Summary of affirmative aspects:

Let me summarize, then, what I see as very positive, affirmative aspects of this bill:

First, it dispenses with the old government-sanctioned monopoly model and replaces it with a process of open access which will lead to more competition across-the-board, in every part of the communications business. It flattens all regulatory barriers to market entry in all telecommunications markets. The more open access takes hold, the less other government intervention is needed to protect competition. Open access is the principle establishing a fair method to move local phone monopolies and the oligopolistic long distance industry into full competition with one another. Completion of the steps on the pro-competitive checklist will give both the long distance firms and the local telephone companies confidence that neither side is gaming the system.

Second, it eliminates a number of unnecessary rules and regulations now—by giving the FCC the discretion to forebear from regulating competitive communications services, by removing unneeded, high-tier, cable price controls.

Third, it establishes a process for continuing attic-to-basement review of all regulations on a 2 year cycle.

Fourth, it seeks to create an environment that is more conducive to more new services and more competitors—by allowing broadcasters and cable operators, for instance, greater competitive flexibility, and giving local and long distance phone companies more chances to compete as well.

Fifth, it terminates the involvement of the Justice Department and the Federal courts in the making of national telecommunications policy.

Sixth, the bill emphasizes effective competition while also safeguarding core values, such as universal service access and limitations on indecency; and,

Finally, it maintains the responsibility of Congress to continue to work through the budget, oversight, and confirmation processes to move this critical sector toward full competition and deregulation.

H. BENEFITS OF S. 652

In General. Competition and deregulation in telecommunications as a result of the Pressler Bill means:

Lower prices for local, cellular, and long distance phone service, and lower cable television prices, too.

More and less costly business and consumer electronics to make U.S. business more competitive and American citizens better informed.

Expanded customer options, as business is spurred to bring new technology to the marketplace faster. In addition to more choices for long distance, cellular, broadcast, and other services where competition already exists, competition and choice in local phone and cable services will be introduced.

High technology jobs with a future for more Americans, economic growth, and continued U.S. leadership in this critical field. The President's Council of Economic Advisors estimates that deregulating telecommunications laws will create 1.4 million new jobs in the services sector of the economy alone by the year 2003. In a Bell Company funded study, WEFA concluded that telecommunications deregulation would cause the U.S. economy to grow 0.5 percent faster on average over the next 10 years, creating 3.4 million new jobs by the year 2005, and generating a cumulative increase of $1.8 trillion in real GDP. Finally, George Gilder has estimated $2 trillion in additional economic activity with the Pressler Bill.

More exports of high-value products, and greater success on the part of U.S.-based telecommunications equipment $10.25 billion, and services $3.3 billion, companies as well as computer equipment $29.2 billion, companies as they leverage their domestic gains to make more sales overseas.

In Media. Competition and deregulation in electronic media including broadcasting, cable, and satellite services means:

More Networks and Channels. In the early 1970s, there were three national TV networks and virtually no cable systems. Today, there are 6 national TV networks, plus 10,000 cable TV systems serving 65 percent of American homes—96% have the cable option—with DBS now offering digital service to millions more. The average American family now has access to some 30 video channel choices. Much more is on the way if the Pressler Bill is enacted into law.

More News and Public Affairs. Cable deregulation—spurred by satellite communications deregulation—made more news and public affairs programming available. CNN, C-SPAN, and ESPN are prime examples. Local all news channels and local C-SPAN-oriented programming is on its way if deregulation occurs.

More Jobs. Relaxing broadcast rules and regulations—spurred by the growth of cable TV—made it possible for some 300 new TV and 2,000 new radio outlets to emerge. This created 10,000 new jobs in broadcasting.

Small town and rural America parity. Satellites and cable TV service means small town and rural Americans command nearly the same media choices only big city residents once enjoyed. This democratization has spurred public awareness of national and international events—as well as encouraged fuller participation in the political process.

Political shift. Satellites, cable, talk radio, and C-SPAN, which were a specific result of deregulation and competition in communications, were prime ingredients to last year's landmark national political shift. Further decentralization of media control through deregulation will accelerate this democratization phenomenon.

In telephone service. Competition and deregulation in the telephone business means:

Lower prices. Deregulation of phone equipment resulting in faster deployment of advanced equipment has made it possible to reduce local phone rates by $4 billion since 1987. More long distance competition has meant nearly $20 billion in price cuts since 1987. Virtually all Americans now have far more choices in phone equipment and long distance service—and with the Pressler Bill will see choices in local phone services.

New options. Sixty million American families now have cordless phones. Twenty-five million now have cellular phones. Fifty million have answering machines. Twenty million have pagers. Deregulation has allowed technology to evolve to meet the demands of an increasingly mobile society.

Special benefits. Cellular phones have helped millions of American women feel safer and more secure. They have made it possible to drive safely under even the most severe weather conditions, because now help can be called.

Computer services. Competition and deregulation in telecommunications will speed the deployment of the so-called information superhighway. Currently, 40 percent of American homes have a personal computer. Computers are ubiquitous for American business. There is one school computer for every nine students. Competition and deregulation will mean new communications

EXHIBIT 2

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

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

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

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

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

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

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

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

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

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

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

Mr. President, with that I yield the floor.

Mr. KERREY addressed the Chair.

The PRESIDING OFFICER. The Senator from Nebraska.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

whole array of new companies providing local service.

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

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

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

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

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

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

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

This is extraordinary in the sense of telling private industry that this is what they have to do in order to let the competitors come in and try to beat your economic brains out. It is there on page 323, called a competitive checklist. It says a Bell company may provide long distance service if, first, they go through all of these things that they do, to allow the long distance companies to provide local service.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

EXHIBIT 2

Continuation of House Proceedings of August 3, 1995, Issue No. 128; and Proceedings of August 4, 1995, Issue No. 129

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Mr. DINGELL. Mr. Chairman, if I said anything which offends the gentleman, I apologize.

The CHAIRMAN. The gentleman from Texas?

Mr. BRYANT of Texas. Further reserving the right to object, Mr. Chairman, I will not go along with the unanimous-consent request after the words that were spoken were so evasive as that. The fact of the matter is the gentleman made a factual allegation with regard to my role in this bill which was totally inaccurate. I want him to apologize, and I want him to state that it was not correct what he said because he knows it was not correct. Otherwise I would insist that the gentleman's words be taken down.

The CHAIRMAN. The gentleman from Texas [Mr. BRYANT] insists that the words of the gentleman from Michigan [Mr. DINGELL] be taken down.

Mr. DINGELL. Mr. Chairman, I would ask unanimous consent to withdraw the word "sulk."

The CHAIRMAN. Without objection, that word is withdrawn.

Mr. BRYANT of Texas. Further reserving the right to object, Mr. Chairman, I have made it very clear that the gentleman from Michigan [Mr. DINGELL] made an allegation about me that was incorrect, and I want him to state that it was not correct, and he knows it was not correct, and then I want him to apologize for it. Otherwise there is not going to be any withdrawal of my objection.

The CHAIRMAN. The gentleman from Texas [Mr. BRYANT] continues to reserve the right to object.

Mr. BRYANT of Texas. I would just point out once again I have had no dealings with the gentleman on this matter. He has no basis on which to make that statement whatsoever, nor have I had any dealings in any fashion interpretable in the way that the gentleman spoke to the other side, and, if he is going to persist in that allegation, then I am going to insist that his words be taken down.

The CHAIRMAN. Does the gentleman from Michigan care to respond?

Mr. DINGELL. Mr. Chairman, I am not quiet sure to what I am supposed to respond.

The CHAIRMAN. A unanimous-consent request has been made to withdraw the words. The gentleman from Texas has reserved the right to object to that unanimous-consent request stating, as he has stated, that he desires an apology and an understanding that it was factually incorrect.

Mr. DINGELL. Mr. Chairman, I have asked unanimous consent to withdraw the words. I have said that if I have said something to which the gentleman is offended, then I apologize. I am not quite sure how much further I can go in this matter.

Mr. BRYANT of Texas. Reserving the right to object, Mr. Chairman, I will tell the gentleman how much further he can go in this matter.

Mr. Chairman, I have had no visits with the gentleman about this manager's amendment except to express my general opposition to the whole process. The gentleman stated that I behaved in a particular way when in fact I have had no opportunity to behave either this way or any other way with the gentleman, and, if what the gentleman said is simply an outburst of temper, I think, I have been guilty of the same thing, and I want the gentleman to make it plain to the House that there has been no opportunity for there to have been any type of behavior whatsoever.

Mr. DINGELL. Mr. Chairman, will the gentleman yield?

Mr. BRYANT of Texas. I yield to the gentleman from Michigan.

Mr. DINGELL. Mr. Chairman, I will be pleased to make the observation that the gentleman chose not to be a participant in moving the bill forward. If I said that he has sulked, that was in error. I apologize to the gentleman.

The CHAIRMAN. Without objection, the words are withdrawn.

There was no objection.

Mr. BRYANT of Texas. Mr. Chairman, I withdraw my reservation of objection.

Mr. FIELDS of Texas. Mr. Chairman, how much time do I have remaining?

The CHAIRMAN. The gentleman from Texas has 30 seconds remaining.

Mr. FIELDS of Texas. Mr. Chairman, I yield myself the balance of my time.

Mr. Chairman, the gentleman from Michigan has made it clear to Democrat Members this is a fair process, it is a good process. I want to say to Republican Members we have worked for 2½ years on opening the local loop to competition. If my colleagues want fair competition, if they want the loop open with a level playing field, vote for this manager's amendment. It is time to move this process forward, time to move the telecommunication industry into the 21st century.

Mr. TAUZIN. Mr. Chairman to enforce the long-distance restriction on the seven Bell companies, the district court approved the establishment of the so-called local access transport area or LATA system. The drawing of the LATA system is extraordinarily complex and confusing. There are 202 LATA's nationwide; four of them are in Louisiana and they bear no relationship to markets or customers. Yet it is the LATA system that is used to regulate markets and limit customer choices. LATA boundaries routinely split counties and communities of interest. LATA boundaries can even extend across State lines to incorporate small areas of a neighboring State into a given LATA. Louisiana does not have any of these so-called bastard LATA's but our neighboring State to the east, Mississippi, does. Towns and communities in the northwest corner of Mississippi, such as Hernando, are actually part of the Memphis LATA. That's Memphis, TN, not Mississippi.

The enforcement of the long-distance restriction on the seven Bell companies and the establishment of the LATA system effectively preempted State jurisdiction over entry and pricing of telecommunications service. In the process, State authority over intrastate interLATA telecommunications have been impeded. For example, in Louisiana the Public Service Commission instituted a rate plan that provided K–12 schools with specially discounted rates for high speed data transmission services. With the availability of the education discount, it was contemplated that school districts could upgrade their educational systems, establish computer hookups, and tie into their central school board locations to improve and facilitate administrative services. The public school system in Louisiana is aggressively implementing communications technology to improve access to educational resources and streamline administrative processes.

There are 64 parishes in Louisiana. Each parish has its own school district. Thirteen of the sixty-four parishes are traversed by a LATA boundary, meaning the school district locations in each parish are divided by the LATA system. Consequently, K–12 schools in the Allen, Assumption, Evangeline, Iberia, Iberville, Livingston, Sabine, St. Charles, St. Helena, St. James, St. John the Baptist, St. Landry, St. Martin, St. Mary, Tangipahoa, Vernon, and West Feliciana Parishes are unable to take advantage of the education discount program as intended by the Louisiana Public Service Commission. The LATA boundary effectively prevents the schools in these 13 parishes from linking to the Louisiana Education Network and the Internet as well. These failures are attributable to the fact that the inter-LATA restriction dictates alternative, circuitous routing requirements to link the schools—making the service unaffordable. The chart to my right depicting the scenario of the Vernon Parish School District is just one example of this routing problem. The inability of these 13 school districts to network K–12 schools is denying the students, teachers, and administrators throughout these parishes the opportunity to utilize new tools for learning and teaching.

The LATA system arbitrarily segments the telecommunications market. Many business, public, and institutional customers, such as the 13 parish school districts in Louisiana, have locations in different LATA's which makes serving them difficult, costly, and inefficient. In Louisiana, BellSouth has filed tariffs with the Public Service Commission, is authorized to provide the high-speed data transmission services, and would be in a position to offer the services to the 13 school districts at specially discounted rates were it not for the inter-LATA long-distance restriction. In the alternative to BellSouth, to receive the desired service any one of the 13 school districts must resort to the arrangement by which the service is provisioned over the facilities of a long-distance carrier. Typically, this would involve routing the service from one customer location in one LATA to the long-distance carrier's point of presence in that LATA then across the LATA boundary to the carrier's point of presence in the other LATA and then finally to the other customer location to complete the circuit. As the explanation sounds, this alternative route utilizing the long-distance carrier's facilities is less direct, more circuitous, and more costly to the customer than a direct connection between the two customer locations. Of the 13 affected school districts in Louisiana, I have chosen the example of the Vernon Parish schools to show the cost penalizing effect of the inter-LATA restriction.

Most of the schools in Vernon Parish are in the Lafayette LATA and are connected by a

network based in Leesville. Unfortunately, two schools in the Hornbeck area are across a LATA boundary and linking them to Leesville is so expensive that Vernon parish has not been able to include them in the network.

Hornbeck is only 16 miles from Leesville but it is in a different LATA. BellSouth could provide a direct and economical connection between the Hornbeck schools and Leesville but it is prevented from doing so because of the inter-LATA restriction.

Instead, the connection between Hornbeck and Leesville would have to be made through an indirect routing arrangement involving a long-distance carrier, AT&T. In this scenario, the route would run from Hornbeck to Shreveport, then 185 miles across the LATA boundary to Lafayette, before finally reaching Leesville, a total distance of 367 miles.

The inter-LATA restriction forces Vernon Parish to use a longer and more expensive route to connect all the schools within its district. If BellSouth was allowed to provide the direct connection between Hornbeck and Leesville, the cost to connect the Hornbeck schools would be almost $48,000 less each year, a savings that could enable the parish to include them in the network.

The inter-LATA restriction is imposing a tremendous cost penalty on users of telecommunications and is preventing telecommunications from being used in cost effective and efficient ways. The manager's amendment would make it possible for customers like the Vernon Parish School District to take advantage of the benefits of telecommunications technology by giving them greater choices in service providers. For this reason, the manager's amendment is worthy of your support.

The relationship between section 245(a)(2)(A) and 245(a)(2)(B) is extremely important because they are, along with the competitive checklist in section 245(d), the keys to determine whether or not a Bell operating company is authorized to provide interLATA telecommunications services, that are not incidental or grandfathered services. As such, several examples will illustrate how these sections function together.

Example No. 1: If an unaffiliated competing provider of telephone exchange service with its own facilities or predominantly its own facilities has requested and the RBOC is providing this carrier with access and interconnection—section 245(a)(2)(A) is complied with.

Example No. 2: If no competing provider of telephone exchange services has requested access or interconnection—the criteria in section 245(a)(2)(B) has been met.

Example No. 3: If no competing provider of telephone exchange service with its own facilities or predominately its own has requested access and interconnection—the criteria in section 245(a)(2)(B) has been met.

Example No. 4: If a competing provider of telephone exchange with some facilities which are not predominant has either requested access and interconnection or the RBOC is providing such competitor with access and interconnection—the criteria in section 245(a)(2)(B) has been met because no request has been received from an exclusively or predominantly facilities based competing provider of telephone exchange service. [Subparagraph (b) uses the words "such provider" to refer back to the exclusively or predominately facilities based provider described in subparagraph (A).]

Example No. 5: If a competing provider of telephone exchange with exclusively or predominantly its own facilities, for example, cable operator, requests access and interconnection, but either has an implementation schedule that albeit reasonable is very long or does not offer the competing service either because of bad faith or a violation of the implementation schedule. Under the circumstances, the criteria 245(a)(2)(B) has been met because the interconnection and access described in subparagraph (B) must be similar to the contemporaneous access and interconnection described in subparagraph (A)—if it is not, (B) applies. If the competing provider has negotiated in bad faith or violated its implementation schedule, a State must certify that this bad faith or violation has occurred before 245(a)(2)(B) is available. The bill does not require the State to complete this certification within a specified period of time because this was believed to be unnecessary, because the agreement, about which the certification is required, has been negotiated under State supervision—the State commission will be totally familiar with all aspects of the agreement. Thus, the State will be able to provide the required certifications promptly.

Example No. 6: If a competing provider of telephone exchange service requests access to serve only business customers—the criteria in section 245(a)(2)(B) has been met because no request has come from a competing provider to both residences and businesses.

Example No. 7: If a competing provider has none of its own facilities and uses the facilities of a cable company exclusively—the criteria in section 245(a)(2)(B) has been met because there has been no request from a competing provider with its own facilities.

Mr. BUNNING. Mr. Chairman, I rise today in strong opposition to H.R. 1555, the Communications Act of 1995 and the manager's amendment.

My primary objection to this bill is process. We have waited 60 years to reform our communications laws. It needs to be done. We need deregulation.

But, I believe that if we waited 60 years to do it, we could wait another month, do it right, and work out some of the problems in this bill instead of ramming it through during the middle of the night.

If we would have gone a little more slowly, I believe that we could have come to an agreement that the regional Bells and the long distance companies could agree with. Instead we are passing a bill that I believe favors the regional Bells a little too much.

This bill makes it too easy for the regional Bells to get into long distance service and too difficult for cable and long distance companies to get into local service.

We should not allow the regional Bells into the long distance market until there is real competition in the local business and residential markets.

It is not AT&T, MCI, or Sprint that I am worried about. They are big enough to take care of themselves. I am concerned about the affect this bill will have on the small long distance companies who have carved themselves out a nice little niche in the long distance market.

This bill will put a lot of the over 400 small long distance companies out of business.

I agree that the bill that was originally reported out of committee probably did give an unfair edge to the long distance companies, but the pendulum has swung way too far in favor of the regional Bells. If we wait instead of passing this bill tonight we may be able to find a solution that is fair to everyone.

My second reason for opposing this bill is the fact that the little guys—many of the independent phone companies—got lost in the shuffle. This bill has been a battle of the titans. The baby Bells against AT&T and MCI.

But the big boys aren't the only players in telecommunications. There are plenty of smaller companies like Cincinnati Bell which services the center of my district in northern Kentucky.

This bill is not a deregulatory bill for Cincinnati Bell. It is a regulations bill. Although Cincinnati Bell has never been considered a major monopolistic threat to commerce, this bill throws it in with the big boys and requires them to live with the same regulations as the RBOC's—one size fits all.

For Cincinnati Bell and over 1,200 independent phone companies around the country this bill is a step in the wrong direction. It's more regulation rather than deregulation.

I also believe that this bill deregulates the cable industry much too quickly. We should not lift the regulations until there is a viable competitor to the cable companies.

The underlying principles in this bill are right on target. We need to deregulate telecommunications and increase competition. That will benefit everyone.

For that reason, I dislike having to vote against H.R. 1555.

But I firmly believe that even though this bill is on the right track, it is just running at the wrong speed. Let's slow down the train and do it right.

Mr. OXLEY. Mr. Chairman, I rise to express my firm support for the Communications Act of 1995 and the floor manager's amendment to it. The amendment improves the bill in a variety of areas, including some important refinements regarding foreign ownership.

The amendment clarifies section 303 of the bill giving the Federal Communications Commission authority to review licenses with 25 percent or greater foreign ownership, after the initial grant of a license, due to changed circumstances pertaining to national security or law enforcement. The Commission is to defer to the recommendations of the President in such instances.

In addition, I wish to clarify the committee report language on section 303 concerning how the Commission should determine the home market of an applicant. It is the committee's intention that in determining the home market of any applicant, the Commission should use the citizenship of the applicant—if the applicant is an individual or partnership—or the country under whose laws a corporate applicant is organized. Furthermore, it is our intent that in order to prevent abuse, if a corporation is controlled by entities—including individuals, other corporations or governments—in another country, the Commission may look beyond where it is organized to such other country.

These clarifications are intended to protect U.S. interests, enhance the global competitiveness of American telecommunications firms, promote free trade, and benefit consumer everywhere. They have the support of the administration and the ranking members of the Committee on Commerce, and I ask all members for their support.

was completely ignored when the two committees sought to reconcile their legislation.

Finally, I would note that the amendment has been revised to clarify that any determinations made by the Attorney General are fully subject to judicial review. It was never my intent to deny the Bells or any other party the right to appeal any adverse determination, so to accomplish this purpose I have borrowed the precise language from the Judiciary bill.

I urge the Members to vote for this amendment which gives a real role to the Justice Department and goes a long way toward safeguarding a truly competitive telecommunications marketplace. In an industry that represents 15 percent of our economy, we owe it to our constituents to do everything possible to make sure we do not return to the days of monopoly abuses.

Mr. Chairman, I reserve the balance of my time.

Mr. BLILEY. Mr. Chairman, I yield myself 1 minute.

(Mr. BLILEY asked and was given permission to revise and extend his remarks.)

Mr. BLILEY. Mr. Chairman, I rise in strong opposition to the amendment offered by the gentleman from Michigan [Mr. CONYERS].

The core principle behind H.R. 1555 is that Congress and not the Federal court judge should set telecommunications policy. This is one of the few issues that seems to have universal agreement, that Congress should reassert its proper role in setting national communications policy.

My colleagues, last November the citizens of this country said, loud and clear, we want less Government, less regulation. Getting a decision out of two Federal agencies is certainly a lot harder than getting it out of one. For that reason alone, this amendment ought to be defeated.

Mr. Chairman, I reserve the balance of my time.

Mr. CONYERS. Mr. Chairman, I yield 2 minutes to the gentleman from Texas [Mr. BRYANT], a member of the committee.

(Mr. BRYANT of Texas asked and was given permission to revise and extend his remarks.)

Mr. BRYANT of Texas. Mr. Chairman, the gentleman from Michigan [Mr. CONYERS] made a very important point a moment ago when he pointed out that last year when we passed the bill by an enormous margin, we had a stronger Justice Department provision in the bill than we do, than even the Conyers amendment today would be.

The House has adopted the manager's amendment over our strong objections, but for goodness sakes consider the fact that, while the gentleman from Virginia [Mr. BLILEY] makes the point that we have decided that Congress shall make the decision with regard to communications law rather than the courts, Congress cannot make the decisions with regard to every single case out there.

As is the case throughout antitrust law, all we are saying with the Conyers amendment is that the Justice Department ought to be able to render a judgment on whether or not entry into this line of business by one of the Bell companies is going to impede competition rather than advance it.

Now, what motive would the Justice Department have to do anything other than their best in this matter? They have done a fine job in this area now for many, many years. The Conyers amendment would just come along and say, we are going to continue to have them exercise some judgment.

What we had in the bill before was that when there is no dangerous probability that a company who is trying to enter one of these lines of business or its affiliates would successfully use its market power and the Bell companies have enormous market power, to substantially impede competition, and the Attorney General finds that to be the case, there will be no problem with going forward.

When they find otherwise, there will be a problem with going forward, and we want there to be a problem with going forward. For goodness sakes, we know that the developments with regard to competition in the last 12 years are a result of a court, a sanction agreement, supervised by a judge. I do not know that that is the best process, but the fact of the matter is we allowed competition where it did not exist before.

Why would we now come along and take steps that would move us in the direction of impeding competition or essentially impeding competition? Give the Justice Department the right to look at it as they look at so many other antitrust matters. The President has asked for it. I think clearly we asked for it a year ago.

Let us keep with that principle.

Mr. BLILEY. Mr. Chairman, I yield 3 minutes to the gentleman from Michigan [Mr. DINGELL].

(Mr. DINGELL asked and was given permission to revise and extend his remarks.)

Mr. DINGELL. Mr. Chairman, there are three things wrong with this amendment. The first is the agency which will be administering it, the Justice Department. The Justice Department is in good part responsible for the unfair situation which this country confronts in telecommunications. The Justice Department and a gaggle of AT&T lawyers have been administering pricing and all other matters relative to telecommunications by both the Baby Bells and by AT&T. So if there are things that are wrong now, it is Justice which has presided.

The second reason is that if we add the Justice Department to a sound and sensible regulatory system, it will create a set of circumstances under which it will become totally impossible to have expeditious and speedy decisions of matters of importance and concern to the American people.

The decisions that need to be made to move our telecommunications policy forward can simply not be made where you have a two-headed hydra trying to address the telecommunications problems of this country.

Now, the third reason: I want Members to take a careful look at the graph I have before me. It has been said that a B–52 is a group of airplane parts flying in very close formation. The amendment now before us would set up a B–52 of regulation. If Members look, they will find that those in the most limited income bracket will face a rate structure which is accurately represented here. It shows how long-distance prices have moved for people who are not able to qualify for some of the special goody-goody plans, not the people in the more upper income brackets who qualify for receiving special treatment.

This shows how AT&T, Sprint and MCI rates have flown together. They have flown as closely together as do the parts of a B–52. Note when AT&T goes down, Sprint and MCI go down. When MCI or AT&T go up, the other companies all go up. They fly so closely together that you cannot discern any difference.

This will tell anyone who studies rates and competition that there is no competition in the long distance market. What is causing the vast objection from AT&T, MCI and Sprint is the fact that they want to continue this cozy undertaking without any competition from the Baby Bells or from anybody else.

If Members want competition, the way to get it is to vote against the Conyers amendment. If you do not want it and you want this kind of outrage continuing, then I urge you to vote for the amendment offered by the gentleman from Michigan [Mr. CONYERS] who is my good friend.

Mr. CONYERS. Mr. Chairman, I yield myself 15 seconds.

Mr. Chairman, I say to my very dear colleague and the dean of the Michigan delegation, that ain't what he said when the Brooks-Dingell bill came up only last year, and he had a tougher provision with the Department of Justice handling this important matter.

Mr. Chairman, I yield 2 minutes to the gentleman from California [Mr. BERMAN], a very able member of the Committee on the Judiciary.

Mr. BERMAN. Mr. Chairman, I thank the gentleman for yielding time to me.

Everything that my friend from Michigan [Mr. DINGELL] said about the question of competition can be assumed to be true, and none of it would cause Members to vote against the Conyers amendment. Because I do not think we should put artificial restrictions on the ability of the Bell companies to go into long distance. I supported the manager's amendment because it got rid of a test that made it virtually impossible for them to ever enter that competition.

Now the only question is whether the Justice Department, that had the foresight starting under Gerald Ford, finishing under Ronald Reagan, to break

EXHIBIT 2

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In the 21 years that I have been here, the most successful farm legislation has been bipartisan farm legislation. The most successful farm legislation has been that where we have worked together. There are a lot of issues in this, from the normal crops to issues of nutrition, conservation, reserve areas, which are very important to me. I know that the only kind of legislation we are ever actually going to see go into law is something we all work together on.

I commend Senator DOLE and Senator DASCHLE and Senator LUGAR and others for working so hard to bring us together. I think we will shortly be in a position to put before the body a piece of legislation that we can at least all vote cloture on and then go on in the normal course of things on the farm bill.

But I commend those Senators again on both sides of the aisle who have been willing to work together on legislation to protect the farmers of our country, to require the production of food and fiber and allow family farms to continue, but also to protect the environment of this country and to feed the people of this country through the nutrition programs. Those programs work best when we come together to pass it. I think we are coming very close to that.

I thank the distinguished majority leader for yielding to me.

THE TELECOMMUNICATIONS BILL

Mr. DOLE. Mr. President, I think the Senator from Iowa has a legitimate request here. We are trying to clarify that now with the Senator from South Dakota. If we can do that, then we will start the debate on the telecommunications bill. I have read the colloquy. I do not see any problem with it. But I am not on the committee. I am not the committee chairman. So I hope we can work that out.

THE FARM BILL

Mr. BUMPERS. Mr. President, will the majority leader yield for a question?

The majority leader may have already covered this. I am concerned about this. I am vitally interested in the farm bill. I have no objection whatever going to the telecommunications bill. But if at some point this afternoon some sort of a compromise is reached, I hope that we will not have any difficulty setting the telecommunications bill aside and then get back to the farm bill and, hopefully, dispose of it this evening.

Mr. DOLE. We would like to dispose of it this evening. We are hoping there can be an agreement and that we have 80 votes on cloture—not 61 or 59, or whatever. I know some Members have to depart fairly soon. We are trying to accommodate everyone. It is difficult to do. But I think they are meeting as we speak in a bipartisan group.

Mr. LEAHY. Mr. President, if the leader will yield, his staff, mine, Senator LUGAR's, and Senator DASCHLE's are meeting. I think we are going to have very soon a package on the farm bill before us, at least the original package most of us can vote for and, obviously, subject to amendment after that. But the desire, I think, of the principals—those of us on both sides of the aisle who are handling this—is to get something that we can compress in time, if at all possible, and protect the legitimate interests reflected not only geographically but politically.

Mr. BUMPERS. My concern, Mr. President, to the majority leader was, I wish we could incorporate into the unanimous-consent request that the majority leader will have a right to automatically set the telecommunications bill aside. I do not want somebody to object to that and get us bogged down here so that we cannot get back to the farm bill.

Mr. DOLE. I will assure the Senator I am interested, too, just as the Senator from Arkansas is. If we get bogged down on this, we could set it aside. We have regular order to bring it back.

TELECOMMUNICATIONS ACT OF 1996—CONFERENCE REPORT

Mr. DOLE. Mr. President, I now ask unanimous consent that notwithstanding the absence of the official papers—they are somewhere else—the Senate now turn to the consideration of the conference report to accompany S. 652, the telecommunications bill, and the conference report be considered read.

The PRESIDING OFFICER. Is there objection? The Chair hears none, and it is so ordered.

The report will be stated.

The legislative clerk read as follows:

The committee of conference on the disagreeing votes of the two Houses on the amendments of the House to the bill S. 652, to provide for a procompetitive, deregulatory national policy framework designed to accelerate rapid 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, having met, after full and free conference, have agreed to recommend and do recommend to their respective Houses this report, signed by a majority of the conferees.

The PRESIDING OFFICER. The Senate will proceed to the consideration of the conference report.

(The conference report is printed in the House proceedings of the RECORD of January 31, 1996.)

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

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

Mr. PRESSLER. Mr. President, it is with a sense of relief and pride that we bring to the Senate floor the conference report on the telecommunications bill. I wish to commend my colleague, Senator HOLLINGS, for his outstanding leadership and bipartisan spirit throughout this debate. This long debate has brought us to the point today where we have a conference report that is very positive. It is procompetitive and deregulatory. The Telecommunications Act of 1996 will get everybody into everybody else's business.

The purpose of this bill is to update the 1934 Communications Act. This is the first complete rewrite of the telecommunications law in our country. It is very much needed.

I predict that this will be succeeded someday as we get into the wireless age by another act, maybe in 10 or 15 years. But this Telecommunications Act will provide us with a road map into the wireless age and into the next century.

Mr. President, what has occurred in our country is that through court decisions and through the 1934 act we have developed an economic apartheid regarding telecommunications, that is, the regional Bell companies have the local telephone service, the long-distance companies have the long-distance service, the cable companies have their section, the broadcast companies have their section.

This bill attempts to get everybody into everybody else's business and let in new entrants. For example, at President Clinton's recent White House conference on small business many small business people wrote and said, we want the Telecommunications Act of 1996 to pass because it will allow small business people to get into local telephone service, it will allow small business people to get into different segments of telecommunications.

Mr. President, this conference report we bring here today is a vast bill. It covers everything from the rules of entry into local telephone service by other competitors—it deals with long distance, it deals with cable, it deals with broadcast, it deals with the public utilities getting into telecommunications, it deals with burglar alarm issues, it deals with the authority of State and local governments over their rights of way, and it deals with the rules of satellite communication.

It will result in many things for consumers. For example, I believe it will accelerate an explosion of new devices, an explosion of new investment. What has happened in our country is that we have forced our regional Bell companies to invest overseas because we limit what they can manufacture. We have limited many of our companies in what they can do in our country. This legislation unleashes them, makes them competitive and is deregulatory in nature.

It will do a great deal for consumers. For example, and specifically, it will lower prices on local telephone calls

through competition. It will lower prices on long-distance calls through competition. It will lower cable TV rates through competition. It will provide an explosion of new devices, services and inventions.

Mr. LOTT. Mr. President, will the distinguished Senator from South Dakota yield? I hate to interrupt.

Mr. PRESSLER. I do yield.

UNANIMOUS-CONSENT AGREEMENT

Mr. LOTT. Mr. President, we have a unanimous-consent agreement I believe we are ready to enter. It is a very important effort to complete this legislation.

After consultation with the Democratic leadership, Mr. President, I ask unanimous consent that there now be 90 minutes on the conference report to be equally divided in the usual form, and following the conclusion or yielding back of the time, the Senate proceed to the adoption of the conference report without any intervening action or debate.

Mr. FORD. Reserving the right to object, Mr. President, I ask that my friend allow the ranking Member to have equal time for what the chairman has had, say 5 minutes, and add that to that.

Mr. LOTT. I amend my unanimous-consent request to that effect.

Mr. FORD. I thank my friend.

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

Mr. LOTT. I thank the Senator for yielding.

Mr. PRESSLER. I thank my colleagues and my colleague from Kentucky.

So, Mr. President, this bill is an industrial restructuring. It will be like the Oklahoma land rush because many investors have not had a road map as to what to do. It will mean we will be more competitive internationally, and it will mean many of our companies can form alliances internationally.

Some have said, well, will this just allow one or two companies to take everything over? No, it will not. I think it will prove to be the age of the small, nimble business. I believe that we will see small businesses emerging. We have seen AT&T break up into three companies. I think that is going to happen more and more.

This bill does not affect our antitrust laws. The antitrust laws stay in place. But this bill will encourage small, nimble companies and entrepreneurs to enter the telecommunications area.

It will also bring us to a point where many of our companies that have not been able to get into other areas can do so. For example, the public utilities will be able to get into telecommunications.

What does this mean to the average consumer? I have already mentioned I think it will mean lower prices through competition. It also will mean many new devices for senior citizens who might be living alone and want to summon emergency help with some of the wireless technologies that will be available. They can stay in their own homes longer with the security of mind of being able to call for help by pushing a button.

For the home, I believe we will see the computer and TV and telephone blended into one source of education, news, and entertainment. For the small town hospital, it will mean telemedicine, new devices and investment, where a large hospital can partner with a small hospital in research.

For the small business located in a smaller town, it will mean that a small businessman there will be on an equal footing with a bigger businessman in an urban center in terms of access to research and the ability to partner.

As a member of the Finance Committee, I have asked my staff to help find ways that when big universities get a research grant for cancer research, for example, that they use telecommunications to partner with a small university. That will make the research more accurate at lower cost.

So there are a number of benefits to consumers, farmers, small business people, and universities. There are many new devices that will come online that we have not even heard of yet. This bill will be like the Oklahoma land rush in terms of investment, inventions and development. We have just begun imagining what the telecommunications revolution will be like.

This will be the starting gun. We have kept our companies in bondage. Those companies will break free and there will be a whole group of new small entrepreneurs coming forth to participate in the telecommunications revolution.

Another area that it will help our country is jobs. This is the biggest jobs bill ever to pass this Congress. It will result in a creation of thousands of jobs, good jobs, good-paying jobs across our country.

We read about layoffs every day, but they are frequently in industries that have grown obsolete. This bill will allow an unleashing of new high-technology jobs in the information age. And it is very important.

This bill is a jobs bill without spending any Federal money. It will go down in history as the largest jobs bill in American history.

So, Mr. President, I shall, to save time, because I know some of my colleagues wish to speak—I want to pay tribute to both the Republicans and Democrats who have worked on this bipartisan bill, to my colleague, Senator HOLLINGS, to my colleague, Senator DASCHLE, who is on the floor, and many others on both sides of the aisle, Republicans and Democrats.

This is a bipartisan bill. It has been all the way through the Senate. First of all, this bill has been simmering for many years. We have worked on it first in the Senate and then in the House. There were bipartisan staff meetings.

We have brought the White House into the conference discussions. I spoke with President Clinton and Vice President GORE on a number of occasions throughout this process. I thank them for their participation. Mr. Simon of Vice President GORE's staff was a guest speaker at the conference staff's first meeting. We invited him so we could bring this together on a bipartisan basis.

This bill is not one that could be partisan. I think it is one of the most bipartisan pieces of legislation in the Congress. Mr. President, I shall have additional remarks as time goes on. I yield the floor.

Mr. HOLLINGS addressed the Chair.

The PRESIDING OFFICER. The Senator from South Carolina.

Mr. HOLLINGS. Mr. President, today the Senate considers the conference agreement to S. 652, the Telecommunications Act of 1996. This bill is intended to promote competition in every sector of the communications industry, including the broadcast, cable, wireless, long distance, local telephone, manufacturing, pay telephone, electronic publishing, cable equipment, and direct broadcast satellite industries. This legislation has the support of the Clinton administration and almost every sector of the communications industry. I urge my colleagues to pass this comprehensive legislation.

Mr. President, this conference agreement comes before the Senate for final passage after years of debate. In 1991, I authored legislation to allow the Regional Bell Operating Companies [RBOC's] into manufacturing. That bill passed the Senate by almost ¾ of the Senate, but the House could not pass it. Several other bills were offered, but at each stage, one industry blocked the other. As a result, communications policy has been set by the courts, not by Congress and not by the Federal Communications Commission [FCC], the expert agency.

In 1994, I introduced S. 1822, the Communications Act of 1994, which contained the most comprehensive revision of the communications law since 1934. In that year, the committee held 31 hours of testimony in 11 days of hearings from 86 witnesses. Though that bill was reported by the Commerce Committee by a vote of 18 to 2, there was not enough time in the 103d Congress to complete our work.

Senator PRESSLER and I decided earlier this year to pick up where we left off in the last Congress. We jointly introduced S. 652 early in 1995 and succeeded in passing the bill out of the Commerce Committee by a vote of 17–2 on March 23 of last year. The bill passed the Senate in June by an overwhelming vote of 81–18. After the House passed its version of the legislation in August, the two Houses entered into the difficult task of reconciling the two bills over several months through the fall and winter.

I am pleased that the conferees have succeeded in reconciling these bills. I

believe that the conference report that is brought before the Senate today is a fair and balanced compromise between the bills passed by the two Houses. It retains many of the concepts contained in my legislation from the 103d Congress. For instance, it promotes competition, it retains strong protections for universal service and rural telephone companies, it promotes consumer privacy, and it allows the RBOC's into long distance and manufacturing under certain safeguards.

At the same time, this legislation contains many more deregulatory provisions than were contained in my legislation from last year. It allows greater media concentration than I would have preferred. It deregulates cable on a date certain, rather than upon a determination that there is actual competition. Nevertheless, I believe that this legislation on the whole presents a balanced package that deserves the support of every Member of this body.

The basic thrust of the bill is clear: competition is the best regulator of the marketplace. Until that competition exists, monopoly providers of services must not be able to exploit their monopoly power to the consumer's disadvantage. Timing is everything. Telecommunications services should be deregulated after, not before, markets become competitive.

Competition is spurred by the bill's provisions specifying the criteria for entry into various markets. For example, on a broad scale, cable companies soon will provide telephone service, and telephone companies will offer video services. Consumers will soon be able to purchase local telephone service from several competitors, and vice versa. Electric utility companies will offer telecommunications services. The RBOC's will engage in manufacturing activities. All these participants will foster competition to each other and create jobs along the way.

We should not attempt to micromanage the marketplace; rather, we must set the rules in a way that neutralizes any party's inherent market power, so that robust and fair competition can ensue. This is Congress' responsibility, and so the bill transfers jurisdiction over the modification of final judgment [MFJ] from the courts to the FCC. Judge Greene, who has been overseeing the MFJ, has been doing yeoman's work in attempting to ensure that monopolies do not abuse their market power. But it is time for Congress to reassert its responsibilities in this area, and this conference agreement does just that.

Mr. President, let me address some of the specific areas of important in the bill.

UNIVERSAL SERVICE

The need to protect and advance universal service is one of the fundamental concerns of the conferees in drafting this conference agreement. Universal service must be guaranteed; the world's best telephone system must continue to grow and develop, and we must attempt to ensure the widest availability of telephone service.

The conference agreement retains the provision in the Senate bill that requires all telecommunications carriers to contribute to universal service. A Federal-State joint board will define universal service, and this definition will evolve over time as technologies change so that consumers have access to the best possible services. Special provisions in the legislation address universal service in rural areas to guarantee that harm to universal service is avoided there.

RBOC ENTRY INTO LONG DISTANCE

One of the most contentious issues in this whole discussion has been when, or if, the RBOC's should be allowed to enter the long-distance market. I share the concern of many consumers that the RBOC's should not be permitted to enter the long-distance market while they retain a monopoly over local telephone service. For this reason, I strongly opposed the idea that the RBOC's should be permitted to enter the long-distance market on a date certain, whether they face competition or not. I am pleased that the conference agreement recognizes that the RBOC's must open their networks to competition prior to their entry into long distance.

CABLE RATE DEREGULATION

The 1992 Cable Act was a great success. The rate regulation provisions of that legislation have saved consumers about $3 billion a year. The 1992 law also stimulated competition for cable service by wireless cable providers and direct broadcast satellite [DBS]. For these reason, I have agreed to go along with the provisions in the final conference agreement what would deregulate the upper tiers of cable service on March 31, 1999. By that time, we expect that competition from DBS and wireless cable, and perhaps from the telephone companies, will provide enough restraint on further cable rate increases. I believe that this is a fair compromise that serves the interests of consumers and the cable industry.

BROADCAST ISSUES

The conference agreement changes some of the current rules and statutory provisions concerning media concentration. I share the concerns of the Clinton administration and others that excessive media concentration could harm the diversity of voices in the communications marketplace. At the same time, that marketplace has undergone several changes since many of these rules were first adopted in the 1970's. As a result, I have agreed to some changes in the ownership rules to allow the broadcast and cable industries to compete on more equal footing.

IMPORTANCE OF MUST-CARRY

I would like to add one more point concerning the importance of must-carry. Broadcast stations are important sources of local news, public affairs programming and other local broadcast services. This category of service will be an important part of the public interest determination to be made by the Commission when deciding whether a broadcast renewal application shall be granted by the Commission. To prevent local television broadcast signals from being subject to noncarriage or repositioning by cable television systems and those providing cable services, we must recognize and reaffirm the importance of mandatory carriage of local commercial television stations, as implemented by Commission rules and regulations.

CONCLUSION

This comprehensive bill strikes a balance between competition and regulation. New markets will be opened, competitors will begin to offer services, and consumers will be better served by having choices among providers of services. I urge my colleagues to adopt this bill. I myself would go further in several areas covered by the legislation, and not as far in other areas. But I have seen that, unless we adopt a comprehensive approach to legislation, any one sector of the telecommunications industry can stop this bill and checkmate the others. Telecommunications reform is too important to let this opportunity go by. This conference agreement is an equitable approach to most of the areas covered by the bill, and I urge my colleagues to support it.

Mr. President, I ask unanimous consent that a "Resolved Issues" table be printed in the RECORD.

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

TELECOMMUNICATIONS BILL RESOLVED ISSUES

1. Long Distance.

a. FCC decides whether to allow a Regional Bell Operating Company to provide long distance under the following conditions:

i. FCC gives substantial weight to the DOJ;

ii. RBOC application must be in the public interest;

iii. RBOC must face a facilities-based competitor or must have received approval from the State that it has met the unbundling requirements;

iv. RBOC must have opened and unbundled its network using a specific checklist;

v. RBOC must apply on a state-by-state basis;

vi. RBOC must use a separate subsidiary for long distance;

b. RBOCs can provide long distance outside their region immediately upon enactment;

c. RBOCs can provide incidental long distance (i.e. long distance related to cellular, information services cable services, cable services) immediately after enactment;

d. the RBOC can jointly market local and long distance service immediately after enactment;

2. Media Ownership:

a. nationwide reach raised from 25% to 35%—no waivers

b. duopoly rule—FCC will study whether to change duopoly rule. Current rule prohibits ownership of two TV stations in the same market. If it changes the rule, there should be a higher standard on V-V combinations than U-U or U-V combinations

c. Local Radio—raise the limits on the number of stations one person can own as follows:

develop monopolies and dominate marketplaces to the detriment of the consumer.

This Nation learned through long and hard experience that laissez-faire attitudes towards industries does not protect smaller entities when larger competition comes along and certainly does not provide safeguards where consumers are concerned. I acknowledge the roles of government oversight that the bill does now provide. But the larger corporations will not be constrained in their ability, should they desire, to monopolize media and various telecommunication mediums. And in our effort to allow such an environment do we want to place the consumer on the altar of deregulation?

Nevertheless, my constituents from Nevada believe this bill will provide genuine competition. And I note with some pride, their foresight and fairness in establishing a telephony commission to watch over the changes within the industry. Mr. President, the telecommunications industry is clearly evolving. Everyday we read of new emerging technologies that will directly impact all that this bill is trying to accomplish. While we should give it freedom to compete; we must, as is our responsibility, watch carefully to protect the consumers and small businesses so that this sphere of our economy is truly competitive. Despite my reservations, I will vote for this bill because there are positives and I hope that steadfast government oversight will preserve the competitive marketplace.

Mr. BREAUX. Mr. President, anyone who has followed the debate over telecommunications legislation in recent years knows that much of it has been over when and under what conditions the Bell companies will be allowed to compete in the long distance market S. 652 resolves this issue.

Congress has determined that removing all court ordered barriers to competition—including the MFJ interLATA restriction—will benefit consumers by lowering prices and accelerating innovation. The legislation contemplates that the FCC should act favorably and expeditiously on Bell company petitions to compete in the long distance business. There are various conditions for interLATA relief. These include the establishment of Sate-by-State interconnection agreements that satisfy the 14 point check list outlined in Sec. 271 of the bill. Bell companies also have to show they face competition from a facilities based carrier. They can also show that they have not received a legitimate request for interconnection from a competing service provider within three months of enactment.

In short, interLATA relief should be granted as soon as competing communications service providers reach an interconnection agreement. In some States these agreements have already been put in place with the approval of state public service commissions. In those instances, we see no reason why the FCC should not act immediately and favorably on a Bell company's petition to compete, once the test for facilities based competition is satisfied.

Congress fully expects the FCC to recognize and further its intent to open all communications markets to competition at the earliest possible date. The debate over removing legal and regulatory barriers to competition has been resolved with this legislation. Unnecessary delays will do nothing more than invite vested interests to "game" the regulatory process to prevent or delay competition.

The time has come to let consumers—not bureaucrats—choose.

Mr. HARKIN. Mr. President, today we are voting on the approval of historic telecommunications legislation that will reshape the landscape of the entire communications industry and affect every household in this country. The future success of America's economy and society is inextricably linked to the universe of telecommunications. After a decade of intense debate, this legislation rewrites the Nation's communications laws from top to bottom.

The bill before us, S. 652, has come a long way and survived many battles. It is not a perfect bill in the sense that no one got everything they wanted—but I believe it will unleash a new era in telecommunications that will forever change our society and make our Nation a key driver on the information superhighway. We should applaud this amazing effort and support the conference report to S. 562.

The debate over this measure has never been about the need for reform—everyone agrees that it's time. The real debate has been over how we reform our telecommunications law. The 1934 Communications Act serves our country as the cornerstone of communications law in the United States. The current regulatory structure set up by the 1934 act is based on the premise that information transmitted over wires can be easily distinguished from information transmitted through the air. So regulations were put in place to treat cable, broadcast, and telephone industries separately and for the most part, to preclude competition.

However, advances in technology have brought us to a melding of telephone, video, computers, and cable. Digital technology allows all media to speak the same language. These once neat regulatory categories between telecommunications industries have started to blur and the assumptions upon which they are based are fast becoming obsolete.

The essential purpose of this measure is to foster competition by removing barriers between distinct telecommunications industries and allowing everyone to compete in each other's business. But how do we increase competition while simultaneously ensuring that everyone is playing on a level playing field?

Coming from a rural State, this was an especially important question for me. The overall goal of this legislation is to increase competition and I wholeheartedly believe that increased competition will benefit consumers. However, we must also recognize that telecommunications competition is limited in some areas, especially in many rural areas. The high cost of providing telecommunications to rural areas is prohibitive for most telecommunications service providers without some incentive. The 1934 communications bill understood this and adopted a principle called universal service, which was thankfully maintained and updated in S. 652.

The universal service concept charged the FCC with responsibility for "making available, so far as possible to all people of the United States a rapid, efficient, nationwide, and world-wide wire and radio communications service with adequate facilities at reasonable charges." So far we have done a heck of a job: 98 percent of American homes have television and radio, 94 percent have telephone, close to 80 percent have a VCR, while 65 percent subscribe to cable TV—96 percent have the option.

Without universal service protections, advanced telecommunications will blow right by rural America creating a society of information haves and have nots. S.652 recognizes that the definition of universal service is evolving as the technology changes. S. 652 requires the FCC to establish a Federal-State joint board to recommend rules to reform the universal service system. The Joint Board will base its policies on principles which understands that access to quality, advanced telecommunications services should be provided to all Americans at a reasonable cost.

I was particularly pleased to support an amendment, now in the bill before us, which guarantees that our nation's K-12 schools, libraries and rural health care providers have affordable access to advanced telecommunications services for education. As Congress moves forward on this bold legislation it is vital to provide a mechanism to assure that children and other community users have access to the information superhighway. The information superhighway must be available and affordable to all Americans through schools and libraries.

And in the midst of the great battles among corporate titans like the Baby Bells and the major long distance carriers it's also important to balance the needs of the little guy. Small businesses are the backbone of economic and community life in this country. I was proud to put forward two provisions, included in this bill, which maintained the integrity of small businesses in the telecommunications revolution.

My first provision amended the telecommunications bill to allow companies with under 5 percent of the market nationally to continue offering joint marketing services. Under current law, joint marketing companies can approach a business and offer to provide

them local and long distance service together, at a low rate. The business therefore gets a low cost integrated service, with the convenience of having only one vendor and one bill to deal with for all their telephone service. In an effort to prevent the big long distance companies from having a competitive advantage, the original telecommunications bill would have prohibited joint marketing.

Such a prohibition would have put small company owners like Clark McLeod out of business. Mr. McLeod has been offering joint marketing services to businesses in Iowa for several years. In the process he has created thousands of jobs and filled a need for service. While I think any prohibition on joint marketing is anti-competitive, my proposal will at least allow the many innovative companies like Mr. McLeod, to continue their operations and continue to provide the services valued by so many Iowans.

My other small business provision prevents the Bell Operating companies from entering into the alarm industry before a level playing field exists. The burglar and alarm industry is unique among small businesses in the telecommunications industry. It is the only information service which is competitively available in every community across the nation. This highly competitive $10 billion industry is not dominated by large companies. Instead, it is dominated by approximately 13,000 small businesses employing, on average, less than ten workers. Vigorous competition among alarm industry companies benefits consumers by providing high quality service at lower prices.

Lastly, I am pleased that the Senate unanimously adopted two amendments I wrote to crack down on phone scams where enterprising swindlers have used the telephone to scam unsuspecting customers out of their hard earned money

Today, it is all too easy for telemarketing rip-off artists to profit from the current system. The operators of many of these promotions set up telephone boiler rooms for a few months, stealing thousands of dollars from innocent victims. These scam artists often prey on our senior citizens. Then they simply disappear. They take the money and run—moving on to another location to start all over again.

My provision will protect consumers by providing law enforcement the authority to more quickly obtain the name, address, and physical location of businesses suspected of telemarketing fraud. It makes it easier for officers to identify and locate these operations and close them down. This change was requested by the U.S. Postal Inspection Service—our chief mail and wire fraud enforcement agency. They do a very good job and this provision gives them an important new tool to protect the elderly and other Americans from scam artists and swindlers.

I also succeeded in adopting a provision to help stop another outrageous phone scam that has added hundreds, even thousands of dollars, to a family's phone bill. Worst of all, this ripoff exposes young people to dial-a-porn phone sex services—even when families take the step of placing a block on extra cost 900-number calls from their home.

Companies promoting phone sex, psychic readings and other questionable services—often targeted at adolescents—use 800-numbers for calls and then patch them through to 900-number service via access codes. My amendment closes the loophole that allows these unseemly services to swindle families and restores public confidence in toll free 800-numbers.

If we pass this bill today, these provisions will become the law of the land. As Microsoft giant, Bill Gates said in a recent interview with Newsweek,

> The revolution in communications is just beginning. It is crucial that a broad set of people participate in the debate about how this technology should be shaped. If that can be done the highway will serve the purposes users want. Then it will * * * become a reality.

This bill is a starting point, a gateway to the revolution, that allows all Americans to participate. I urge my colleagues to support this conference report.

Mr. LEVIN. Mr. President, I would like to engage my colleague from Nebraska, the author of Title V of the telecommunications conference report, in a colloquy. I have a number of questions I hope you can answer to help clarify the intent of title V.

Is a company such as Compuserve which provides access to all mainframes on the Internet liable for anything on those mainframes which its users view?

Is a company like Compuserve which maintains its own mainframe and which allows people to post material on its mainframe liable for prohibited material that other people post there in the absence of an intent that it be used for a posting of prohibited material?

Is the entity that maintains a mainframe, such as a university, that allows a person to post material on its mainframe liable for prohibited material that other people post there in the absence of an intent that it be used for a posting of prohibited material?

When a user accesses prohibited material on a mainframe that was posted by a third party, does that constitute an "initiation" of transmission for which the entity maintaining the mainframe or the entity providing access to the mainframe is liable?

Mr. EXON. I appreciate the questions raised by my colleague, Senator LEVIN. These questions are important and helpful. In general, the legislation is directed at the creators and senders of obscene and indecent information. For instance, new section 223(d)(1) holds liable those persons who knowingly use an interactive computer service to send indecent information or to display indecent information to persons under 18 years of age. You can't use a computer to give pornography to children.

The legislation generally does not hold liable any entity that acts like a common carrier without knowledge of messages it transmits or hold liable an entity which provides access to another system over which the access provider has no ownership of content. Just like in other pornography statutes, Congress does not hold the mailman liable for the mail that he/she delivers. Nothing in CDA repeals the protections of the Electronic Message Privacy Act.

For instance, new section 223(e)(1) states that "no person shall be held to have violated subsection (a) or (d) solely for providing access or connection to or from a facility, system, or network not under that person's control, * * * that does not include the creation of the content of the communication." In other words, the telephone companies, the computer services such as Compuserve, universities that provide access to sites on Internet which they do not control, are not liable.

There are some circumstances, however, in which a computer service or telephone company or university could be held liable. If, for instance, the access provider is a conspirator with an entity actively involved in creating the proscribed information (223(e)(2)), or if the access provider owns or controls a facility, system, or network engaged in providing that information (223(e)(3)), the access provider could potentially be held liable. Access providers are responsible for what's on their system. They are generally not responsible for what's on someone else's system.

Even in these cases, however, an access provider that is involved in providing access to minors can take advantage of an affirmative defense against any liability if the entity takes "good faith, reasonable, effective, and appropriate actions * * * to restrict or prevent access by minors to such communications "(223(e)(5)). The Federal Communications Commission may describe procedures which would be taken as evidence of good faith. One such good faith method is set forth in the legislation itself—the access provider will not be liable if it has restricted access to such communications by requiring use of a verified credit card or adult access code (223(e)(5)(B)). This affirmative defense is similar to the defense provided under current law for so-called "dial-a-porn" providers.

I hope that this response provides clarification to the Senator.

Mr. LEVIN. Yes; it does, and I thank my friend from Nebraska for that clarification.

Mr. President, when the telecommunications reform bill was before the Senate in June, I supported giving the Justice Department a role to ensure that existing monopoly powers are not used to take advantage of the new markets being entered. While

parents more control over the sex and the violence that is coming into our homes today. Most of the kids in our society will see 8,000 murders and over 100,000 acts of violence on television by the time they finish grade school. That is appalling. We need to do more to help these parents who do take responsibility for their kids.

Now, the V-chip, that is something that is part of this package. It was the gentleman from Massachusetts [Mr. MARKEY] and the gentleman from Michigan [Mr. DINGELL] and others who have been active on this issue. We have got that in here. The V-chip included in this bill will help parents let in Sesame Street and keep out programs like the Texas Chainsaw Massacre.

Mr. Speaker, it is parents who raise children, not government, not advertisers, not network executives, and parents who should be the ones who choose what kind of shows come into their homes for their kids.

It was a little more than a week ago when the President of the United States stood directly in back of me and spoke to the Nation, and the most memorable words from my standpoint in that speech were parents have the responsibility and the duty to raise their children. This bill will help immeasurably in that direction, so I urge my colleagues to be supportive of the conference report when it comes before us in the next few minutes.

Mr. LINDER. Mr. Speaker, I yield such time as he may consume to the gentleman from Texas [Mr. FIELDS], the chairman of the subcommittee that produced this bill.

(Mr. FIELDS of Texas asked and was given permission to revise and extend his remarks.)

Mr. FIELDS of Texas. Mr. Speaker, very seldom, if ever, in a legislative career, can we as legislators, can we as trustees for the American people, feel that we have made a significant contribution for the country's future—made a real difference. Well, today we can.

Mr. Speaker, this is a watershed moment—a day of history—and, not just because this is the first comprehensive reform of telecommunication policy in 62 years—not just because we have been able to accomplish what has eluded previous Congresses—which, in and of itself, is of particular pride to me and my fellow subcommittee members, on both sides of the aisle, because we have all worked many long hours to get to this watershed moment.

No, Mr. Speaker, this is a historic moment because we are decompartmentalizing segments of the telecommunications industry, opening the floodgates of competition through deregulation, and most importantly, giving consumers choice—in their basic telephone service, their basic cable service, and new broadcasting services as we begin the transition to digital and the age of compression—and from these choices, the benefits of competition flow to all of us as consumers—new and better technologies, new applications for existing technologies, and most importantly, to all of us, because of competition, lower consumer price.

For the last 3½ years this telecommunication reform package has been my life—I have lived with it, eaten with it, and not to sound weird, even dreamed of telecommunication reform while I'm asleep—so, believe me when I say that I am glad that we are bringing this important issue to closure. In fact, this closure reminds me of my newest daughter, Emily, born 14 days ago—the labor has been long, we've been through some painful contractions, but at the birth of something so magnificent, you're a proud father—and today, I am one of many proud fathers.

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And, just as I cannot predict what Emily will be like as she grows up, few of us really understand what we are unleashing today. In my opinion, today is the dawn of the information age. This day will be remembered as the day that America began a new course—and none of us fully appreciate what we are unleashing. I do know that this is the greatest jobs bill passed during my service in Congress. I really believe that because of the opportunities afforded because of deregulation that there will be more technology developed and deployed between now and the year 2000 than we have seen this century. I believe that this legislation guarantees that American companies will dominate the global landscape in the field of telecommunication.

And, if asked what I am most proud of in this legislation—besides the fact that my subcommittee members on my side of the aisle have worked as a team in developing this legislation—is the approach that we initiated in January 1995, when we as Republicans assumed leadership on this issue and invited the leading CEO's of America's telecommunication companies to come and answer one question. That one question was, What should we do as the new majority in this dynamic age of telechnology to enhance competition and consumer choice? The telephone CEO's said that they didn't mind opening the local loop if they could compete for the long distance business that was denied to them by judicial and legislative decision. The long distance CEO's said that they didn't mind the Bell's competing for the long distance business if the local loop was truly open to competition and if they could compete for the intraLATA toll business which was denied to them. And, the biggest surprise to us was when Brian Roberts of Comcast Cable on behalf of the cable industry said that they wanted to be the competitors of the telephone companies in the residential marketplace. In fact, the next day, I called Brian and Jerry Levin of Time-Warner to have them reassure me that their intent was to be major players and competitors in the residential marketplace. After that discussion, I told my staff that we needed a checklist that would decompartmentalize cable and competition in a verifiable manner and move the deregulated framework even faster than ever imagined. And we came up with the concept of a facilities based competitor who was intended to negotiate the loop for all within a State and it has always been within our anticipation that a cable company would in most instances and in all likelihood be that facilities-based competitor in most States—even though our concept definition is more flexible and encompassing. It is this checklist which will be responsible for much of the new technologies, the major investments that will be flowing, and the tens of thousands that will be created because of this legislation.

And, in talking about opening the loop, I don't want to take away the other deregulatory aspects of our legislation such as the more deregulatory environment for the cable industry as they prepare to go head-to-head with the telephone companies. The streamlining of the license procedures for the broadcasting industry and the loosening of the ownership restrictions.

Mr. Speaker, I could go on and on and on and be excited about what this bill means to Americans, to our consumers.

Let me just end at this particular time in saying once again, I am a proud father, along with many others. There are many who have brought this day to us. It is a watershed moment, a historic moment, and it is a day that all of us can be extremely proud of.

Mr. BEILENSON. Mr. Speaker, I yield 3 minutes to the gentlewoman from New York [Ms. SLAUGHTER].

(Ms. SLAUGHTER asked and was given permission to revise and extend her remarks.)

Ms. SLAUGHTER. Mr. Speaker, I thank the gentleman for yielding me time.

Mr. Speaker, I agree with the previous speaker, we are not sure what we are unleashing here. But I am rising in objection today to at least another measure to restrict women's constitutional rights that has appeared in this bill. I am referring to section 507 of the Communications Act of 1995 that would prohibit the exchange of information regarding abortion over the Internet. I ask you, is the abortion issue going to be attached and is it at all germane to this bill?

This is the 22d vote of the 104th Congress on abortion-related legislation that has whittled away at the constitutional and legal rights of American women. Today we have the opportunity to pass a widely supported bipartisan telecommunications bill. Instead of focusing on the important issues at hand, we are being forced again for the 22d time during Congress to vote on a measure to further reduce women's constitutional rights.

Abortion is a legal procedure. To prohibit discussion of it on the Internet is

chance to do. Imagine: 1.5 million to 3.5 million new families earning money instead of being dependent upon somebody else. That is what this bill promises for us, a little promise that we ought to keep on this House floor.

Mr. Speaker, I want to commend the gentleman from Michigan [Mr. DINGELL], the former chairman, the gentleman from Virginia [Mr. BLILEY], our chairman, and particularly the gentleman from Texas [Mr. FIELDS] for the extraordinary work he has done. Let us celebrate their hard work, and let us celebrate the spirit of America, a free-market system and competition. Let us vote this good bill out today.

Mr. BEILENSON. Mr. Speaker, I yield 3 minutes to the gentleman from Michigan [Mr. CONYERS], the distinguished ranking member of the Committee on the Judiciary.

Mr. CONYERS. Mr. Speaker, I would like to begin by congratulating the gentleman from California [Mr. BEILENSON] for supporting my discussion last night in the Committee on Rules, when the Congress had finished its work, when we found out that this conference report would be brought forward today in less than 24 hours, violating the most time-honored rule in the procedures of bringing legislation to this House.

The same rule that Speaker GINGRICH has spoken with great passion about; the same rule that the gentleman from New York, Mr. SOLOMON, chairman of the Committee on Rules, has preached to me about across the years, this rule is now being violated for reasons that I cannot fathom.

Let me make it clear that this is the most important 111 pages in a conference report in terms of economic consideration that my colleagues will ever in their careers deal with. The fact of the matter is that there are very few, if any, persons that have read, not to mention understand, what is in the report. That is why we have a 3-day rule layover.

Now, in all fairness, I want to commend the gentleman from Virginia [Mr. BLILEY] because he has cooperated with me throughout this process as a conferee. In all fairness, I want to commend the dean of the House, the gentleman from Michigan [Mr. DINGELL], who has not only afforded me every courtesy but has allowed me to have 20 minutes in the debate that will shortly follow.

But ask this question, as I urge my colleagues to return this rule to the committee: Who knew that that noxious abortion portion was in the conference report? Nobody, until it was found out about last night. Who knows many of the other provisions, I have a whole list of them here, that could not possibly be known about, much less understood in terms of their implications?

The reason that we honor the 3-day rule is simply because there are no amendments possible on a conference report. We can only vote it up or down. We should have a 3-week delay on this measure, since we are going out this afternoon. So 3 days would be a very modest consideration. That is why I am asking that this measure be returned to the Committee on Rules for the observation of the 3-day rule.

Mr. LINDER. Mr. Speaker, I yield 3 minutes to the gentleman from Illinois [Mr. HASTERT], another member of the Committee on Commerce.

(Mr. HASTERT asked and was given permission to revise and extend his remarks.)

Mr. HASTERT. Mr. Speaker, I really want to congratulate the gentleman from Texas [Mr. FIELDS], the gentleman from Virginia [Mr. BLILEY], the gentleman from Ohio [Mr. OXLEY], the former chairman on the other side of the aisle—folks who have been working on this issue for a long, long time and have put together a very, very good piece of legislation.

I might add that the piece of legislation that came out of here in the last Congress, also worked on by a group of folks, but it came out on suspension. It never got out of the Senate, back to the House in a conference. The gentleman from Michigan was talking about this bill, when my Democrat colleagues passed a bill on the suspension calendar with no amendments, 40 minutes of debate, and that was it. So take the difference in what is happening here.

Mr. Speaker, I rise in support of the conference report on the Communications Act of 1995. I have worked on this legislation for several years, and I am proud to come to the floor to support a bill that will unleash $63 billion in economic activity.

Reform of the 1934 Communications Act is long overdue. The road map for our communications future, outlined in the 1934 Act and the courts, still anticipates two-lane back roads rather than the fast paced super-highways we have today. The U.S. District Court began the trip toward competition when it issued the modified final judgment [MFJ] that required the breakup of "Ma Bell" 10 years ago and brought competition to the long-distance industry. Back then, I served as chairman of the Illinois Joint Committee on Public Utility Reform. We were charged with the task of revamping Illinois law to bring more competition. At that time, it was assumed that competition was not a good thing for local telephone service; the local telephone loop was viewed as a natural monopoly. Now, because of advances in technology, we see that it is possible—and preferable—to bring competition to the local loop.

But the MFJ has not brought about the full fledged competition consumers needed in every part of the communications industry. Thus, Congress has risen to the task of planning the road-trip so that American consumers will have more choices and innovative services, and will pay lower prices for communications products.

The map shows that there are pitstops along the road to competition. Everyone is in favor of "fair" competition as industries begin to contend in each others businesses. Fair competition means local telephone companies will not be able to provide long-distance service in the region where they have held a monopoly until several conditions have been met to break that monopoly.

First, the local Bell operating company [BOC] must open its local loop to competitors and verify it is open by meeting an extensive competitive checklist. Second, there must be a facilities-based competitor, or a competitor with its own equipment, in place. Third, the Federal communications Commissions [FCC] must determine that the BOC's entry into the long-distance market is in the public interest. And fourth, the FCC must give substantial weight to comments from the Department of Justice about possible competitive concerns when BOC's provide long-distance services.

Consumers can be sure BOC's won't get the prize before crossing the finish line.

As a member of the Commerce Committee, I worked on several provisions of this bill, and was the author of section 245(a)(2)(B) of H.R. 1555 which deals with the issue of BOC entry into in-region inter-LATA telecommunications service. This provision has become section 271(c)(1)(B) in the conference report. Section 271(c)(1)(B) provides that a BOC may petition the FCC for this in-region authority if it has, after 10 months from enactment, not received any request for access and interconnection or any request for access and interconnection from a facilities-based competitor that meets the criteria in section 271(c)(1)(A). Section 271(c)(1)(A) calls for an agreement with a carrier to provide this carrier with access and interconnection so that the carrier can provide telephone exchange service to both business and residential subscribers. This carrier must also be facilities based; not be affiliated with BOC; and must be actually providing the telephone exchange service through its own facilities or predominantly its own facilities.

Section 271(c)(1)(B) also provides that a BOC shall not be deemed to have received a request for access and interconnection if a carrier meeting the criteria in section 271(c)(1)(A) has requested such access and interconnection; has reached agreement with the BOC to provide the access and interconnection; and the State has approved the agreement under section 252, but this requesting carrier fails to comply with the State approved agreement by failing to implement, within a reasonable period of time, the implementation schedule that all section 252 agreements must contain. Under these circumstances, no request shall be deemed to have been made.

Mr. Speaker, we have given serious debate and consideration to this bill. Now is the time for Congress to set reasonable guidelines for our communications future. All signs point to competition ahead, so I urge my colleagues to give the Telecommunications Act of 1996 a green light.

Mr. BEILENSON. Mr. Speaker, I yield the balance of my time to the gentlewoman from Texas [Ms. JACKSON-LEE].

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Ms. JACKSON-LEE of Texas. Mr. Speaker, I thank the gentleman for yielding time to me.