Public Law 97-130
97th Congress

An Act

To amend the Communications Act of 1934 to eliminate certain provisions relating to consolidations or mergers of telegraph and record carriers and to create a fully competitive marketplace in record carriage, and for other purposes.

Dec. 29, 1981
[S. 271]

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

Record Carrier Competition Act of 1981.

SHORT TITLE

SECTION 1. This Act may be referred to as the "Record Carrier Competition Act of 1981". 47 USC 609 note.

COMPETITION AMONG RECORD CARRIERS

SEC. 2. Section 222 of the Communications Act of 1934 is amended to read as follows: 47 USC 222.

"COMPETITION AMONG RECORD CARRIERS

"SEC. 222. (a) For purposes of this section: Definitions.

"(1) The term 'primary existing international record carrier' means any record carrier which (A) derives a majority of its revenues during any calendar year from the provision of international record communications services between points of entry into or exit from the United States and points outside the United States; (B) is eligible, on the date of the enactment of the Record Carrier Competition Act of 1981, to obtain record traffic from a record carrier in the United States for delivery outside the United States; and (C) is engaged in the direct provision of record communications services between the United States and four or more continents.

"(2) The term 'record carrier' means a common carrier engaged in the offering for hire of any record communications service, including service on interstate network facilities between two points located in the same State. Such term does not include any common carrier which derives a majority of its revenues during any calendar year from the provision of services other than record communications service.

"(3) The term 'record communications service' means those services traditionally offered by telegraph companies, such as telegraph, telegram, telegram exchange, and similar services involving an interconnected network of teletypewriters.

"(b)(1) The Commission shall, to the maximum extent feasible, promote the development of fully competitive domestic and international markets in the provision of record communications service, so that the public may obtain record communications service and facilities (including terminal equipment) the variety and price of which are governed by competition. In order to meet the purposes of this section, the Commission shall forbear from exercising its author-

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ity under this Act as the development of competition among record carriers reduces the degree of regulation necessary to protect the public.

"(2) In furtherance of the purposes of this section, record carriers shall not impose upon users of any regulated record communications services the costs of any other services or facilities (including terminal equipment), whether regulated or unregulated.

Facilities, availability. 47 USC 201.

"(c)(1)(A)(i) In implementing its responsibilities under section 201(a), the Commission shall require each record carrier to make available to any other record carrier, upon reasonable request, full interconnection with any facility operated by such record carrier, and used primarily to provide record communications service. Such facility shall be made available, through written agreement, upon terms and conditions which are just, fair, and reasonable, and which are otherwise consistent with the purposes of this section.

Agreement.

"(ii)(I) Subject to the provisions of subclause (II), if a request for interconnection under clause (i) is for the purpose of providing international record communications service, then the agreement entered into under clause (i) shall require that the allocation of record communications service between points outside the United States and points of entry in the United States shall be based upon a pro rata share of record communications service between points of exit out of the United States and points outside the United States provided by the carrier making such request for interconnection.

"(II) The requirement established in subclause (I) shall not apply in any case in which the customer requesting any record communications service between a point outside the United States and a point of entry in the United States has the option to specify the international record carrier which will provide such record communications service.

"(B) The Commission shall require that—

"(i) if any record carrier engages both in the offering for hire of domestic record communications services and in the offering for hire of international record communications services, then such record carrier shall be treated as a separate domestic record carrier and a separate international record carrier for purposes of administering interconnection requirements;

"(ii) in any case in which such separate domestic record carrier furnishes interconnection to such separate international record carrier, any interconnection which such separate domestic record carrier furnishes to other international record carriers shall be (I) equal in type and quality; and (II) made available at the same rates and upon the same terms and conditions; and

"(iii) in any case in which such separate international record carrier furnishes interconnection to such separate domestic record carrier, any interconnection which such separate international record carrier furnishes to other domestic record carriers shall be (I) equal in type and quality; and (II) made available at the same rates and upon the same terms and conditions.

The requirements of clauses (i), (ii), and (iii) shall not apply to a record carrier if such record carrier does not have a significant share of the market for record communications services.

"(2) If any request made by a record carrier under paragraph (1)(A)(i) will require an agreement under which any record communications service or facility operated by one of the parties to such agreement will be used by any other party to such agreement, then such agreement shall establish a nondiscriminatory formula for the equitable allocation of revenues derived from such use between the

parties to such agreement, except that each party to such agreement shall have the right to establish the total price charged by such party to the public for any such service which is originated by such party, consistent with the provisions of section 203. To the extent possible, and consistent with the provisions of paragraph (3)(B)(ii), the Commission shall require that such equitable allocation of revenues be based upon the costs of the record communications service or facility employed as a result of such agreement. 47 USC 203.

"(3)(A) The Commission, as soon as practicable (but not later than fifteen days) after the date of the enactment of the Record Carrier Competition Act of 1981, shall convene a meeting among all record carriers which the Commission determines would be parties to any agreement required by paragraph (1)(A)(i). Such meeting shall be held for the purpose of negotiating any such agreement. Representatives of the Commission shall attend such meeting for purposes of monitoring and presiding over such negotitions.

"(B)(i) In the case of any such required agreement, if—

"(I) the record carrier subject to the interconnection requirement; and

"(II) a majority of the primary existing international record carriers involved in the meeting convened by the Commission under subparagraph (A);

fail to enter into an agreement before the end of the forty-five-day period following the beginning of such meeting, then the Commission shall issue an interim or final order which establishes a just, fair, reasonable, and nondiscriminatory agreement which is consistent with the purposes of this section. Any such agreement established by the Commission shall be binding upon such parties. Interim or final order.

"(ii) Such interim or final order shall be issued not later than ninety days after the date on which the Commission convenes the meeting under subparagraph (A). In the case of any such required agreement, if—

"(I) the record carrier subject to the interconnection requirement; and

"(II) a majority of the primary existing international record carriers involved in the meeting convened by the Commission under subparagraph (A);

reach an agreement which complies with the requirements of this section, and such agreement is entered into before the issuance of such order by the Commission under this subparagraph, then such agreement of the parties shall take effect and the Commission shall not be required to issue any such order.

"(C) Any record carrier which is not subject to the agreement entered into, or established by the Commission, under this paragraph may elect to be subject to the terms of such agreement upon furnishing written notice to the Commission and to all existing parties to such agreement. After a carrier makes such an election, the terms and arrangements established by the agreement shall apply to such carrier to the extent practicable, as determined by the Commission. Notice.

"(4) The Commission shall have authority to vacate or modify any agreement entered into by any record carriers under this section if the Commission determines that (A) such agreement is not consistent with the purposes of this section; or (B) such agreement unjustly or unreasonably discriminates against any record carrier. Authority to vacate or modify agreements.

"(5) If the Western Union Telegraph Company submits an application to the Commission for authority to provide international record communications service, the Commission shall not have any authori- Application, restrictions.

ty to take any final action with respect to such application until the end of the one hundred and twenty-day period following the date a written agreement is entered into between such Company and other record carriers under paragraph (3), or following the effective date of any interim or final order issued by the Commission under paragraph (3)(B) with respect to such carriers. The limitation upon Commission authority established in this paragraph shall expire at the end of the two hundred and ten-day period following the date of the enactment of the Record Carrier Competition Act of 1981.

"(d) Subject to the provisions of subsection (c)(5), each record carrier may provide record communications service in the United States domestic market and in the international market. Any record carrier seeking to provide domestic record communications service may provide such service without submitting an application to the Commission under section 214 unless the Commission requires such a submission. The Commission shall act expeditiously upon any application submitted pursuant to section 214.

47 USC 214.

"(e)(1) At the end of the 36-month period following the date of the enactment of the Record Carrier Competition Act of 1981, the provisions of subsection (c), other than paragraph (1)(B) of such subsection, shall cease to have any force or effect.

"(2) The provisions of paragraph (1) shall not be construed to affect the obligation of any carrier to interconnect with any other carrier pursuant to this Act.".

COMMISSION OVERSIGHT OF DISTRIBUTION FORMULAS

47 USC 222 note.

SEC. 3. (a) Subject to the provisions of subsection (b), the Federal Communications Commission shall exercise its authority under the Communications Act of 1934 to continue its oversight of the establishment of just and reasonable distribution formulas for unrouted outbound telegraph traffic and the allocation of revenues with respect to such traffic, consistent with the purposes of section 222 of the Communications Act of 1934, as amended in section 2.

47 USC 609.

Ante, p. 1687.

(b) The provisions of subsection (a) shall cease to have any force or effect at the end of the 1-year period beginning on the date of the enactment of this Act.

EFFECT OF AMENDMENT UPON CERTAIN CONTRACTS

47 USC 222 note.

SEC. 4. The amendment made in section 2 shall not affect the validity of the terms of any otherwise lawful contract relating to the distribution of outbound international record traffic between any domestic record carrier and any international record carrier if such contract was entered into before June 23, 1981.

AMENDMENT TO OTHER LAW

Rock Island Railroad.
94 Stat. 409
45 USC 1017.

SEC. 5. (a) Section 122(a) of the Rock Island Transition and Employee Assistance Act is amended by adding at the end thereof the following new sentence: "The Commission shall have authority to authorize continued rail service under this section over the lines of the Rock Island Railroad until the disposition of the properties of the estate of the Rock Island Railroad.".

(b) The applicability of the amendment made by subsection (a) to Interstate Commerce Commission Service Order 1498 shall expire at the end of May 15, 1982.

Expiration date. 45 USC 1017 note.

Approved December 29, 1981.

LEGISLATIVE HISTORY—S. 271 (H.R. 4927):

HOUSE REPORT No. 97-356 accompanying H.R. 4927 (Comm. on Energy and Commerce).
SENATE REPORT No. 97-25 (Comm. on Commerce, Science, and Transportation).
CONGRESSIONAL RECORD, Vol. 127 (1981):
June 2, 22, considered and passed Senate.
Dec. 8, H.R. 4927 considered and passed House; proceedings vacated and S. 271, amended, passed in lieu.
Dec. 16, Senate concurred in House amendments with an amendment; House concurred in Senate amendment.