the reach of my voice knows of any amendment, please call the hotline now or we will pass this bill in a few minutes.

Mr. EXON. May I add, Madam President, please come forward now or forever hold your peace. Thank you.

Mr. GORTON. Madam President, I ask unanimous consent to speak as in morning business.

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

BOSNIA

Mr. GORTON. Mr. President, last night the President of the United States spoke to the people of the United States in justification of his dispatch of some 20,000 American troops to Bosnia to enforce the agreement entered into last week in Dayton, OH, ending for the time being, at least, the war in Bosnia.

President Clinton, I believe, made the best possible case for keeping a commitment which he made some months ago. I believe that commitment was both unwise and improvident. Nonetheless, it was made by the President.

For me, and I think for most other Members of Congress, the American national security interest in Bosnia is difficult to discern. We will be there in the hopes that we can settle a civil war which has gone on in its present form for some 4 years, but in a more profound fashion for at least 600 years.

The temporary peace which we will be in Bosnia to enforce is not a just peace. In fact, it ratifies almost all of the gains made as a result of the aggression of the Bosnian Serbs, leaves essentially unchallenged the ethnic cleansing, the displacement of people, and the killing of tens of thousands of innocent civilians.

We will be in Bosnia to support a peace of exhaustion, not a peace of justice.

Having said all that, Mr. President, and having spoken on this floor on numerous occasions in favor of an American policy that would have repudiated the arms embargo and allowed the citizens of Bosnia the effective means to fight for their own freedom and independence, we as Americans, we as United States Senators, are now faced with a fait accompli.

The President of the United States has the constitutional authority, in my view, to send troops to Bosnia and has announced that he is going to do so. As a consequence, however unwise we may consider that decision to have been, we are essentially faced with the proposition that to oppose it, to try to put roadblocks in its path, is likely to increase the already considerable danger in which our troops will find themselves on the front lines in Bosnia.

This reaction is one that I think is fairly common among Members of this body. It was expressed by three former National Security Advisers and Secretaries of Defense before the Armed Services Committee this morning, and by many outside commentators who have felt this administration's position with respect to Bosnia has been wrongheaded almost from the start.

So, sometime in the next week or 2 weeks, we will be presented here on the floor with some sort of resolution with respect to Bosnia. I do not believe any Member, at this point, can say that he or she will vote in favor of it sight unseen or, for that matter, will vote against it sight unseen. I hope we will be able to come up with a resolution which will have at least a wide degree of support here in this body, a broader and less partisan degree of support than was the case a few years ago with respect to the war in the gulf. Such a resolution, I believe, will concentrate on the situation as it exists on the ground today, given the President's decision, rather than with the process that led the President to this decision, one which gives unequivocal support to our troops, to the men and women whose lives will be at risk, to the maximum possible extent without saying we necessarily agree with the policy that brought them there in the first place.

We can all hope that in a period of 1 year the civil passions which have been so brutally expressed during the last 4 years will be extinguished. We can be pardoned for believing that is a very considerable long shot and that our troops, a year from now, are likely to come home leaving behind them exactly the situation they found when they arrived.

Nevertheless, this is the point we have reached. The President has done his best to explain it to the people of the United States, and I am certain that most of them, while they may not like the decision, will certainly provide support for those troops themselves.

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

The PRESIDING OFFICER. The clerk will call the roll.

The bill clerk proceeded to call the roll.

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

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

INTERSTATE COMMERCE COMMISSION SUNSET ACT

The Senate continued with the consideration of the bill.

Mr. EXON. Mr. President, the Senator from North Dakota is about to offer an amendment, as I understand it, that he has shown me, and I am opposed to it. But, to accommodate this Senator and the time constraints that I have this afternoon, I wish to make a few appropriate remarks about why, in my opinion, we should not adopt the amendment that is going to be offered by the Senator from North Dakota.

Mr. President, this amendment seeks to change the way mergers are handled by curtailing the current ICC rail merger review process.

Under the current process, and the process in the bill before us—the bill by the chairman of the committee and this Senator from Nebraska—the so-called Intermodal Surface Transportation Board will approve, disapprove, or condition rail mergers based on the public interest standard currently used by the ICC, not a narrow, Department of Justice-type of antitrust analysis. The public interest standard—which is part of the bill offered by the chairman of the committee and myself—allows the board to weigh the public benefits of a merger against its competitive harms. This standard allows the board to condition and approve mergers that are in the public interest even though they might violate some of the existing antitrust laws. This review has served my farmers, the farmers of South Dakota, and other farmers as well. This concept must be kept as part of our overall transportation network if we want it to run efficiently, especially with regard to rural areas.

The current process provides for the input of the Department of Justice. Let me repeat that. The bill before us, the Pressler-Exon bill, provides for the input of the Department of Justice. This amendment goes beyond that and gives the Department of Justice the final say—or the veto, if you will—on rail mergers.

Even though a merger might be approved by the Board because it is in the public interest, is protection of captive shippers, and is in the best interest of the transportation system, the Department of Justice with all of the lawyers, or some other third party, could still bring suit and force divestiture based on antitrust laws under the Dorgan amendment that is going to be proposed.

Mr. President, this amendment erodes the jurisdiction of the Commerce Committee, and the new ISTB board because it invests too much authority in the Department of Justice.

Lawyers are a very important part of our society, depending on your point of view. It seems to me, Mr. President, that, if we are going to turn the Department of Justice into a veto authority which they did not have under the Interstate Commerce Commission and take away the independent functioning of the board that we are setting up with the Pressler-Exon measure in the Department of Transportation, we are taking a significant step backward. I see nothing whatsoever wrong with the Department of Justice being the lawyer-adviser to the new board that is created. They should be consulted as to whether or not there is a serious violation of antitrust laws. But customarily in business, in my experience in business, and my experience as an individual, I have never let my lawyer make decisions for me. I consult with my lawyer, if I need one. I listen to his counsel and advice as to what is right

and what is wrong. But I think the decision has to rest with me. Likewise, for the newly independent board that is created under the Pressler-Exon bill, which vests in a new department under the Department of Transportation, we do not need to hamstring that board and their efforts with regard to what should and should not be done with regard to mergers.

So I hope if the amendment offered by the Senator from North Dakota comes to a vote the Senate will overwhelmingly oppose it.

The Senator from North Dakota was involved in a similar effort with regard to the FCC legislation wherein he and some others felt that the Department of Justice should have the final say so in matters before the Federal Communications Commission. That measure was turned down overwhelmingly by the U.S. Senate because, if we have supposedly independent operating boards, such as the Federal Communications Commission, they should not be hamstrung or dictated to by the Department of Justice. It seems logical as to why we should not accept the amendment being offered by the Senator from North Dakota because it would essentially do the same thing that the Senate voted down with regard to the Federal Communications Commission.

Therefore, I hope that we will give these new independent boards the authority that they obviously need to make decisions based upon the public interest. If turned over to the Justice Department, I believe that too much of the decisions would be made on legal technicality rather than that it is in the best interest of the public, in this case transportation, especially with regard to small States.

I yield the floor.

Mr. DORGAN addressed the Chair.

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

AMENDMENT NO. 3064

(Purpose: To establish certain competition standards with respect to mergers by railroad carriers)

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

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

The Senator from North Dakota (Mr. DORGAN), for himself and Mr. BOND, proposes an amendment numbered 3064.

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

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

The amendment is as follows:

On page 319, strike lines 1 through 9 and insert in lieu thereof the following—

(3) striking subparagraph (E) of subsection (b)(1) and inserting in lieu thereof the following—

''(E) whether the proposed transaction will not substantially lessen competition, or tend to create a monopoly in any line of commerce in any section of the country.'';

(4) striking paragraph (2) of subsection (b) and striking ''(1)'' in the first paragraph of subsection (b);

(5) striking subsection (c) and inserting in lieu thereof the following—

''(c) The Commission shall approve and authorize a transaction under this section when it finds the transaction is consistent with the public interest. In making the findings under subsection (b)(1)(E), the Transportation Board—

''(1) shall request an analysis by the Attorney General of the United States and shall accord substantial deference to the recommendations of the Attorney General and shall approve the transaction only if it finds that transaction does not violate the standards set forth in subsection (b)(1)(E). The transaction may not be consummated before the thirtieth calendar day after the date of approval by the Transportation Board. Action under the antitrust laws arising out of the merger transaction may be brought only by the Attorney General, and any action brought shall be commenced prior to the earliest time under this subsection at which a merger transaction approved under this subsection may be consummated. The commencement of such an action shall stay the effectiveness of the Transportation Board's approval unless the court shall otherwise specifically order. In any such action, the court shall review de novo the issues presented. Upon consummation of a merger transaction in compliance with this subsection and after termination of any antitrust litigation commenced within the period prescribed in this section, or upon the termination of such period if no such litigation is commenced, the transaction may not thereafter be attacked in any judicial proceeding on the ground that it alone and of itself constituted a violation of any antitrust laws other than section 2 of Title 15, but nothing in this subsection shall exempt any rail carrier resulting from a merger transaction approved under this subsection from complying with the antitrust laws after the consummation of such transaction;

''(2) may impose conditions governing the transaction, including the divestiture of parallel tracks or requiring the granting of trackage rights. Any trackage rights conditions imposed to alleviate anticompetitive effects of the transaction shall provide for compensation levels to ensure that such effects are alleviated;

''(3) may approve and authorize the transaction only if it finds that the guaranty, assumption, or increase is consistent with the public interest, when the transaction contemplates a guaranty or assumption of payment dividends or of fixed charges or will result in an increase of total fixed charges; and

''(4) may require inclusion of other rail carriers located in the area involved in the transaction if they apply for inclusion and the Transportation Board finds their inclusion to be consistent with the public interest.'';

(6) striking the last two sentences of subsection (d);

(7) striking subsection (e); and

(8) notwithstanding any other provisions of this Act, amendments under this section shall apply to all applications pending before the Transportation Board.

Mr. DORGAN. Mr. President, I listened with interest to the statement of the Senator from Nebraska [Mr. EXON]. He is always persuasive and never in doubt. He makes an interesting case on this amendment. He pointed out that I offered a similar amendment on the telecommunications bill, and he is correct about that. I would offer a similar amendment if I had the opportunity dealing with airlines. I wish to explain that because it is the reason I offer this amendment today dealing with railroads.

Let me go to the subject of airline mergers just for a moment. Since deregulation of the airline industry, we have had more and more mergers. We now have five or six very large airlines in America controlling most of the air transportation in our country.

Prior to 1989, when two airlines wanted to merge, the Department of Transportation determined whether they are able to merge or not. They gave the approval. The Justice Department was allowed to comment on it in terms of the antitrust effects: whether the merger would be good for the country and whether it would be good for competitiveness. But the Department of Justice is only allowed to comment. Then the Department of Transportation makes the judgment. And so often the judgment is made on issues other than whether this is good for the country in terms of competition.

In fact, I would make the case that a number of the airline mergers that have occurred have not been good for this country. And if you established an antitrust standard that was worthy, you probably would not have had a couple of these mergers and would not have a couple that will occur in the future. But we have a circumstance where those mergers were approved by the Department of Transportation and Justice is only asked to give its opinion.

With respect to the previous bill that came before the Senate on telecommunications, the Federal Communications Commission will determine when there is competition in the local exchange with the regional Bell systems. I and several of my colleagues said, well, what we would like to do is have the people who know about competition and who know about these standards establish the Clayton Act test over in the Department of Justice about whether or when there is competition.

That is why we have antitrust lawyers in this country. We have, incidentally, about 1,000 antitrust attorneys working for the Federal Government, or we used to have. There have been some cutbacks. One thousand of them. I used to at least threaten to put their pictures on the sides of milk cartons because I swore that despite the fact there were 1,000 antitrust lawyers, you could see no evidence that they lived. You could see no evidence they did anything. You could see no evidence that they cared at all whether there was antitrust activities in this country. In fact, the fewer companies competing, the better, according to some in our Government. I happen to think the more companies that are competing, the better for our free-market system.

Some speak of a regulating mechanism that is good in a free market economy. Well, I have felt this way about airline mergers. I felt this way

about the competition issues with the telecommunications bill, and I feel this way about the legislation before the Senate today.

Let me begin by saying I support the legislation brought to the floor of the Senate by the Senator from Nebraska and the Senator from South Dakota. I commend the two of them as well as Senator HOLLINGS for writing a piece of legislation that I think has great merit and that I support.

I would like to make a change, which is the reason I am offering this amendment. I would like to make an addition to it, but that does not diminish the fact I think all three have done a good job and I compliment them for their work.

This piece of legislation in its larger form abolishes the Interstate Commerce Commission and creates a board over in the Department of Transportation that assumes many of the functions that the old ICC used to have. It does it in a thoughtful way, and it does it in the right way, and I support most of what the Senators have brought to the floor.

I said during the Commerce Committee consideration of the legislation that I have made the case for some years the Interstate Commerce Commission had died from the neck up, and then I found myself mourning its passage. When people said, ''Let's kill it,'' I worried that if you do not put something in its place, all you have are larger and larger railroads, and then a bunch of shippers out here trying to deal with something that is closer to a monopoly than it is to pure competition. It seems to me that we need a regulatory mechanism in between, and that is the purpose for which this board is created in this legislation.

For that I commend Senator PRESSLER, Senator EXON, and Senator HOLLINGS and fully support them. I come to the floor with this amendment to say I think this bill would be improved with one addition, and the addition is offered in my amendment which provides that the Justice Department would have an opportunity using the Clayton Act standard on defining competition to review mergers of railroads.

I recognize that the Interstate Commerce Commission has had the sole purview for reviewing mergers for some 70 years. I understand that. In my judgment, that does not make it right. I would prefer to see the authority given to the Justice Department and the antitrust folks in the Justice Department to evaluate: Is this merger something that makes sense for our country, or, with the Clayton standard, will the proposed merger substantially lessen competition, or would it tend to create a monopoly in any line of commerce in any section of the country? That is the Clayton 7 standard which I would like the Justice Department to be able to apply.

My amendment provides that the Justice Department would make that judgment and offer its assessment using that standard to the Department of Transportation. And that the Board in the Transportation Department would give substantial deference to the Justice Department antitrust analysis. The amendment also provides that if the Justice Department antitrust lawyers who evaluate this determine, using the Clayton standard, that it would lessen competition substantially, it would tend to create a monopoly, et cetera, and it is not in the public interest to proceed and the board would proceed anyway. This establishes a provision by which the Justice Department or the Attorney General would be able to bring an action for a stay.

That is essentially what this amendment does and what it is.

The amendment says that notwithstanding any other provision of this act, amendments under this section shall apply to all applications pending before the transportation board.

I would like to just talk for a moment about the consequences of this. There are some who are concerned because there is a very large proposed merger that has been filed or will be filed that deals with two very large railroad companies. I have no interest in that question at all. I do not have any of those companies in North Dakota. In fact, if the larger railroad company that serves our State were involved in a merger right now, I would still be in the chamber offering it, and I would not care what the larger railroad company that serves our State thinks about it. My interest is making sure that we have a seabed of competition that is enforced by evaluating a standard that is reasonable for ensuring competition. Because only in that manner will consumers, shippers and others reliant on a competitive system, only in that manner will they be able to see that this market system works to their advantage as well.

I wish to say that I was approached by a representative of one of the railroads today asking why I was doing this, and I explained it had nothing to do with their company. In fact, it is interesting in that one of the companies—and I shall not name the companies—involved in this that is very concerned about it is a company that I have great fondness for because when I was a State tax commissioner many years ago and we put together, through an interstate compact, joint auditing around the country of companies, which made a lot of sense from the taxpayers' standpoint but which angered a lot of big companies. That particular rail company which I shall not name was almost alone in standing up in this country saying what the tax administrators around the country are doing on behalf of many States makes good sense and we support it.

This company exhibited some strength and courage in doing that, so I have some fondness for this company because they stood up and said this was the right thing to do when almost all other corporations in the country were squealing and were angry because finally the States were getting from them the taxes that they had legitimately owed for many, many years.

I say that only to demonstrate that I do not offer this because there is any merger pending or because there is any railroad that has an interest in one thing or the other. I offer this because I offered the amendment on the telecommunications bill, and I would offer the same amendment on a piece of legislation dealing with airline mergers.

It seems to me that we ought not continue a circumstance where the regulatory body, that is the old ICC and now the transportation board, will make decisions about whether a merger is in the public interest based on a range of factors that is spelled out in current law, which include, for example, the effect of the transaction on the adequacy of transportation, the effect on the public interest of including or failing to include other rail carriers, the total fixed chargers that result from the proposed transaction, the interest of carrier employees affected by the proposed transaction, and whether the proposed transaction would have an adverse effect on competition among rail carriers in the affected region.

These are the criteria that the Board itself will use. But the Board might decide to give substantial weight to two or three of the top criteria when, in fact, you might have a Clayton 7 standard here which clearly on its face is demonstrated not to be in the public interest with respect to this merger. I am not talking about this particular merger that I referred to earlier. I am talking about any merger. The Justice Department might evaluate that and say, ''This is not in the public interest if you use the Clayton standard.'' And yet the regulatory Board might say, ''Well, we view the top three areas here, top three factors, as having sufficient weight, so that we think this makes sense for our country.''

My point is that I want those who are experts in our Government in the area of antitrust enforcement to have a valid and legitimate role in measuring whether a proposed merger in the railroad industry meets the test, meets the test for all Americans and for consumers. Is this in the public interest? Will it substantially lessen competition and tend to create a monopoly in any line of business in any section of this country? If so, in my judgment, it should not happen. It might be good for a couple companies now or in the future. But if that is the case, if it does not meet that test, then it should not happen.

I want the Justice Department to be able to take that measure and provide that information to the transportation board, and to have substantial weight and deference given to the Justice Department's recommendation. That is all this does. It does not do any more than that. I hope that, as we talk

through this here in the next half-hour or hour, colleagues will see fit to support it.

The Senator from Nebraska is correct, I offered a similar amendment to the telecommunications bill on essentially this same kind of issue. He is correct about that. But it is, in my judgment, the right thing to do for our country, the right thing to do to ensure vibrant competition in a free market system. I hope people will look at this amendment and think it has merit and decide today to support it.

Mr. President, I would be happy to yield the floor at this point. I see my colleague, Senator BOND from Missouri, is seeking the floor. Let me yield the floor to him.

Mr. BOND addressed the Chair.

The PRESIDING OFFICER. The Senator from Missouri.

Mr. BOND. I am very pleased to rise in support of the amendment by my friend and colleague from North Dakota. I have a very clear-cut philosophy on economic issues. Government regulation is the least desirable and the least effective way to make sure that the customers—you and I as customers; we may be customers down the line—but as customers of businesses which are buying from other businesses or seeking services from them, we are all best served if the free market, rather than Government regulation, tells us how the service or products are delivered, what cost they are, and how readily available they are.

Now, to achieve this, it requires there be competition. You cannot rely on the marketplace to regulate provision of services or goods or their cost if there is no competition. We have in law the Clayton Act, section 7 of the Clayton Act, which requires mergers in almost any other industry to be judged, and they cannot go forward if the proposed transaction would substantially lessen competition or tend to create a monopoly in any line of commerce in any section of the country. That is basic American philosophy going back almost 100 years. We need in this country to have the marketplace work. And the marketplace works when there is competition.

Right now we have a situation in rail mergers under the Interstate Commerce Act that competition is not necessarily a criteria. The role of competition in rail mergers, in my view, should be the same as its role in any other mergers. If it does not leave a marketplace which can work, then we should not permit it. That is why we have laws against monopolization in section 2 of the Sherman Act and section 7 of the Clayton Act. That is why we have the FTC. That is why we have the Department of Justice. That is why we have access to the Federal courts.

The amendment proposed by the Senator from North Dakota would just say that we have to apply this same test when it comes to rail mergers. It seems to me to make a lot of sense.

Mr. President, I really got involved in this when shippers in my State expressed concern about their ability to both ship grain out in small lots of several cars, not unit trains, and purchasers who purchase inputs coming in by rail said, ''Hey, we need to have competition so we can get the best service at the best price.''

We had our second joint hearing of the Senate and House Small Business Committees on November 8 in the House Office Building. I thought I would just share with my colleagues a couple of the points made by the witnesses. Obviously, we did not have jurisdiction over this, but as a matter affecting small business, we advised the distinguished chairman and my predecessor in the Republican slot on the Small Business Committee that we wanted to hear from the shippers and others affected. We tried the get a good cross-section. But several of the points made by those witnesses I think should be called to the attention of my colleagues.

Prof. Curtis Grimm, who is professor and chair of the Transportation, Business, and Public Policy, College of Business and Management at the University of Maryland, College Park, said:

> Under current standards, the ICC could approve a significantly anticompetitive merger, based on claims of speculative efficiency gains which would outweigh competitive harms.

Mr. President, just because two companies want to merge and they say they can be more efficient, it does not necessarily mean that competition and the people they serve are going to benefit if we wind up with a monopoly situation. Sure, a lot of people would merge if they could take care of all their competition and be the only supplier in the marketplace. We have seen that before.

We have seen that in transportation. Did you ever try to buy a ticket on an airline flight between two cities where there is only one carrier? Wow. It is usually cheaper to go around the world, no matter how close those two cities are. There was a time when only one carrier served Kansas City and St. Louis. You had to mortgage the home to fly back and forth. When competition comes in, you are going to find the best price and the best service. The same thing ought to be true, I believe, in other forms of transportation and, in this instance, in rail mergers.

One of the witnesses testifying before us, Ed Emmett, is the president of the National Industrial Transportation League, the trade association representing over 1,000 shippers. He said:

> We are at a critical juncture in U.S. rail transportation policy. It is essential that the Congress act now to change the standards for judging rail mergers to focus more on competition.

A fellow who relies on rail transportation for his inputs and his products, James F. Jundzilo, transportation manager, Tetra Chemicals in Texas, testified:

> We must put more focus on competition, involve anti-trust laws, competition in the public interest will then be maintained and protected.

A manager of Lange Co. of Conway Springs, KS, William F. York, said:

> The current merger standards should be revised to focus more on the loss of competition and less upon so-called ''efficiency gains'' or allow the Department of Justice to review rail mergers as they do for other modes, including airlines.

Finally, one other private sector witness, Fredrick D. Palmer, General Manager and CEO of Western Fuels Association, said:

> I submit that a virtually deregulated railroad system in serving a virtually deregulated electric utility industry cries out for the sorts of antitrust regulation to which both the electric utility and telecommunication industries are subjected.

Finally, we were pleased to have testify before us the Secretary of Agriculture, the Honorable Dan Glickman, who said:

> If this latest railroad consolidation is approved, there will only be two major rail carriers west of the Mississippi. This could have serious implications for the rates and availability of rail transportation for the agriculture industry because of the reduced level of competition.

It is for that reason that we should provide the Clayton Act section 7 standards to judge rail standards. I am advised the groups supporting this amendment include the National Industrial Transportation League, the Society of Plastics, the American Farm Bureau, Western Fuels Association, AFL–CIO, Railway Labor, Western Shipper's Coalition, the Chemical Manufacturer's Association, and I believe that the administration also supports this amendment.

Mr. President, I think as we move toward a leaner and more efficient, more streamlined Federal Government, many functions of the Federal Government are excess, we do not need them. And there is one real area where we can get rid of a lot of regulation. It is where the marketplace forces competing suppliers of services or goods to compete on the quality of the service and the price.

You do not need Government bureaucracies. You do not need rate setting. You do not need the whole plethora of rules and regulations for Government to run it if to make a buck they have to provide better service or better products at a better price than their competitors.

That is the way we get the best deal. That is where our country has been most successful in making progress. I urge my colleagues to support this amendment.

Mr. President, I yield the floor.

Mr. PRESSLER addressed the Chair.

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

Mr. PRESSLER. Mr. President, I rise in opposition to the Dorgan amendment. Let me make some general remarks on the issues surrounding antitrust and some of the standards that are used.

First, let me point out that this amendment is an attempt to change

the way the ICC looks at the competition among rail carriers, particularly whether the reduction in number of railroads at any one point is harmful.

Changing the standards by which rail mergers are judged is very complicated. The current public interest standard is well established and has been in place for 75 years. Changing them now, particularly while two class one railroads are in a merger proceeding, without fully understanding how these changes affect railroads, shippers, States and even the financial markets, is not the approach this committee should take without fully understanding what we are doing. Unintended consequences could easily result.

We have one of the most efficient, if not the most efficient, transportation system in the world. A large part of the system is the level of competition that exists between the transportation modes and within the modes. Merely trying to guarantee competition in the rail industry by changing how the ICC looks at competition could easily backfire.

In the last 15 years, there have been roughly a dozen rail mergers, a tremendous increase in concentration when just measured by the number of railroads. However, at the same time, real rates have fallen up to 50 percent with the decreases occurring every year across all major commodity groups and in all major geographic areas.

This cannot just be attributed to deregulation, because without ongoing effective competition, the productivity gains that deregulation made possible for the railroads would not have been passed through to the shippers.

Without fully understanding what we are doing in this area, we could easily turn back this trend, even though we have the best intentions. As a result, I urge that this amendment be defeated. I urge my colleagues to vote against it as well.

Now specifically, the ICC does not apply or follow antitrust law, though it pays very close attention to competitive issues. The rail system is the underpinning of our entire economy, and many rail efficiencies can be achieved only through mergers. The ICC applies a public interest standard, under which the public benefits, competitive or otherwise, of a merger, are balanced against any detriments, again competitive or otherwise, of a merger. This process allows the Commission to approve consolidations, even if they otherwise would violate antitrust laws.

Rather than applying a narrow DOJ-type antitrust analysis, the Commission has consistently looked at all factors in deciding the competitive impact of rail mergers and has found pure concentration measures, such as the number of railroads serving a point, to be too simplistic a standard.

The UP/MKT merger is a good example. In that case, a number of markets went from three railroads to two. Various parties, including the Justice Department, argued that there would be a reduction in competition in those markets and that conditions should be imposed to introduce additional rail competition in them. The Commission rejected these arguments, finding that the continued competition from a strong second railroad, the increase in competition from the merged system's introductions of new single-line routes and other service improvements and other competitive constraints, such as modal and source competition, would keep competition vigorous.

In fact, the Commission was right. Union Pacific, at the request of an agency in California, had studied the rates in these 3-to-2 markets before and after the UP/MKT merger which was consummated in 1988.

What they found was that in all cases, rates had decreased significantly, confirming the Commission's conclusion that competition would be intensified by moving from three railroads—one of which, MKT, was a weak third—to two strong rail competitors.

The evidence is overwhelming that a mere reduction in the number of railroads does not stifle competition and, in fact, can enhance it where the effect is to add to the efficiency of the merged carriers and to their ability to offer new services.

Furthermore, there is ample proof all across the country that where markets are served by two railroads with broad, equivalent networks, rail competition is intense. Perhaps the best example is a precipitous drop in Powder River Basin, WY, coal rates following the entry of CNW into the basin as a competitor, in partnership with UP against Burlington Northern.

This experience of huge declines in the rates for the transportation of Powder River Basin coal is flatly incompatible with any theory that two railroads in a market will collude to keep prices at or near the level where other constraints, such as truck or product competition, would cause a loss of traffic. Other examples are the intense two-railroad competition throughout the Southeast, between Norfolk Southern and CSX, and for Seattle/Tacoma and other Washington and Idaho traffic between BN and UP.

The number of railroads alone is not what matters, it is the effect of the merger on competition. Absent some compelling reason for change, which has yet to appear, the current process should stand.

Mr. President, let me make a few more remarks, and if other Senators come to the floor, I will certainly yield to them, but I want to continue to state my opposition to the Dorgan amendment.

Since 1920, due to the unique place railroads hold in our economy, Congress has consistently found that applying a pure antitrust standard to rail mergers is inappropriate.

Railroads carry roughly 40 percent of the freight in this country. These include 67 percent of new autos, 60 percent of coal, 68 percent of pulp and paper, 55 percent of household appliances, 53 percent of lumber and 45 percent of all food products. Much of this material is delivered on a just-in-time basis.

What is impressive about these numbers is that, unlike the trucking, ship, barge, and aviation industries, which operate over national systems and which are built and/or maintained by Government and open to all operators, the goods that move by rail are transported over fixed, regional systems. Due to the regional nature of railroads, much more interchange occurs than in other modes of transportation. That is, railroads hand off cargo to one another while other modes of transportation have very little of this type of interchange—truck to truck, barge to barge.

As a consequence, there are natural efficiencies in these other modes that do not readily occur in the rail industry. To achieve these types of efficiencies in the rail industry, there must be consolidations. Mergers and consolidations allow the rail industry to maximize the use of its tracks, cut down on interchange points, get the most out of switching yards, consolidate terminals and, in short, provide better service to its customers at the lower cost.

In the past, Congress has recognized that rail consolidations cannot occur if rails are subject to the normal antitrust tests imposed on other businesses. What makes the ICC test different? There are three major components.

The first is the use of the public interest standard. When looking at a merger, the Department of Justice focuses almost exclusively on possible reductions in competition. Under a pure antitrust review, the Justice Department could deny all rail mergers, which is what happened before the public interest standard was adopted. The ICC, on the other hand, takes into account both the public benefits of a merger, in terms of increased efficiencies, better service and enhanced competition, and any harms, in terms of reduced competition and loss of service.

The ICC also has the power to condition mergers to take care of anticompetitive concerns, while the Department of Justice could try to negotiate conditions, it does not have the same power and discretion as the ICC. As a result, the ICC can condition and approve mergers that are in the public interest but might normally fail a review by the Department of Justice.

The second is the open and well-developed process the ICC has for reviewing rail mergers. The process includes discovery, the development of a detailed record and a full and fair opportunity for all affected parties, including Federal agencies, States, localities, shippers and labor to be heard.

The DOJ process, on the other hand, is a closed informal ex parte process in

which DOJ speaks with only those persons it chooses to and hears only the evidence it chooses to. There is no opportunity for discovery and no opportunity to learn and to respond to what others are saying.

Taken together, these first two points are extremely important. Railroads cannot be duplicated. The lines that exist today are essentially it. While spur lines and short lines may be built, there will be no more railroads built from Chicago to Los Angeles or New York to St. Louis, not in the near future at least.

A fair, impartial system bound by rules and precedent where all parties can be heard is important in deciding how these systems are rationalized. A DOJ review is far more subjective. All parties may not be heard and DOJ can decide which types of traffic patterns to look at, thereby making the process unpredictable from one case to another, from one administration to another.

So I think, in looking at this, we have to look at what we are dealing with in the uniqueness of railroads. We will not have more railroad lines built in this country in terms of major routes from Chicago to Los Angeles or New York to St. Louis. We will have those remaining. But the question is a public interest standard allows some flexibility on the part of the rulemaking body which will now be in the Department of Transportation.

The third component is the actual approval. The Department of Justice does not approve mergers, it merely indicates whether or not the Government will bring suit to stop it. I think now under the Hart-Scott-Rodino standard, companies can get an opinion before they actually go to the expense of getting together.

The ICC process brings with it a formal approval and preemption of other laws. This is important for a number of reasons. Without formal approval, abandonments or line sales contemplated by a merger will have to be approved by another agency. State laws designed to prevent or hinder mergers will not be preempted. This is particularly important to the free flow of interstate commerce. Further, private parties would not be prohibited from bringing suit to seek conditions or block the transaction.

Finally, the Rail Labor Act would not be preempted. This is critical. Most railroads have 13 different unions with hundreds of different contracts. Absent the preemption of the Rail Labor Act and the imposition of labor protection conditions, the merging carriers would be forced to negotiate implementation agreements with each union under the Rail Labor Act. Because rail transportation is so vital to the economy, this act was created ''to avoid any interruption to commerce.'' The act achieves this goal by obligating management and labor to negotiate using a long, drawn-out process. Using this act to negotiate the implementation of a merger would take years. As a result, without a formal approval, even if a merger were approved by the Department of Justice it would more than likely be years, if ever, before it could be implemented.

At the heart of this debate is, What is best for transportation policy? The more than 500 railroads that are in existence today are an integral part of our country's transportation system and are a linchpin in our economy. We have the best rail system in the world. The long-established national railroad merger policy has served our country well. Absent some compelling reason, there is no basis for gambling with the future of an industry that is so important to our Nation. That is an important point.

The second point is, the Senator from South Dakota spoke of deregulation. I am probably much less a fan of deregulation than he or some others in this Chamber. There are certain areas in our country where regulation, I think, is critical, where, without regulation, you get price gouging, you get pricing outside of a free market that disadvantages consumers. I will give some examples of that.

While I say this, I am not opposed to all deregulation. Some of it has been just fine. But the Senator from South Dakota and I come from States that are sparsely populated, and we often, especially in the area of transportation, suffer the consequences of a deregulated environment in which, without competition, they extract prices that are unreasonable.

I used an example of the airline industry in the Commerce Committee that the Senator from South Dakota will recall. I held up a picture of a big Holstein milk cow, called Salem Sue. It is the world's largest cow. It happens to be metal, but it is the largest cow. It sits on a hill about 25 or 30 miles from the airport in Bismarck, ND, if you drive down Interstate 94. I pointed out, if you get on a plane here in Washington, DC—and I admit, there are probably not a lot of folks who have an urgent desire to go see the world's largest cow just for the sake of going to see the largest cow—but if your desire is to go from Washington, DC, to see the world's largest Holstein cow, 30 miles from the Bismarck airport, you will pay more money for that trip than if you get on an airplane in Washington, DC, and fly to London to see Big Ben.

Or, let us decide you want to see Mickey Mouse and decide to fly to Disneyland in Los Angeles. You fly twice as far and pay half as much as getting on an airplane here and flying to Bismarck. Question: Why would that be? Answer: Because we do not have substantial competition. We do not have the kind of competition in the airline industry that you have if you are in Chicago or Los Angeles. There, if you show up at the airport you have dozens of choices, all competing against each other, and the result is attractive choices at lower prices. But, with deregulation in the airline industry, we have fewer carriers, fewer choices, and higher prices.

Now, deregulation is not always a boon to areas of the country that are sparsely populated. When you talk about deregulation with respect to railroad carriers, you must find a way, it seems to me, to provide protections for consumers. My concern about all of this is that the consumers be afforded an opportunity to have a price in the open market system or the free market system that is a fair price. We can foresee circumstances, and we have already seen some in this country, where the prices charged in areas where there is not substantial competition are prices far above those that should be charged.

I mentioned earlier that my amendment is not directed at any carrier or any company or any merger. I mentioned I was interested in the telecommunications legislation, and I rose to offer an amendment including the Department of Justice there. I also have been involved in similar issues.

About 3 weeks ago, I asked the Banking Committee in the Senate to hold hearings on bank mergers. This is not a newfound interest of mine. I was on a program awhile back and they asked me about my interests in having hearings on bank mergers. We were talking about a specific merger where two very large banks were combining and merging to be a much, much larger bank. They said, ''Does that not make sense? Two banks become one and you are able to get rid of a lot of overhead and lay off 6,000 or 8,000 people. Does it not make sense to be more efficient?''

I said, ''Following that logic, it makes sense to have only one bank in America, just one. That way you do not have any duplication. Of course, you do not have any competition either.''

Following this to its extreme, this notion of efficiency without caring much about what it does to the free marketplace and without caring much about what violation occurs to the issue of competition, I suppose you could make a case that in every industry the fewer companies the better, because the fewer companies the more efficient you are going to become. You can lay off people. Of course, it would not be very efficient for consumers, because you can then engage in predatory pricing and no one can do very much about it.

The point I am making is, I am not here because of a railroad or a merger. I have been involved in the issue of bank mergers, calling for hearings at the Senate Banking Committee in recent weeks on that. I have been on the floor on several other merger issues. I hope that the Senate will take a look at this and decide this makes sense. If it does not, at the next opportunity I will again raise this issue.

Frankly, there are not many people in the Senate, or the House, for that matter, who care to talk much about antitrust issues. First of all, it puts most people to sleep. You know, it is

better than medicine to put people to sleep. Nobody cares much about it. Nobody understands it much. It is, to some people, just plain theory. But, if you are a shipper and you are somewhere along the line someplace and the company that has captured the competition and is now the only opportunity for you to ship says to you, ''By the way, here is my price; if you do not like it, tough luck,'' all of a sudden, this has more meaning than theory.

If you are a traveler on an airline and you have no competition when you used to, but now the only remaining carrier that bought its competition and became one says to you, ''By the way, here is my price; if you do in the like it, do not travel,'' then this is more than theory.

That is what persuades me to believe that in a free market system, if you preach competition but do not care very much about whether meaningful competition exists, or whether we have adequate enforcement of antitrust standards, then in my judgment you do no favor to the free market economy.

I hope people will consider this on its merits and consider that it would be wise for our country and for public policy to ask that this legislation be amended with the amendment I have offered, along with Senator BOND.

Mr. President, I yield the floor. I make the point of order a quorum is not present.

The PRESIDING OFFICER (Mr. THOMPSON). The clerk will call the roll.

The legislative clerk proceeded to call the roll.

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

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

Mrs. HUTCHISON. Mr. President, I rise to speak against the Dorgan amendment.

I do very much appreciate the chairman of the committee putting forward this legislation. Our budget resolution envisions that the ICC will go out of existence. I think it is important that we pass this legislation. But I do not think it was the intent of the committee to change all the rules under which we have been operating as it concerns mergers in this area. I think turning over the power to the Department of Justice and changing the criteria that are being used for antitrust purposes would not be a very good thing for us to do, and there is no reason to do it. We are talking about saving money here. We are talking about doing away with the duplication of administration. I do not think we have to also change all of the rules and the precedents that have been set for the last 70 years in railroad mergers.

There are many people who have legitimate concerns about some of the railroad mergers that are being considered right now. But these were brought into play before we brought this bill to the floor. And I think to change the rules is not necessary, nor desirable. I think we have the capabilities to judge any mergers. We have the ability to judge the issues under the standards that we have had before in transferring that to the Department of Transportation.

The second reason I think it is important to keep the standards we have is that the Department of Transportation and the new Board that will be created will have the transportation background. They will specialize in this area. That will be their area of expertise and concern. I do not think it does us any good to go to the Department of Justice, which has so many other areas of interest, and I do not think that having this transfer does anything for the merits of the issue, and it could hurt by changing precedent that has been in place.

One of the things that is so important in our judicial system is the value of precedent. We place a great deal of emphasis on being able to determine from what has happened in the past what will be allowed in the future. That is one of the ways that businesses make their decisions. They would look at a merger, they would look at a precedent, and they would make a business decision if this is something that would go through and what the concerns would be.

I think it is important we keep that value of precedent so that we will have an orderly business climate that allows people to make good business decisions without disrupting 70 years of precedent in this area.

So I hope that we can defeat the Dorgan amendment and stick with the committee bill. I think it is a good bill. It has many merits. It is certainly going to save money.

We are on the road to eliminating the ICC because it is not necessary. Let us not throw out the value of what has gone on in the past just because we are putting it into a more efficient system. I think it could cost us much more in the long run and certainly cost competitiveness and cost to customers if we increase the regulatory environment and therefore cause people to have to raise prices. So I hope we can defeat this amendment, and I yield the floor.

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

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

Mr. INHOFE. Mr. President, I ask unanimous consent that I be recognized as if in morning business.

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

SENDING AMERICAN TROOPS TO BOSNIA

Mr. INHOFE. Mr. President, I feel compelled today to make a couple of statements about the President's message last night.

I am very disturbed at what is happening, and I think all of America needs to know what is going on. I commend the President on giving a beautiful, persuasive speech, as he is very good at doing. However, I suggest, Mr. President, that as we are speaking now and as time is creeping by, our troops are on their way to Bosnia.

It is my understanding that the distinguished Senator from Colorado, who will be here in just a moment, made a trip over Thanksgiving, which is essentially the same trip I made the week before, into the northeast sector of Bosnia, which is the area where our troops are going to be. A number of people have gone over to Bosnia but have not gone beyond Sarajevo and do not really have a feel for the environment in which our President has this obsession of sending our American troops.

Mr. President, last night he talked about morality and about what our moral obligation is in Bosnia, and the fact that we have a moral obligation to see how many people we are going to be able to save from the brutality that could be taking place there.

He talked about our commitment to NATO. And I would like to throw out a couple of ideas, a couple of thoughts. Mr. President, when I went to Sarajevo it was the middle of a blizzard, a snowstorm. We had a hard time getting up there. There were not any Americans up there. There were not any Americans going to the northeast sector, that area around the Posavina corridor and Tuzla, and south of Hungary, which is an area where our troops are going to be deployed from the lst Armored Division where they are being trained for this kind of deployment. And that may be happening and is happening, I suggest, as we speak.

I heard several people say that we need to wait until we have hearings and let some time go by. But each hour that goes by, the American people need to know the President has a strategy to get our troops over there, to put us in a position where we are going to have to, by denying the authorization of sending troops into Bosnia on the ground, we are turning our backs on troops who are already there. And this is a position that we are now getting into. And each hour that goes by we are getting in deeper and deeper.

I can recall not being able to get up there until General Rupert Smith, who is the successor of Michael Rose as the commander there of the U.N. forces in Bosnia, he agreed to take me up. And as we went up we went over almost every square mile of that area that is called the northeast sector, where our troops are going to be deployed, not more than 100 feet off the ground—because I have a background in aviation,