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## Senate

(Legislative day of Monday, June 5, 1995)

The Senate met at 9:15 a.m., on the expiration of the recess, and was called to order by the President pro tempore [Mr. THURMOND].

### PRAYER

The Chaplain, Dr. Lloyd John Ogilvie, offered the following prayer:

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

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

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

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

### RECOGNITION OF THE ACTING MAJORITY LEADER

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

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

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

### RESERVATION OF LEADER TIME

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

### THE TELECOMMUNICATIONS COMPETITION AND DEREGULATION ACT

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

The assistant legislative clerk read as follows:

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

The Senate resumed consideration of the bill.

Pending:

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

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

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

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

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

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

The assistant legislative clerk proceeded to call the roll.

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

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

AMENDMENT NO. 1265, AS MODIFIED, TO  
AMENDMENT NO. 1264, AS MODIFIED

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

The PRESIDING OFFICER. The Senator is correct.

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

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

• This "bullet" symbol identifies statements or insertions which are not spoken by a Member of the Senate on the floor.



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

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

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

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

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

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

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

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

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

Mr. President, the only people in the U.S. Capital, the people's Capital, with

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

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

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

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

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

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

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

plication in accordance with a date certain established by Congress.

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

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

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

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

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

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

I yield the floor.

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

The PRESIDING OFFICER. The majority leader is correct.

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

The PRESIDING OFFICER. That is correct.

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

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

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

Is there any objection if we proceed on that basis?

Mr. HOLLINGS. No objection.

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

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

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

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

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

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

The Senator from North Dakota is recognized for a moment.

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

In 1934, when the Telecommunications Act was written originally, the

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

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

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

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

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

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

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

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

role for the Justice Department was in the telecommunications bill.

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

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

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

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

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

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

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

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

Mr. President, I yield the floor.

Mr. SANTORUM addressed the Chair. The PRESIDING OFFICER. The Senator from Pennsylvania.

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

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

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

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

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

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

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

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

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

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

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

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

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

The Senator from Pennsylvania.

Mr. SANTORUM. I thank the Chair.

#### LACK OF PRESIDENTIAL LEADERSHIP

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

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

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

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

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

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

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

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

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

Mr. SANTORUM. I would be happy to yield.

Mr. KERREY. Mr. President, is the Senator from Pennsylvania saying essentially then if somebody else does something that he finds objectionable, because the other person has done it, therefore it establishes a precedent and he does not mind doing it as well? Is the Senator from Pennsylvania saying he is following the example of the Senator from Massachusetts, that whenever the Senator from Massachusetts does something, even though he may object to it, he is going to cite it as a precedent? The question that I asked

was, does he respect the Commander in Chief, the President of the United States, enough to call him by a name that is worthy of that respect, regardless of whether he disagrees? If you want to bring up these opinions, bring up these policies, bring up whatever you want to the floor—

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

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

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

The point of the chart is apparent.

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

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

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

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

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

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

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

Mr. PRESSLER. If my friend will yield.

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

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

Mr. KERREY addressed the Chair.

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

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

Mr. KERREY addressed the Chair.

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

Mr. KERREY. Parliamentary point.

The PRESIDING OFFICER. The Senator will state his point.

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