ORDERS FOR TUESDAY, JUNE 13, 1995

Mr. LOTT. Mr. President, I ask unanimous consent that when the Senate completes its business today it stand in recess until the hour of 9:15 a.m., on Tuesday, June 13, 1995, that following the prayer, the Journal of proceedings be deemed approved to date, the time for the two leaders be reserved for their use later in the day, and there then be a period for the transaction of morning business not to extend beyond the hour of 9:45 a.m., with Senators to speak for up to 5 minutes each; further that at the house of 9:45, the Senate resume consideration of S. 652, the telecommunications bill.

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

PROGRAM

Mr. LOTT. Under a previous order debate will be equally divided from 11:30 to 12:30 on the pending Thurmond second degree amendment to the Dorgan amendment, with a vote to begin on the motion to table the Dorgan amendment at 12:30; I now ask unanimous consent that at the conclusion of vote the Senate stand in recess until the hour of 2:15 p.m. on Tuesday for the weekly policy luncheons to meet; and further that Members have until 1 p.m. to file first degree amendments to S. 652, under the provisions of rule XXII.

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

Mr. LOTT. For the information of all Senators there will be a rollcall vote on the Department of Justice amendment at 12:30 tomorrow. Additional votes are expected on the telecommunications bill following that vote, but not prior to 4 p.m., in order to accommodate Members attending the memorial service for former Secretary Less Aspin. Also Members should be on notice that a cloture motion was filed on the telecommunications bill tonight, but it is the hope of the managers that passage of the bill would occur prior to the vote on the cloture motion. Senators should be reminded that under the provisions of rule XXII, any Senator intending to offer an amendment to the bill must file any first-degree amendment with the desk by 1 p.m. on Tuesday.

ORDER FOR RECESS

Mr. LOTT. Mr. President, I understand that the distinguished Senator from South Dakota wishes to make one final statement.

I would like to go ahead and conclude now by saying that if there is no further business to come before the Senate after the statement by Senator PRESSLER, that we stand in recess under the previous order.

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

THE TELECOMMUNICATIONS COMPETITION AND DEREGULATION ACT

The Senate continued with the consideration of the bill.

Mr. PRESSLER. Mr. President, I would like to summarize where we are with this bill and take a look at tomorrow and finishing this bill, which I hope we will be able to do.

We have a very tough vote coming up tomorrow regarding adding the Department of Justice to the regulatory scheme. I would just like to point out that referral to the Department in the past precludes timely resolution, because the Department does not take timely action.

Now, the Department is filled with very brilliant lawyers and they have a reputation of moving very slowly on these waiver applications. I will show a couple of charts that illustrate how slow the Department has been.

In the original 1982 MFJ, it was suggested that the Department complete its work on each waiver request within 30 days. And, although the decree itself contemplates that waiver requests will be filed directly with the court, in July 1984 the court announced that it would consider application for waivers of the line of business restrictions only after review by the Department of Justice.

This procedure was imposed after only 7 months' experience with the waiver process and was not expected substantially to delay the processing of waiver requests. To the contrary, in establishing this procedure, the court noted the length of time that previously filed waiver requests have been pending and accordingly directed the Department to endeavor to return those requests to the court with its views within 30 days.

I am going to repeat that because I think it is very important. The court noted how slow the Justice Department was moving on these waivers and told them the length of time requests had been pending and accordingly directed the Department to endeavor to return these requests to the court with its views within 30 days.

So the framework for what I am saying is that the Justice Department was asked to do this within 30 days; not 90 days, as my friends have put into their bill. But what actually happened? Let us look at the facts. Let us go to the videotape, so to speak.

Contrary to the court's expectations, delays in administrative processing of waiver requests soon began to grow. In 1984 the Department disposed of 23 waivers. The average age of waivers pending before it was a little under 2 months. By 1988 the average age of pending waivers topped 1 year. Then, in 1993, when the Department disposed of only seven waivers, the average age of pending waivers at year end had increased to 3 years. More recently, in 1994, the Department disposed of only 10 waivers. This left over 30 waivers with an average of 2½ years still pending.

The Department now takes almost as long on the average to consider a single waiver request as the total time intended to elapse before comprehensive triennial reviews—which the Department has refused to conduct. This has occurred notwithstanding significant decreases in the number of waiver requests. While requests have decreased substantially since 1986, the Department had not even made a dent in the backlog. To the contrary, because the Department disposes of fewer and fewer waiver requests each year, the number of pending requests continues to grow. No matter how few waiver requests the BOC's file, the Department simply cannot keep up. In light of the multiyear delays in processing waiver requests, it is remarkable the court originally directed Department review within weeks, not months or years.

So the court directed the Department of Justice to act within a few weeks. And it has taken it years to act. So the point is, if we adopt the Dorgan-Thurmond amendment, we will be adding probably 2 or 3 years to this so-called deregulatory process, because that is what has happened in the past.

More significantly, the court ordered virtually immediate Department action because of prior delays that now seem comparatively minor. The eight waivers at issue since July of 1984 had been pending just an average of 5 months, with none more than 6 months old. Today, a waiver request rarely makes it through the Department in less than a year, and 2½ years is the mean.

Think about that; it takes 2½ years for the Department of Justice to approve or disapprove a waiver request that originally the district court thought could be done in 30 days. What is going on? Why is that?

As AT&T argued in 1986, and the court noted in 1988, the Department is clearly overwhelmed by its decree responsibilities. Aware of this, the Bell operating companies several years ago attempted to reform waiver procedures within the limits of the court's orders to eliminate the mounting backlog of pending requests. Following consultation with the Department, during 1991 the Bell operating companies agreed to consolidate the large number of pending waiver requests into a handful of generic requests and to limit their filings of new individual waiver requests. In exchange, the Department committed to acting promptly on generic waiver motions.

Once again the Department has not kept its part of the bargain. Four generic waiver requests have been filed. The first covered international communications. It was filed with the Department in December 1991 but did not receive departmental approval for 7 months, even though AT&T indicated within 3 months of the waiver request that it had no objection. Thus, we have a circumstance where the company, AT&T—a party to the consent decree—

said, after 3 months, we have no objection. It still took them 7 months to issue it. And the amendment proposes to add this bureaucracy to the present FCC review. That would lead to costs and delays. It has in the past.

As I stated before, the court suggested 30 days and it has taken an average of 2½ years. In the example I just cited there was no controversy. After 3 months, AT&T said it had no objection. It still took the Department of Justice 7 months to issue that. It is tortuously slow, and businessmen waiting for that paperwork have been torturously treated, because they sit there with that investment ready to go, there is no objection, and they wait and wait. This huge bureaucracy with all these brilliant lawyers cannot produce the paper.

The second generic request, which consolidated 23 then-pending waivers, covered interLATA wire services such as cellular phones, two-way paging, and vehicle locators. It, too, was filed in December 1991. It then languished before the Department for 3 years before finally being submitted to this court. Now, 4 years after it was originally filed, the waiver is still pending; 4 years, a simple waiver in that Department of Justice—the same department that the Assistant Attorney General for Antitrust is asking this body to give an additional review—that would simply hold things up. I think that would be a very great mistake.

The period for public comment and investigation spent in connection with the generic wireless waiver request alone is more than three times as long as the period allowed by the court for public comment and review of the entire decree in 1982.

It is also eight times longer than it took for AT&T to get a factually and theoretically correct request processed. When AT&T sought relief in connection with the cellular properties in McCaw Communications, it was able to file its requests directly with the court and obtain a decision in just 7 months. During those 7 months, however, the BOC's motion for generic wireless relief continued to languish before the Department, just as it had for the 3 years before. This is 3 years waiting for one simple piece of paper.

Surely the referral procedures were not intended to bring about such disparate treatment of the BOC and AT&T when they made similar requests. The remaining BOC generic requests have followed the same path of delay upon delay.

The third request covering delivery of information services across LATA boundaries was submitted in June 1993 and, now, 20 months later, still awaits Department action.

So I will go on to a fourth. The fourth, covering interexchange services provided outside of SBC's region, was filed in July 1994 and was fully briefed before the Department by September 27, 1994. The blame for these delays simply cannot be laid at the BOC's feet. The number of requests filed with the Department held steady at roughly 20 to 30 per year from 1987 through 1991 and dropped sharply thereafter. More important, none of these requests have been frivolous and virtually every one of them has been granted.

I have identified 266 waiver applications that have been presented to the court either directly or in the form of a consolidated generic waiver. Of these, the court has approved 249 in their entirety and 5 in part. The court has denied only six, and another six remain pending.

So, while the record is clear about the failure of the Justice Department to act in a timely manner, the Department of Justice is here now, on the Hill, lobbying for still more power and authority and an unprecedented decisionmaking role. Whatever the excuses one may offer as to why delay has taken place, the facts are undeniable. Referral to the Department of Justice precludes timely resolution because the Department does not take timely action, even if ordered to do so.

Now my friends who are offering this amendment tomorrow, which will be voted on, and I think it is one of the key votes of this session, glibly say we have a requirement that everything has to be offered and dealt with within 90 days. Well, the district court had a requirement that they be dealt with within 30 days. This is notwithstanding all the efforts to speed them up.

I think Senator EXON of Nebraska has eloquently explained that Congress has passed many deregulation measures—for airlines, trucking, railroads, buses, natural gas, banking and finance. None of those measures, according to Senator EXON, give an executive branch department coequal status as regulators. What Justice is seeking here is essentially a front-line role with ad hoc veto power. Justice would be converting from a law enforcement to a regulatory agency. It would end up focusing chiefly on just this sector of the economy.

Why does Justice want to do this? They have their Assistant Attorney General for Antitrust lobbying, so I am told, calling Senators, and urging that this be so.

Why do they wish this? It is very unusual, because the Justice Department has the Sherman and the Clayton Acts oversight. They have the Hart-Scott-Rodino preapproval on antitrust. They have plenty to do. In fact, I have the statistics that they are way behind on a lot of their other work. The Justice Department is not supposed to be a regulatory agency. It is supposed to be a law enforcement, antitrust enforcement agency. But they have gotten into this habit because of the district court action in 1982. They have a bunch of lawyers and staff over there, who are regulators. That is what the FCC is for.

So we just do not need to create the equivalent of a whole new regulatory agency just for telecommunications. It is just not needed. The sort of extraordinary power is just not needed here.

Let us look. There are nearly two dozen existing safeguards that are already contemplated and required by this bill. There is a comprehensive, competitive checklist of 14 separate compliance points—unbundling, portability, the requirement for State regulator compliance, the requirement that the Federal Communications Commission make an affirmative public interest finding, the requirement that Bell companies comply with separate subsidiary requirements, the requirement that the FCC allow whole public comment and participation, including full participation by the antitrust division in all its various proceedings, the requirement that Bell companies comply with all the existing FCC rules and regulations that are already on the books, including an annual attestation, very rigorous audits, elaborate cost accounting manuals and procedures, computer assisted reporting and analysis systems such as the FCC's new automated regulatory and management information systems, and all the existing tariff and pricing rules, full application of the Sherman Antitrust and Clayton act, and full application of the Hart-Scott-Rodino Premerger Notification Act requiring Justice clearance in most acquisitions.

I think our present Attorney General, and the Assistant Attorney General for Antitrust, have done a good job in many of the Hart-Scott-Rodino areas that I have observed. That is what the Justice Department is supposed to do, and not worry about creating a bureaucracy and keeping several hundred lawyers employed over there.

There is also the full application of the Hobbs Civil Appeals Act, Section 402(a) of the Communications Act which makes the Antitrust Division automatically an independent party in every FCC common carrier and rulemaking appeal.

Finally, a consensus approach in this bill has been hammered out in the most bipartisan way possible. It has strong support on both sides of the aisle.

We are all aware that several States have moved in the direction of deregulating telecommunications. I know that Nebraska, Illinois, Tennessee, North Carolina, Florida, New Jersey, Pennsylvania, California, Wisconsin, Michigan—none of those States has given their Governors or attorneys general the kind of extraordinary new powers which this Dorgan-Thurmond amendment would create here at the Federal level for the U.S. Department of Justice.

There are plenty of safeguards in this bill and existing law already. If any competitive challenges arise because the Antitrust Division is not allowed to convert itself into a telecommunications regulatory agency, Congress can revisit the issue. Justice already has adequate statutory powers. This amendment represents the sort of undesirable approach toward regulation that the American public rejected last

fall and which we as a country cannot afford. The Justice Department already has a big role in telecommunications regardless of whether this amendment is adopted. The Department enforces the Sherman and Clayton antimerger laws, and they certainly apply to telecommunications.

The Department has been an active participant in dozens of Federal Communications Commission proceedings over the years, and it will remain an active participant. Under section 402(a) of the 1934 Communications Act, moreover, the Antitrust Division has special status in every FCC common carrier and rulemaking appeal. They are what is called a statutory respondent, which means they are automatically an independent party in all of those appeals in court actions.

So what we are really talking about here is whether to give the Antitrust Division even more of a role than they will have, and will continue to have. And, frankly, I would like to know why we need to have this enormous amount of overlapping and duplicative effort focused on telecommunications. I do not think the case has been made that existing law is inadequate. In fact, I think it would be almost impossible to do so because, it seems to me, Justice has all the enforcement tools it needs without additional surplus legislation.

I expect what all this boils down to is the Justice Department has about 50 people spending $2 or $3 million a year trying to operate like a telephone regulatory agency, a telephone regulatory agency, and they like their jobs. They are up here telling us, if we do not adopt this amendment, all sorts of bad things are going to happen.

They simply do not need this amendment if they want to stick to their traditional role of being an antitrust enforcement agency.

When this bill was introduced before the Commerce Committee, my distinguished colleague, the Senator from Arizona, noted that with more of the little provisions we added the more jobs we were creating for the Federal bureaucracy. That is exactly what we have here, the functional equivalent of a jobs bill for the bureaucracy which we just do not need.

The historic role of the Antitrust Division of the U.S. Department of Justice has been to operate as a law enforcement agency, not a regulator deciding which company can or cannot get into the market. That kind of market entry decisionmaking has not been one of the Justice's roles until very recently—indeed, not until they drafted the AT&T antitrust consent decree.

I do not agree that the Justice Department and the executive branch should be placed in this kind of industrial policymaking role. The Department should remain a law enforcement agency. I simply do not agree that it should transform itself into the functional equivalent of a regulatory agency.

I am also a bit concerned about what the long-run effect of this kind of institutional transformation might be. On April 2, the Associated Press reported that the total dollar volume of corporate mergers and acquisitions reached a record $135.2 billion worldwide during just the first quarter of 1995. Last year, there were an all-time record number of these megamergers totaling some $339.4 billion. That was up to 43 percent compared with 1992.

At the same time this tremendous number of mergers and acquisitions is taking place the Antitrust Division seems to be focusing upon becoming a telephone regulatory agency. I agree that telecommunications is critically important. But we have the Federal Communications Commission. We have the Public Service Commissions in all 50 States plus the District of Columbia. I do not think the taxpayers should be forced to pay to create and then support yet another telecommunications regulatory agency, namely the Antitrust Division. The Antitrust Division should concentrate on its traditional role of enforcing the antitrust laws. They should be examining all those massive mergers and acquisitions that are taking place. They should not be spending all of this time and effort focusing on duplicating what the FCC and the State commissions are perfectly capable of handling.

Mr. President, I have pointed out before how slow the Justice Department is. We all know that my friends in the long distance industry, some of them, are pushing for this amendment. They see it as another promising way to game the process. They want to game the process rather than deregulate, to use the Federal Government to block additional competition. And remember, delay in this area has genuine cash value.

I am very concerned that we take a look at some of the hopes of some of these companies. I consider them my friends, but I think that they are acting against consumers here. We really need to pass this bill. This bill sets up a system for competition.

So, Mr. President, this bill represents the work of a bipartisan group of Senators who started work in November. This telecommunications bill received a vote of 17 to 2 coming out of the Commerce Committee with all the Democrats on the committee. There is a wide range of ideological spectrum there among the 9 Democrats and 10 Republicans, but it happened to receive all the votes of the Democratic Senators. Now the White House is raising questions. My friend from Nebraska is raising questions. But we included them in our process. We did our best to get a bipartisan bill.

It is going to be tough to pass this bill because in telecommunications legislating, as we found last year and over the decades, each group can be a checkmate. Any one of the economic apartheid groups in telecommunications can checkmate at any point in the process. It is like playing chess with several people and anybody can checkmate.

What has happened since the 1934 Communications Act is an economic apartheid has sprung up and companies have done very well with this company doing local service, this area doing long distance service, this area doing cable TV, this area doing broadcasting, and utilities prohibited from participating in all of this. This is a massive bill that brings everybody into competition. It is procompetitive, deregulatory if we can keep it that way.

What is happening, however, is that each day and each month that this bill has moved forward, a lot of companies have said, wait a minute, when we said deregulation we meant deregulation of for me, not the other guy. When we presented them a fair playing field, they said, wait a minute, we want a fair playing field with just a slight advantage. And virtually every lobbyist in America has been working on this bill in one form or another.

We have held off granting certain special deals to certain groups in this Senate bill. For example, the newspaper publishers group sought special treatment for their electronic subsidiaries, and in the Senate we said, no, everybody has to compete. Now, they have obtained that special treatment in the House bill.

Who knows, I may well be outvoted on that. But that is an example of how we have tried to hold the line on competition. We have tried to make it a procompetitive bill.

Now, in our history, in terms of telecommunications, this bill will take us into the wireless age, which I think is about 10 or 15 years away. Some people think it is only 5 years away. But that will be an age when wires may be obsolete, and we are a ways away from that. But we need this bill as a road map to get everybody into everybody else's business.

Right now, regional Bells have to invest abroad if they want to manufacture because they are restricted from doing so here at home. Other companies have this line of business or that line of business restriction on them. This will let everybody into everybody else's business. It will allow a great deal of competition.

Now, some will say, that will just result in a group of monopolies. It will not, because we have the antitrust laws. But also let us look back to that day in 1982 when the Justice Department made two decisions on the same day. The Justice Department decided to allow IBM and the computer industry to go into the marketplace and to let there be winners and losers. It decided to place the MFJ ruling under Judge Greene on the telecommunications companies and break up into regional Bells under heavy government regulation.

Now, you can argue this forever. This will be argued forever in industrial history. But what happened in the computer area has been magnificent. We

have new technology and product cycle every 18 months. The turnover is so great. There are not Government standards. There have been winners and losers, some big winners and some big losers, some have gone out of business, some have become the Bill Gateses of this world. It has been truly amazing to compare the two tracks: one a highly regulated area and the other deregulated. And we will have that sort of an industrial argument.

Now we have come to a point in our history when we need another industrial restructuring, and this one should be done by Congress. Congress should assert its responsibility for a change. The reason the courts acted regarding the telecommunications area was because Congress could not, because it is so politically sensitive. It is going to be tough to get through conference. It is going to be tough to get it through the House. It is going to be tough to get it signed because we have some indications that the President might not be willing to sign it. I hope he is because I think it is the best bipartisan bill that we will be able to get.

So I am going to step back to my charts once more and explain exactly what the bill is one final time.

The Telecommunications Competition and Deregulation Act of 1995 is designed to get everybody into everybody else's business in telecommunications. It is a massive bill. What does it do? First of all, in order to get into other businesses in telecommunications, they would first comply with State market opening requirements.

Second, they would go to the FCC where there are two tests. The first one is the standard of public interest, convenience and necessity test that has been going on for years and years.

Third of all is the FCC would certify compliance with the 14-point checklist. That is the checklist that I will explain here in just a minute.

The regional Bell telephone companies would have to comply with the separate subsidiary requirement, the nondiscrimination requirement, and cross-subsidization ban.

The fifth step would be the Federal Communications Commission would allow the DOJ full participation in all its proceedings.

Now, the Bells must comply with existing FCC rules in rigorous annual audits, elaborate cost accounting, computer-assisted reporting, and special pricing rules. So there are a lot of requirements here that will force the Bell operating companies to open up their businesses, to unbundle, and to interconnect so that people can form a local telephone service and be successful with it.

Meanwhile, the full application of the Sherman Antitrust Act would continue with the Justice Department, and the Clayton Act, and the Hart-Scott-Rodino Act. The Hobbs Civil Appeals Act involving DOJ as an independent party and all FCC appeals would continue, so the Justice Department is already involved. What we would create through the Dorgan-Thurmond amendment is just another layer of bureaucracy.

The competitive checklist has been distributed to all Senators. This checklist was developed as a compromise to the VIII(c) test to determine when companies should be deemed eligible to enter the market, when they have opened up their local markets.

The problem with competition in telecommunications is that you have to use somebody else's wires to get where you are going. There have to be some ground rules. So we came up with this checklist that the FCC would use, in addition to the public interest standard.

The first one is access to network functions and services. That is an interconnection. I went over to visit the Bell Atlantic facility here, and I've seen what interconnection and unbundling actually is.

Next is capability to exchange telecommunications between Bell customers and competitors' customers.

Next, access to poles, ducts, conduits, and rights of way.

Next, local loop transmission unbundled from switching. There are three points on unbundling the system so other people can get into it and market things through the Bell company's system and wires.

Next, local transport from trunk side unbundled from switch.

Next, local switching unbundled.

Next is access to 911 and enhanced 911—which for emergency you might push one button—directory assistance and operator call completion services.

Next, white pages directory listing available at a reasonable price.

Next, access to telephone number assignment.

Next, access to databases and network signaling.

Next, interim number portability.

Next, local dialing parity.

Next, reciprocal compensation.

And last, resale of local service to competitors.

So there we have the measures to assure the breakup of local Bell monopolies. Now the big question is, will the regional Bell companies let competition in? Well, if they do not, under S. 652 they will pay immense financial penalties.

This checklist was agreed to. We had night after night of meetings in January and February. We first wrestled with the VIII(c) test. Other Senators wanted a LeMans start. We came up with this checklist on a bipartisan basis, and I think it is the thing that will move us towards competition.

I have already talked a little bit about the problem with the amendment tomorrow. I wanted to just point out again the average length of time that some of these waivers require. This first chart shows the number of days from zero to 1,200, starting in 1984, how the length of time has expanded for the average age of waivers pending before the Department of Justice at year end.

What has happened is the Department of Justice has gotten slower and slower and slower. As the court has told it to go faster and faster, it has arrogantly gone slower and slower. What is going on? Can someone give me an explanation?

How can it be in 1993 it averaged nearly 1,200 days to get an answer, a piece of paper, out of the Department of Justice?

What the Dorgan-Thurmond amendment is suggesting is that we finish all the checklist, all the public interest requirements, all the other requirements and all the other safeguards, then we go to the Justice Department. My friends say, ''That will only take 90 days,'' but look at the record, look at the videotape, as they say in reporting sports.

On this chart it illustrates the number of requests with the Department of Justice and how frustrated industry has become. They start out about at 86, shortly after that they were hopeful, up to 80. It dropped way down in 1992 and 1993. It is not because there are too many requests filed. People are just giving up. There is a lot of business not being done. That is what we mean by drying up enterprise, discouraging competition. Imagine how it is when a business faces 3 years of delays and 3 years of hiring lawyers and 3 years of having nothing but uncertainty to offer investors. Imagine asking your investment people to wait 3 years just for a decision. You do not get competition that way, and that is what the anticompetitive forces are looking to. They want to use Government to keep other people out of their business. They want to use Government regulation to stop competition.

I say let us deregulate, let us be procompetitive and not go on with practices such as waiting 1,200 days for a piece of paper that the district court thought could be issued in 30 days.

Mr. President, we have before us a procompetitive deregulatory bill. Everybody says they want to deregulate. AL GORE has a commission for privatizing and deregulating and cutting Government. This bill before us will reduce the size of Government, it will protect those people who are applying, but it will not allow this sort of thing—1,200 days waiting for a piece of paper.

This bill will also provide, for the first time, a number of market openings: Utilities will be able to get into telecommunications with safeguards, the subsidiary safeguard; the cable companies in this country will move towards deregulation and will be deregulated when 15 percent of their market has direct broadcast satellite or video dial competition. With the Dole, Pressler, Hollings, Daschle amendments there is further deregulation for small cable; the newspaper publishers will be in the electronics subdivision though there is a difference in the

House and Senate versions; the broadcasters will get further deregulation because they are facing more competition, radio with satellites, so forth.

The giant regional Bell companies will be forced to open up their markets to competition. They will be allowed to manufacture in this country. A long distance company will be able to get into the local markets.

So this is a vast, vast bill. If we do not pass this bill this year, it will be 1997 before we can try it again. We tried it last year. Senator HOLLINGS did a terrific job, so did other Senators, Republicans and Democrats. But as I said, this sort of bill can be checkmated even at the last minute by any one of the interest groups.

I compare passing a telecommunications bill and some of the problems like being in a room with a giant buffet table stacked high with food and people gathering about it ready to eat, but no one starts to eat because they want to be guaranteed that no body else is going to be getting an extra carrot. The fact is, there is plenty for all.

I have never seen companies and groups so nervous, so anxious to get one final slight advantage. This bill affects the burglar alarm business because they have to go on to using other companies' wires. Tomorrow there is going to be an amendment offered to give the burglar alarm companies 6 years protection before they have to compete. In the bill as it stands the burglar alarm companies get 3 years protection. That is more than most others get. But now there is going to be an amendment to give them 6 years of protection.

So every group wants to delay their entry into competition 3 to 6 years. They are trying to figure out ways to get amendments. I say for the American consumer that that is not right. The American consumer wants all these companies to compete, they want new small businesses to be able to be formed to get into telecommunications. Today nobody but the monopolies can get into local telephone service in this country, but if this bill passes, two people can go out and form a local telephone company.

This bill was not drafted by industry, as some may suggest. There has seldom been more of a bipartisan effort in this Senate. When we finished the first draft, I walked a copy of this bill to every Democratic Senator on the Commerce Committee, of whom there are nine, and put it into the Senator's hand. I said I wanted their staffs there. We sent a memo around to everybody, saying, if you want to get involved in meetings at night and Saturdays and Sundays, come on around. I commend my friend from Nebraska, because he sent a very able staffer who helped write much of it. We are very glad for that assistance. We worked on this bill in a bipartisan way.

I said earlier this year that I felt if we did not get legislation out of the Senate by June, it is going to be tough going. I thank the leadership on both sides. My colleague Senator DASCHLE has been very helpful, Senator DOLE has been extraordinary, and Senator LOTT, too—all of the leadership. My colleague here, Senator HOLLINGS, has done a great job on the Democratic side. But if we do not get this bill through conference and to the President's desk and signed this year, it is not going to happen next year.

I say to all those legions of lobbyists and others who are calling in and doing their jobs—this is a democracy and people can petition their Government—I say to them that whatever their interest is, they have an interest in this bill passing because it is procompetitive and deregulatory.

People who want to work and compete will do well under this bill. I think we should all remember that, because this bill is, in my opinion, the most important bill in terms of creating jobs for the next 10 or 15 years. This bill will cause an explosion of new investment, it will cause an explosion of new jobs, the kind of jobs we want in this country.

Now, Mr. President, I have cited frequently that our regional Bell companies, and others, frequently are investing overseas. For example, England has deregulated its telecommunications. Many years ago, when I was a student there, they were a socialistic economy. Now they have privatized, deregulated, de-nationalized. England is, at last, coming out of its long recession as it deregulates. They have deregulated their telecommunications area, and our people can go there and build cable systems, as NYNEX and U.S. West, I believe, are doing. Our investors can go over there and participate. If they keep deregulating, they are going to have a booming economy. You can mark my word on that. They are on the way back. They figured it out that socialism was not beneficial.

We are doing somewhat the same thing in our telecommunications area. Our telecommunications industry has not moved forward as fast as our computer industry has. There are all these companies which want to keep regulation to keep others out. They want Government-set standards, so that the private standards cannot leap forward. They want another review at the Justice Department after they have gone through two reviews. This is inside-the-beltway thinking. The further west I get in this country the more agreement I find that we should deregulate and privatize wherever possible.

So in conclusion, Mr. President, I may have some more remarks later. But I think the Telecommunications Competition and Deregulation Act of 1995 will be a signal point in our Nation's history if we pass it. If we do not, we will remain locked up in economic apartheid—each sector protected from the other, kept from getting into the other's business. We will see more of our jobs going overseas and more and more of our manufacturing and innovation going overseas, American workers not getting the new kinds of jobs we need.

Many of our industries are aging industries, and we read in the paper about this many people being laid off here and that many being laid off there. This is one of the great jobs bills ever to come before Congress. I remember being in the House and we used to debate the Humphrey-Hawkins job creation bill—whether or not the Government could create jobs through the Federal Government paying people to do make-work types of things. I opposed it many years ago in the 1970's when I was in the House of Representatives.

But S. 652 is a jobs creation bill that does not cost the Government anything. In fact, the government costs will be reduced. There will be less in regulation than there is now, provided we do not adopt the Dorgan amendment tomorrow, which would add another layer of regulation.

Mr. President, I yield the floor. I may have some more remarks to make later.

Mr. KERREY. Mr. President, I do not know how long I am going to respond, but we will have time tomorrow to discuss this.

In my judgment, the Senator from South Dakota just misdescribed both our amendment and what the Department of Justice is doing and why the people of the United States of America should want this amendment adopted.

He repeatedly comes to the floor and says that this is ''another layer of bureaucracy,'' and describes himself as being beleaguered with opponents who are trying to prevent something from happening, that we are deregulating, and we ought not interfere with this process.

I say again for emphasis, Mr. President, that nobody in my campaign in 1994 came to me and said, gee, I hope you deregulate the telephone companies. I am an advocate of doing this. But the Senator from South Dakota says, gee, this was not written by industry. It may not have been written specifically by industry, although I daresay you would have to struggle long and hard to find a Member of this Congress that could come up with that 14-point checklist. That is a technical checklist that does not look like it is in the language that at least I hear us using as we describe telecommunications.

It may not have been written by industry, but American industry is asking for this legislation. It allows them to do things they are currently prohibited from doing. I am an advocate of allowing them doing some things they are prohibited from doing. I favor deregulation. I am tired of hearing the straw man set up time after time that somehow you are either for deregulation and therefore against this amendment, or you are against deregulation and, therefore, you support the amendment. That is a nonsense straw man argument.

The questions for consumers, for citizens to ask is, what is this thing all about? What do you mean, Senator KERREY, that these companies want to do something they cannot currently do? The long distance companies want to come in and sell us local telephone service. So there is a section in here that tells them not only how they get in the business but how others can get in the business.

Section 251 is a pretty darn good section. Section 255 is the one that is in question now, which is the local companies saying we want to provide long distance service. We want to enter the long distance service market. By the way, I heard the Senator from South Dakota talking about the Humphrey-Hawkins Act and full employment. The companies that are arguing the loudest and strongest for this legislation have reduced their employment. They have reduced their employment in the decade of the 1980's, since divestiture occurred. Do we have more jobs in computers? No. We have 150,000 fewer. Do we have more jobs in local telephone companies? No, smaller employment. Do we have more jobs at AT&T long distance? No, smaller employment.

I would be, as a Member of this body, real careful not to promise that somehow when I deregulate and say to a company, you can start pricing at cost, that that is going to result in an increase in employment. I will bet you this results in additional downsizing of businesses. This promise of jobs is going to taste real bitter to the families who get laid off. You can say, well, Senator, but there are going to be jobs created in other sectors. I think that is likely to be the case. It is likely to be the case.

The Senator from South Dakota asks why would I want the Department of Justice role, and says, look at the lousy job they have done. Those charts misrepresent what the Department of Justice has done. They are the competition agency, not the Congress. This Congress did not have the guts to stand up to the AT&T monopoly in 1982. It did not have the guts to stand up to them. Who filed the consent decree? Who sued the AT&T monopoly? Who led to this competitive environment in long distance? Was it the people's Congress, out of concern for the citizens and the rates they were paying? No, siree, it was not. It was the Justice Department suing on our behalf.

Because we did not have the guts to take them on. That is what happened.

So citizens say, why do I want the Justice Department to be involved? The answer, plain and simple, is when it comes time to go after a monopoly who is preventing competition, they are the ones that have done it. They are the ones that have done it.

The second reason we want them involved, I would argue, is they are the ones, for a relatively small amount of money, that are likely to make the tough calls.

I am not going to get into a great discussion about this here this evening, but there was a newspaper article this morning in the New York Times. It talked about whether or not the Federal Communications Commission, the agency that has all the responsibility here, is doing a very good job.

I have not up until now, and indeed even now I will not say as the Senator from South Dakota just said, ''I suspect that the reason Senator KERREY wants a DOJ rule is there are a few lawyers that want to keep their job.'' What baloney. Leave that argument off the floor. That is baloney. That is not what is going on.

Go back to airline deregulation. When we passed deregulation for the airline industry, we said precisely what we are saying in this bill. We said we are not going to give the Department any role beyond consultation.

Guess what happened when TWA proposed to acquire Ozark, when Northwest Airlines proposed to acquire Republic? What happened? The Department opposed it, objected to it, offered strenuous objections, but they had no ability to say no. They had no legal authority.

We are trying to correct, based upon lessons of the past, mistakes of the past. That is what we are trying to do, on behalf of consumers. If we do not get a competitive environment, they will not get any advantages.

I bet, of the seven regional Bell operating companies, there is at least $1.5 billion cash flow average from these corporations. These are big corporations. These are big businesses. They are hungry to expand their business, and I want to allow them to expand their business.

Unless we get competition at the local level, we will end up having what we had with airline deregulation, when the Department, with only a consultative role, only could object to the mergers in question. And look what happened to St. Louis when TWA was allowed to come in and acquire Ozark. Look what happened in Minneapolis when Northwest proceeded without any obstacle being offered to the acquisition of Republic Airlines.

Mr. President, all the Dorgan-Thurmond amendment says is, do the citizens want the Department of Justice to be able to say yes or no? Do you want the Department to be able to say yes or no? All the presentations about the waiver requests that have been slowing up; the very people that filed the applications very often cause the cases to go slow because they make an overly broad application for waiver of the problems that the Department can say, we can, in an expeditious fashion, say no. Or we can sit with a company and try to work through this application that they know is too broad, that goes at the core of the restrictions under the modified final judgment.

I ask unanimous consent that the article that appeared in this morning's New York Times be printed in the RECORD.

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

[From the New York Times]

HAS THE F.C.C. BECOME OBSOLETE?

(By Edmund L. Andrews)

WASHINGTON, June 11—David Margolese is a bit player on the information highway, barely a footnote in the $700 billion communications industry. But his experience over the last five years provides a textbook example of why the Federal Communications Commission is under attack as never before.

Mr. Margolese, head of a tiny company called CD-Radio Inc., has gambled $15 million since 1990 to develop a satellite service that beams 30 channels of music to radios nationwide. He thinks it would fill a big gap, reaching rural hamlets and lonely stretches of interstate highway that ordinary radio stations do not reach.

There is a problem, though: the F.C.C. will not let him do it. Traditional radio broadcasters have adamantly fought satellite radio, fearing it as a competitor. Agency officials are torn. Having repeatedly inched forward and back, the agency plans to inch forward again as early as Monday by proposing rules about what kind of service a satellite radio company will be allowed to provide.

Mr. Margolese is fuming. ''All we want to do is give people a choice that they don't have now,'' he said. ''That's all we want to do—give consumers a chance to choose whether our idea is a better idea.''

Anti-government fever is a given in Newt Gingrich's Washington, and agencies ranging from the Food and Drug Administration to the Commerce Department are under sustained attack. But bureaucrat for bureaucrat, few agencies wield as much influence over industry and consumers as the F.C.C. Created during the Depression, when AM radio was king and government regulation was considered essential by many people, the F.C.C. was chartered as the guardian of the public airwaves, charged with insuring that they were used wisely.

''Do you or do you not want a consumer protection function in this arena?'' asked Reed E. Hundt, the commission's chairman. ''If you don't, where else would literally tens of thousands of complaints go?''

Today, the agency has an immense impact on almost every communications medium. It has opened the air-waves to cellular phones and direct-broadcast satellites. It parcels out billions of dollars worth of broadcast licenses, defining the terms of competition for television, radio, satellites and phone service.

But the word into which it was born has gone the way of Norman Rockwell, and critics abound. Conservatives argue that the commission does more harm than good, hindering competition and delaying valuable new services. Consumer advocates say it is often a captive of the industries it regulates. Little mentioned in all this is that the F.C.C.'s most-criticized restrictions have been initiated at the behest of business groups.

Mr. Gingrich has said he would like to abolish it entirely. Republicans on the House Commerce Committee, vowing to cut back its authority, held a series of closed-door meetings with industry executives and agency officials last week to explore ideas intended to curb the agency's powers.

Examples of gridlock are abundant. Nearly three years ago, the F.C.C. moved to promote competition in cable television by adopting rules to let telephone companies offer a rival service called video dial tone. But telephone companies saw their applications to offer the service languish as agency

officials insisted on changes in many plans. Today, only a handful of tiny experiments exist, and many telephone companies have decided to ask cities for traditional cable TV franchises.

If the agency and its video dial tone rules had never existed, economists say, telephone companies might have offered cable service two decades ago and perhaps have prevented cable television monopolies in local markets.

In the meantime, the F.C.C.'s efforts to regulate cable prices have been plagued by policy shifts and the complexity of its pricing rules. The first set of such rules, intended to carry out a law passed in 1992, inadvertently sent rates up rather than down for many customers.

A second effort early in 1994 pushed cable rates down 17 percent. But after incurring a storm of criticism from the industry and from conservatives in Congress, the agency has in recent months adopted still another series of rules that give breaks to small cable systems and to companies that add programming.

Today, some critics of the cable industry say the price regulations are more trouble than they are worth. ''The system is a brain-dead patient on life support,'' said Barry Orton, a professor of telecommunications at the University of Wisconsin and a consultant to many small towns that want to start regulating cable prices. ''The smaller towns and cities that I work with say that they've had it. It's too complicated, and it's too full of holes.''

But for all the complaints by businesses and their Congressional champions, it is business groups that typically have sought to have the agency umpire their disputes. Some of the most onerous and ridiculed F.C.C. rules are those resulting from intense industry lobbying.

For instance, Hollywood studios fought ferociously three years ago to keep television networks out of their business, until a Federal court overturned the F.C.C.'s rules. Local phone companies lobby fiercely to preserve universal service and to delay rules exposing them to new competition. Cable companies have filed more than 20,000 pages of briefs to block phone companies from providing TV programming.

But defenders of the commission, who argue that it is the crucial guardian of the public interest, note that it has consistently tried to promote market competition and move away from traditional regulation. And even the staunchest conservatives have praised one of the commission's initiatives—the auctioning of thousands of new licenses for wireless telephone and data services, a revolutionary departure that raised more than $9 billion in the last year and is expected to increase competition sharply in the cellular telephone market.

''Everybody agrees that you want competition,'' said Mr. Hundt, the F.C.C. chairman, who was appointed by President Clinton. ''But you have to have rules of fair competition if you want to have competitors to enter the market.'' He conceded that the agency had in the past been guilty of micromanagement, but passionately defended its charter to protect the public interest.

A schoolmate and soulmate of Vice President Al Gore, Mr. Hundt promotes a vision of linking all schools to advanced computer networks, and he has proposed rules to expand educational television programs for children. He also vigorously defends the commission's duty to protect consumers from overpricing and to open traditional monopolies in telephone and cable television.

Republican lawmakers agree on that point. They are seeking to pass a sweeping bill deregulating the telecommunications industry, in part by knocking down barriers that prevent cable television and phone companies from attacking each other's markets. The same bill asks the F.C.C. to start dozens of new proceedings, some to find ways of insuring affordable prices for rural areas and for the poor.

In addition to the flak it takes from Capitol Hill, the agency has its own civil strife. It never seemed more at war with itself than in its attempt to let telephone companies offer video dial tone services. The goal of the rules, adopted in 1992, was to break the monopolies enjoyed by most cable companies.

Yet the phone companies became bogged down, and F.C.C. officials complained that the companies were reserving too many channels for themselves and leaving too few for independent programmers. They argued about how the phone companies were allocating for construction costs and sought volumes of technical information.

''It makes no sense,'' said Peter W. Huber, a senior fellow at the Manhattan Institute. ''After 15 years of cable monopolies, almost anything would be an improvement. Even if the phone company keeps most of the channels for itself, you would at least have two competitors instead of only one.''

F.C.C. officials say they are not entirely to blame for the delays, noting that many phone companies had voluntarily withdrawn applications, citing technological uncertainties.

''At a minimum, there has got to be dramatic reform,'' said Representative Jack Fields of Texas, chairman of the House Commerce telecommunications subcommittee.

Business interests may turn out to be the agency's white knight. With competition heating up among industries, cable, phone and even satellite companies will all be looking to the agency for help in attacking each other's market while defending their own turf.

Some consumer advocates add that the agency has often provided crucial support for competition. Though it stalled MCI's effort to enter long-distance service in the 1970's, the F.C.C. later adopted a wide variety of rules that helped it compete with AT&T.

''What many critics fail to see are the tremendous benefits,'' said Gene Kimmelman, a lobbyist for Consumers Union. ''It's unlikely that MCI and Sprint would have been able to make it without regulatory protections designed to move the long-distance industry from monopoly to competition.''

Mr. KERREY. Mr. President, it is an interesting article for citizens saying what is going on here.

Will the consumer get a fair shake? Let me call your attention to the amendment that actually is in front of the Senate, which is the amendment of the Senator from California and from Idaho, on behalf of cities saying, ''Wait a minute.''

In the midst of all this talk, is it not part of the Republican Contract With America to shift more authority back to the States? Those engines of innovation. What happened to the engines of innovation argument? Forget that.

Thirty-some States that have deregulated from rate-based rate of return, we are saying, that is enough. We will preempt all and go to price caps. States do not have authority any longer in this regard. They have authority under price caps, or pricing regulation, but no longer do they have a choice.

If you are a State legislature or citizen out there wrestling with the early stages of debate, the Federal Government will decide it for you. Rate-based rate of return is out the window, and we are going to price caps.

The Senators from California and from Idaho point out not only that, but anything that local government does, if it interferes with a competitive environment, can be prohibited under reducing and eliminating the barriers to competition. This is a substantial move, I think a correct move, in general.

By the way, I am not trying to come to the floor and say I think the FCC is a lousy organization or I think there is a bunch of lobbyists trying to influence my vote or anybody else's vote.

I am trying to say on behalf of consumers based upon the experience both that created the breakup of AT&T in the first place and the airline deregulation case where the Department of Transportation now says they made a mistake not asking for more than merely a consultative role from the Department.

Mr. President, the story in the New York Times this morning is headlined ''Has the FCC Become Obsolete?'' I understand the Senator from South Dakota is basically saying let the FCC do it all, with only a nominal Department of Justice role. We will run this whole thing through the Federal Communications Commission. We do not want duplication of the bureaucracy. We know how the bureaucracies get. They tie things up.

Let me read things in this article. This touches the tip of the proverbial iceberg. CD Radio, Inc, that says, with $15 million since 1990 to develop a satellite service that beams 30 channels of music to radios, they think they fill a big need.

The FCC will not let them do it. Why? Because traditional radio broadcasters have adamantly fought satellite radio, fearing it as a competitor. The FCC is blocking competition in this case, not allowing it, nervous about it. Why? Because they are the most vulnerable to political pressure, frankly, Mr. President, a lot more vulnerable than the Department of Justice.

That has been the competitive agency, the one that has promoted the most competition between the FCC and the Department of Justice. I get a lot more citizens questioning the existence of the FCC than I get citizens coming to me saying, ''Why don't you abolish the Antitrust Division of the Department?''

I do not get people saying, ''I think the Antitrust Division overstepped its bounds. Why not get rid of them?'' But I am hearing complaints from people who question decisions of the Federal Communications Commission.

This agency, as I indicated, is an interesting agency. We will hear businesses complain about it an awful lot. ''They are slowing me down,'' and all the arguments that the Senator from South Dakota makes, ''Poor old businesses. They are making it difficult for

me to get the approval, my waiver, granted,'' and all that.

It says for all the complaints by businesses and their congressional champions, it is business groups that typically have sought to have the agency umpire their disputes. Some of the most ridiculed FCC rules are those resulting from intense, industry lobbying.

For instance, Hollywood studios fought ferociously to keep television networks out of their business, until a Federal court overturned the FCC's rules. Local telephone companies lobby fiercely to preserve universal service and to delay rules exposing them to new competition. Cable companies have filed more than 20,000 pages of briefs to block phone companies from providing TV programs.

Mr. President, I do not believe that the FCC intentionally is creating bottlenecks so as to employ themselves. I do not come down here to the floor saying I know why they are doing this.

There is nothing devious going on. The fact of the matter is our problem is we have a tough time making political decisions. I have a business come and say, ''I want to compete,'' and the next day someone says, ''I don't want to compete.'' It is tough to say you have to compete. That is what this legislation purportedly attempts to do.

The Department needs a role, Mr. President. The Department can, on behalf of consumers, say, not that you have a 14-point checklist. You could have the 14-point checklist and a consumer not have any choice. How do I know I have a choice with a 14-point checklist? I would rather abolish the checklist and have the DOJ with a role in this deal, if that is what the Senator from South Dakota wants to do, wants to get rid of some of the things the FCC does under this legislation, I am willing to do it.

I am willing to deregulate the companies, so you have less regulation for them. I am not an advocate of the status quo, of maintaining the status quo. But I want the agency that has had, I think, the best success, being able to say to the monopoly we are not going to allow you to prevent competition. I want that agency on behalf of consumers to make sure I do have competition. I do not want a bunch of mumbojumbo rules and regulations that everybody can cook and game and hire lawyers to try to figure out how to come out on the winning side. That, it seems to me, is what happens if you set up all these little rules and regulations and hoops you have to jump through, down at the FCC. I would sooner have the Department of Justice sitting there saying: We want competition at the local level. If we see competition at the local level we are going to allow you to go into long distance. I would much sooner have the Department of Justice be that arbiter—not regulator, but an arbiter of the question: Do we have competition? Yes or no? Is it competitive down there at the local level? Do we have the kind of competition that allows us, now, to run the risk—and it is a risk—of allowing the telephone companies to get into long distance?

I hope this amendment is accepted. I hope the Thurmond amendment is accepted, because I believe it is one of the few proconsumer things in this legislation. I think consumers will benefit enormously the quicker we get to competition, where true competition exists at the local level and across the range of telecommunications industries.

This bill does not get us there immediately. It sets a structure in place to move from a monopoly to a competitive environment. That is what it does. No one denies that. The idea that somehow we are deregulating these companies automatically—it is not true. We allow them to keep their monopoly in place. We phase it out. We set timetables in place. We have tests they have to meet and all that sort of thing. They are allowed to stay in a monopoly situation. The sooner you get to a competitive environment where the consumers are deciding what they want and what is best for them the sooner we are going to get rapid decreases in prices and rapid increases in quality.

I believe the Senator from South Dakota is well-intended with this legislation, as I have indicated before. I support large portions of this. I do not come down here and say this bill is anticompetitive or anticonsumer. But I do believe strongly that if we want the consumer to benefit from competition then we have to make sure the Department of Justice has a role in telling us when competition exists.

The PRESIDING OFFICER (Mr. BROWN). The Senator from South Dakota is recognized.

Mr. PRESSLER. Mr. President, I would like to say that, first of all, in the drafting of this bill, it was done by Senators and staff. But Republican and Democratic staff sat down together. I do not know if that has ever been done before with a bill. This bill was not drafted by industry. It was drafted by Senators and staff here in the Senate. They negotiated and worked, and met with Senators with the product of their work, and invited the input from other Senators, and came up with the competitive checklist, which was not proposed by industry. It was proposed by staff as a compromise between the ''actual and demonstrable'' and VIII(c) tests that had been used last year and the concept of a date certain standard which was utilized by my initial chairman's draft—to find a way in this complex telecommunications arena to have a test of when markets are open.

This has not been easy. For instance, let us say you are in the spaghetti business and you have to have somebody else deliver your spaghetti for you. Can you imagine what shape it is going to be in when it is delivered? Especially when the person delivering it is your competitor.

But in this telecommunications area it is so complicated to get competition in because you have to depend frequently on your competitors' wires to get to where you are going. That is why we still need some level of regulation. That is why we still need an FCC at this point. Although I hope in the very near future we can see the FCC reduced a great deal and ultimately whither away.

This bill was drafted with the public interest in mind. This bill continues to have universal service, which will assure that those high cost areas and regions of the country will have telecommunications. Our antitrust laws continue under this bill. In fact, the Justice Department has a major role.

But assigning a decisionmaking role, as the Dorgan-Thurmond amendment does, to the Justice Department, is unprecedented. The Department is always required to initiate a lawsuit in the event it concludes the antitrust laws were violated. It has no power to disapprove transactions or issue orders on its own, generally speaking.

Indeed, Judge Greene's court kept the power to make the decisions through all these years. The people who work there really work for him, or for his court. This would be the first time we are giving the Justice Department this kind of regulatory power—a decisionmaking role.

If you look at history, the law, regulation and history of railroads closely mirrors that of telephony. The Telecommunications Act of 1934 was modeled on the Interstate Commerce Act of 1887. The Federal Communications Commission was modeled on the Interstate Commerce Commission. Both industries involved common carriage, and the establishment of networks. Both industries have been required to provide essential service to rural areas. Both industries have been regarded as monopolies. They share issues related to captive customers, competitive access, the desire to enter related lines of business, and the loss of traffic to alternative carriers.

Congress has delegated exclusive Federal authority to the Interstate Commerce Commission to decide whether a railroad should be permitted to enter into new lines of business. The Department of Justice may file comments in the proceeding but is given no specific statutory role. Even in proceedings involving mergers, acquisitions and other transactions between two class I railroads, Justice has no specific statutory role. Although the Department can and usually does submit its views on the excessive effects of a proposed transaction, the ICC can approve a merger over the objections of Justice.

Indeed, the potential adverse effect of competition is only one of five factors considered by the ICC in its determination whether to permit a proposed merger or acquisition between the Nation's largest railroads. Congress has given the ICC a broader mandate than

simply competition. As the agency of expertise, Congress has directed it to balance transportation and employee interests, among others, with competitive concerns and to accord substantial weight—not to recommendations of Justice—but to any recommendation of the Secretary of Transportation. Justice is not even mentioned in the statutory mechanism.

I could go on through various other areas. But the point is, it is the intent of our structure that this be done at the FCC. What we in Congress want the FCC to do, if it is universal service or whatever it is, or if it is compensation or whatever is decided, the idea is that the representatives of the people are supposed to decide, not the courts. And if it is good or bad, Congress should be thrown out of office or held accountable for it.

Presently we have no one here who is accountable for what is happening in telecommunications because the courts have taken it over. And that is a major part of this bill, to put Congress back in charge of telecommunications and information policymaking and to let the people make judgments on us as they do in elections. That is the basis of democracy. That is what democracy is about.

So, the Federal Communications Commission regulates the communication industry. It should. The Department of Justice should enforce the antitrust laws. Or we can change the antitrust laws if we want. But to create a group of regulators over at the Department of Justice is not wise. Legislation pending before Congress supersedes the provisions of the modification of final judgment that governed Bell company entry into business now prohibited to them. Once legislation is signed into law, a continued Department of Justice role in telecommunications policy is no longer necessary except in the area of enforcing the law.

DOJ does not need an ongoing regulatory role as part of an update of our Nation's communications policy. Such a role would be duplicative of the FCC's authority. Actual regulatory oversight is not what DOJ is equipped to provide. DOJ's claim that it ''alone among Government agencies understands marketplace issues as opposed to regulatory issues'' is inaccurate. I agree with many of the objectives as my friend from Nebraska. Indeed, I think the Senator from Nebraska and I have the same objectives. But we have carefully crafted this bill over months of work, included universal service, included more competition, included more deregulation, included more freedom. It has been a very delicate balance.

Dual Department of Justice and FCC bureaucracies to regulate the communications industry delay the benefits competition brings consumers.

These benefits include lower prices, new services, and more choices for communications services. I have already gone through the length of time and the cost, and ultimately these costs are paid by consumers. You know you can do more for a senior citizen by helping them have lower gas prices to heat their home in the winter than you can by giving them a check, frequently. For example, when we deregulated natural gas in the late 1970's, early 1980's— I must say that it was a Democratic President who took the lead on that— and we followed through with a Republican President. But when that occurred I was over in the House and coming to the Senate. I heard all the speeches about how, if we deregulate natural gas prices will skyrocket, the companies will gouge the public, and senior citizens will need subsidies to pay their heating bills. Look at what has happened with natural gas prices. They collapsed. They have been low. They almost give the stuff away there is so much competition. Senior citizens have had cheaper gas bills, and farmers have had cheaper bills in drying corn.

Some people think you are compassionate if you give checks out to people, if the Federal Government gives a senior citizen a check every month. That is nice, if we can afford it, and it is needed in some cases. But I say that you do just as much for consumers in this country of providing competition for cheaper products and new innovations.

Let us take the computer industry. Forty percent of our homes have a personal computer. The price is dropping and dropping. There is new technology of every 18 months because there is not Government regulation, because there is competition. Some people would say the Government should set standards for computers or provide for regulation of the computer industry. Then it would take 10 years to get a new computer. Some people would say why not model the computer industry on the telecommunications model. But the fact is that prices are dropping, technological innovation flourishing and America's leading the world because of the fierce free market competition in the computer industry. So I say let us model the telecommunications sector on the computer model.

Let us look at cellular telephones, for example. That is one of the few parts of the information highway that we have. Everybody talks about the so-called information superhighway. What is it? It is cable TV, it is some cellular, and some computer Internet. But in reality we have not gotten much of it yet, whatever it is going to be. But it is going to be invented and sold when we have competition and deregulation. Cellular technology was invented in the late fifties. Then Government regulation took 30 years before it was approved for sale. Government regulation said it could only be sold in certain areas by certain people. It was not until the 1990's that we finally got full deregulation and competition in cellular phones. And within a few years, everybody is carrying a cellular phone. They are getting smaller and smaller. Government regulation is off. But it was delayed from the late 1950's until the late 1980's—30 years of delay because of Government regulation. We could have had this in the 1960's or the 1970's. It is estimated that that delay cost American consumers $89 billion. That stimulates our economy when people can communicate better, and do business deals faster. They can be safer. A senior citizen can push a button on an emergency communications device in their bathroom and have an emergency call placed. These things were not available. They were known since the 1950's but because of Government regulation they did not come into being until very recently.

So I could cite computers. I could cite cellular phones. I could go on and cite many other areas. But in this particular area of telecommunications we are going to see a boom of new devices, and a dropping of prices. We are going to see telephone prices drop substantially. We are going to see long distance rates drop. We are going to see cable television rates drop. Presently people are paying too much for telephone calls. As I have indicated in an earlier stage of this debate, based on the same ratio as how much computer prices have dropped and processing power increased, you should be paying only a few cents for most long distance calls and fewer cents for most local calls. That is the fact.

So we need competition and deregulation. This bill has it in it but it is being opposed. Talk about corporate interest, the companies who are supporting the DORGAN amendment have been running full-page ads in our newspapers. That is fine. They can do so. But this idea that one side is all corporate interests and the other side is not is not true. There are large corporations on both sides of this amendment. But the people supporting the DORGAN amendment have been spending millions on lobbyists and full-page ads just like the opposition has been.

So those people who cry corporate interests, pick up yesterday's newspapers and read the full-page ads. Both sides have done it. But lately, all the spending has been done by people who supported the Department of Justice role because they want to slow competition down and game the process.

So there is corporate interests on both sides of this. I do not like pontificating by either side. I hope I am not pontificating. But the point is, look at the newspapers of last week and see who was buying the full-page ads.

So, Mr. President, I conclude by saying that I think we have a good bill. I hope that we hold it together. I am confident we will pass this bill with overwhelming bipartisan support. I yield the floor.

Mr. KERREY. Mr. President, one very quick response. One of the rules of debate is say something over and over and over and pretty soon people begin to believe it is true. This amendment

does not give the Department of Justice a regulatory role. It gives them a responsibility to make a determination as to whether or not there is competition. That is what it does. It does not carve out some new area of the Department of Justice to regulate. Indeed, the legislation itself is as a consequence of our recognizing that there is too much confusion in current law; that there are too many bottlenecks in current law. That is what we are attempting to do about the underlying legislation, to come up with a simplified test in a simplified way for businesses to know what it is that they can do and try to remove the regulatory hurdles of entry into various markets. That is what we are trying to do.

This underlying amendment very simply says, first by Senator DORGAN and now by Senator THURMOND, merely that the Department of Justice should not just have a consultative role. ''Oh, by the way. What do you think?'' Instead, the Department would have a role based on section 7 of the Clayton Act in making a determination as to whether RBOC entry into interLATA services would substantially lessen competition or tend to create a monopoly. That is the idea.

I just appeal to the consumers out there trying to figure out which side to come down on. Look at that 14-point test. It all looks fine to me. They say, ''Well, this was put together by staff or it was put together by us here in Congress.'' It took me a long time to figure out what all 14 mean, and I am still am not sure what each one means. I do not know if they will produce competition.

I can imagine a scenario under which you get no competition with those 14 items. Competition again means the consumers have real choices. The Senator from South Dakota talks about the cellular industry being restricted. It was restricted by the monopoly of AT&T. The monopoly kept the technology from coming online. It was not Congress. Congress did not say in the 1970's we have this great new technology, cellular. So what we are going to do is take on the monopoly, and we do not care what AT&T says. We are going to disregard this influence on Congress and we will come down here and pass legislation that will break them up. That did not happen, I say to consumers now who have benefited from reduced rates for long distance and increased quality in long distance. The increase in quality and deployment of fiber occurred as a consequence of this competition. That benefit did not come as a result of Congress having the courage to take on the monopoly. It came as a consequence of the Department of Justice suing on behalf of the American consumer.

So this amendment is simply something that says to consumers you are going to have the Department of Justice who brought you competition in the long-distance arena, who objected to mergers that were allowed to go forward in airline deregulation which reduced competitive choice and increased prices, we are going to give this agency not a consultative role but the opportunity to say that there is or there is not competition.

If there is competition, have at it. It may be that they say it is a heck of a lot faster. Judging from the evidence at hand, it is likely they come at least as quick to the conclusion as to whether or not there is competition as the FCC looking at this 14-part test.

So we are going to have a vote on this tomorrow at 12:30. We will have an opportunity to debate it a little bit in the morning. I look forward to it, and I hope it will be that the amendment passes because I believe on behalf of American consumers it is going to ensure competition and only by ensuring competition are we going to get the benefits that both the Senator from South Dakota and I wish to see happen in the United States.

I yield the floor.

Mr. PRESSLER. Mr. President, I would disagree with my colleague on cellular. I do not think it was AT&T. It was Government regulation. Maybe AT&T went to the Government. Maybe AT&T used Government regulations. But cellular phones were held up by Government regulation, by all accounts. But that is the point. A lot of companies use Government regulation to hold up competition and to hold up deregulation.

Also, I would be in disagreement with my friend that the computer industry has lost 150,000 jobs. Maybe they have lost 150,000 but overall they have gained. One measure of the relative market growth is the number of employees. In 1980, there were a little more than 300,000 Americans employed in the computer industry while more than 1 million were engaged in the provision of telephone products. And our statistics show there has been a steady increase. There have been some jobs lost but overall there has been a substantial gain, and I shall put that into the RECORD.

By 1993, computer products and services accounted for more than 1.2 million jobs, a fourfold increase. At the same time, the number of telephone employees had dropped to less than 900,000. So unless those numbers are incorrect, I think we have to say that the computer industry has been an expansive industry operating largely without Government standards and regulation where there has been fierce, free market competition.

Indeed, I also serve on the Senate Finance Committee, and every 18 months the computer industry wants to get depreciation; that is, they want their schedule to be 2 or 3 years or less because product cycles change so quickly because there is rigorous competition.

This chart tells what we are trying to do with S. 652—The Telecommunications Competition and Deregulation Act of 1995. This is the most comprehensive deregulation of the telecommunications industry in history and it will promote international competitiveness, job growth, productivity, and a better quality of life. It provides open access to full competition. Interconnection and unbundling will put new competitors including cable and long distance on the same footing with former monopolies. Consumers will use the same phone number and dial the same number of digits no matter what local telecommunications companies they choose, and the competitive checklist for compliance with open access will assure certainty and simultaneity.

Let me also say that universal service is preserved. All providers contribute. We make subsidies explicit. There have been some people who have said, well, this is like a new tax. In fact, it has been reduced from $10 to $7 billion. But all on a bipartisan basis felt strongly that universal service should be preserved.

Removal of restrictions to competition in all markets. Telephone and cable firms are free to compete in each other's markets. For the first time we end this economic apartheid. We let them go into each other's markets and compete and some of them do not like that. But they will have to do it. This is transition to the wireless age, but we have to make them compete.

Utility companies free to enter telecommunications markets. And there are some safeguards here, but we need to unleash our utility companies so they will come into the other markets with a burst of energy and will create new jobs, new products, new service offerings.

The removal of long distance and manufacturing restrictions for Bell companies. Presently, the Bell companies cannot manufacture in this country, so they go abroad to do it. This will unleash new investment in this country, create jobs in this country, instead of having them send their money overseas. And they will be able to get into the long distance business if they wish.

Let me say that some people are worried that the Bell companies are going to become monopolies. We still have Hart-Scott-Rodino. We can change the antitrust laws.

That is something I should say here. Everybody has been saying what the Justice Department should and should not do. If we do not like the antitrust laws, we should change the antitrust laws. We should not create a group of bureaucrats over there who are regulators. Let us change the antitrust laws if we wish to. And I would say that regarding the airlines if necessary.

Market pricing, not Federal price controls for cable. And I predict that the same thing will happen to television in cable rates as happened in natural gas. We will have video dial tone from regional Bell or some other telephone companies. We will have other cable and video providers coming into the market, plus we will have

cable TV, plus we will have broadcast and more than one DBS operator—probably three or four. So you will be able to choose between seven or eight television services. When that happens, the prices are going to go down because there is real competition. But if we do not pass this bill, frequently the average consumer will only have one choice. And that is what competition and deregulation will do. The prices will drop, will just collapse when they have to compete, just as telephone prices will as well. When there are more providers, those telephone calls are only going to cost a few cents and long distance calls are only going to cost a few cents. That is all that they should be costing.

Next, rate of return regulations for large telcos eliminated.

New flexibilities for broadcasters who offer digital service.

End arbitrary limits on broadcast ownership because they are really out of date. And I know that we have increased to 35 percent the amount of the national audience one television broadcast group can have. I would like to raise it to 50 or 100 percent if I could do it. In my original chairman's mark, it did. There will be an effort tomorrow to lower it to 25 percent. I think the old line networks are trying to use Government regulation to avoid competition. They need to get in there and compete instead of coming to Washington to the FCC and to Congress for limits on what can be owned, and so forth, because it will take care of itself. Just as in computers we saw this immense resurgence and regurgitation and these bursts of energy from new companies, we will see the same thing in media and telecommunications.

Extend broadcast license term to 10 years with expedited renewal procedures. Most of the broadcast limitations, in my opinion, are obsolete and should be eliminated.

State and local barriers to market entry repealed. I hope we can hold on to that one tomorrow. We have another crucial vote tomorrow afternoon on preemption of local barriers to entry. Because we cannot allow States and cities to just grant monopoly franchises if we are going to have real competition.

Now, also we are working on investment and growth in the global markets.

We open U.S. telecommunications markets for more investment on a fair and reciprocal basis. A reciprocal basis. This is international law at its best. We will allow other countries to invest here on the same basis that they permit U.S. invest there.

U.S. comparative advantage in products, services, and software with no domestic content provision. That is a very significant change from last year.

Let me explain that. Some of our large unions want to have a domestic content provision but that is anticompetitive. Through GATT and these other international trade agreements we want international competition. We want deregulation and competition. And we did not put the domestic content provision in this year's bill. And that is what Mickey Kantor and members of the administration say they want—members of the administration should be supporting this bill. These are all things that, as I understood it, AL GORE and the administration are for. Mickey Kantor came up last fall and told us in the Commerce Committee that he did not like the bill last year because it had domestic content in it, and we took domestic content out this year. This is deregulatory. We are making some progress toward being an international competitor, and we cannot go on demanding domestic product content and say that we are for international trade.

Next we have sunset for regulation. Biennial review of all remaining Federal, State, and local rules, regulations and restrictions.

It is time we reduce the Federal bureaucracy. We are going to have systematic regulatory review and reform through S. 652. This means every 2 years after reviewing every regulation, we will do away with as many as we can. Inside the beltway, these agencies grow and grow, and they do not want to give up their turf. That is what we have, a turf battle. The Justice Department wants to do the same thing the FCC is doing, and some big companies say, ''That is good, because that will slow down competition.'' They are running full-page ads supporting that concept.

Next we have regulatory forbearance authority ordered, then deregulatory parity for telecommunications providers offering similar services, so that we can get them all competing.

So there it is. That is what we are trying to do. That is what is in this bill. It is not a perfect bill, but it passed the Commerce Committee 17 to 2. We had two Republicans who had some concerns. They wanted it to be more deregulatory, and I sympathize with them. Every Democrat on the committee voted for it. Now the White House says it has concerns. I took this draft over to Al Gore in January. I gave it to him and asked for his help.

We need the administration's help when we get into conference on this bill. It really delivers on all the reform ideas we hear them talk about all the time. This is what the President says he is for. This is what the Vice President says he is for. Let us pass it.

Tomorrow we have two crucial votes. We have to defeat the Dorgan amendment, which would add another level of bureaucracy. We also have to beat back the effort to erect new State and local barriers when we are tearing down Federal barriers.

So, Mr. President, I will conclude by thanking the Members of the Senate for the debate today. I have tried to accelerate the pace of this bill.

I do not see any other Senators who wish to speak.

## RECESS UNTIL TOMORROW AT 9:15 A.M.

Mr. PRESSLER. Mr. President, I ask unanimous consent that the Senate stand in recess under the previous order.

There being no objection, the Senate, at 9:32 p.m., recessed until Tuesday, June 13, 1995, at 9:15 a.m.