do not thank people enough. And the pages have just been terrific.

We are very proud of you, and I am sure some of you are going to be Senators someday in the future.

But it is not only the pages. It is the people who take the RECORD; it is the people at the front desk who tolerate us when we come up and say, ''How did COATS vote on this? How did PRESSLER vote on this?'' It is the people who are waiters and waitresses downstairs—all of the people, the people who watch the doors. I am going to get back in good graces with someone here—it is the people who write out our amendments. It is the people who provide the thousand-and-one little services that we just neglect to thank people for.

So I just wanted to get up and say we thank everyone, and wish the pages the very best. They are a fine group of young people with a bright future. We wish them the very best.

Mr. President, I see the Senator from Montana on the floor. He may wish the floor at this point.

I yield the floor.

TELECOMMUNICATIONS COMPETITION AND DEREGULATION ACT

The Senate continued with the consideration of the bill.

Mr. BURNS addressed the Chair.

The PRESIDING OFFICER (Mr. SANTORUM). The Senator from Montana.

AMENDMENT NO. 1283, AS MODIFIED

Mr. BURNS. I rise in opposition to the Simon amendment.

The Senator is right; we do not thank people enough. I wish to thank the Senator from Illinois for bringing up this issue.

I think it important that the American people take a look and see exactly what is happening in the broadcast business. Radio ownership decisions should be made by owners and operators and investors and not by the Federal Government. That is why we need to eliminate all remaining caps on national and local radio ownership.

Let us take into consideration some things happening in the broadcast industry. Even if I own two radio stations in the same market, would I program them the same? Would I want the diversity to capitalize on an advertising market so that I can expand that advertising base? Because that is what pulls the wagon in the broadcast business—advertising dollars. Would I program it the same? I seriously doubt it. And there are some right now, even though they own an FM station and an AM station and operate it out of the same building, use the same engineer, sometimes the same on-the-air personalities, their programming is different. That is what is happening in the broadcast business today. Now, that is the real world.

Nationally, there are more than 11,000 radio stations providing service to every city, town, and rural community in the United States. Presently, no one can control more than 40 stations. That is 20 AM stations and 20 FM stations. Clearly, the radio market is so incredibly vast and diverse that there is no possibility that any one entity could gain control of enough stations to be able to exert any market power over either advertisers or programmers.

At the local level, while the FCC several years ago modified its duopoly rules to permit a limited combination of stations in the same service in the same market, there are still stringent limits on the ability of radio operators to grow in their markets. Further, the FCC rules permit only very restricted or no combinations in smaller markets. These restrictions handcuff broadcasters and prevent them from providing the best possible service to listeners in all of our States. And, unfortunately, the Simon amendment, whether intended or not, only addresses the national limitations and does nothing to alleviate excessive local market controls.

Increased multiple ownership opportunities will allow radio operators to obtain efficiencies from being able to purchase programming and equipment on a group basis and from combining operations such as sales and engineering which is going on today.

We do not hear any cry in just the local market of anything being really wrong in the broadcast business.

Radio stations have to face increasing competition from other radio stations and from other advertising and programming sources, such as cable television operators. Nowadays many cable operators have begun to provide music and related services that compete locally with radio stations, and soon satellite services will have the capabilities of providing 60 channels of digital audio service that will be available in communities across the Nation, of which there is no wall to receive their signal.

Also in the near future, radio stations will begin facing the need for new capital investment when the FCC authorizes terrestrial digital audio broadcasting. Without an opportunity to grow and to attract capital, our Nation's radio industry will face an increasingly difficult task in responding to these multiplying competitive pressures.

And they are competition. But we also wonder why should we in some way or other hamper a local broadcast station from supporting the local community. News, weather, sports, all the community services that we enjoy in our smaller communities, we have to be able to attract advertising dollars, yet we will be subject to the competition of direct broadcast and also the cable operators. But competition is what makes it good. I am not worried about that. We can compete. Just do not limit our ownership decisions to buy or sell based on a Government-imposed cap on what we can own.

I received a letter from Benny Bee, President of Bee Broadcasting up at Whitefish, MT. Benny writes, and I quote:

> I can't express how important it is that the markets be opened up and the ownership caps be taken off. Broadcasters like myself need to be able to compete. . . . I urge you to defeat the Simon amendment and help move broadcasters forward as we go into the Twenty First century.

Larry Roberts, who operates stations in my home State of Montana, has written me stating:

> [Radio deregulation] would provide us with the freedom to excel and succeed. It will not only allow us to compete more effectively, it will also increase the value of our radio stations.

And in the 1980's we had an explosion, Mr. President, of licenses granted to stations when really there was no market analysis done that the market could even handle another radio station.

There are many more examples that I could leave you with. One final one from Ray Lockhart of KOGA, an AM and FM station in Ogallala, NE, not my constituents but I know Ray very well. My wife comes from that part of the country. And he writes:

> Soon, one DBS operator will be able to deliver 50 to 60 radio channels into every market in the country with none of the rules that I labor under. The Baby Bells will be able to do the same thing at even less cost. Help broadcasters by not protecting us. Cut us loose from ownership . . . regulation so we can take advantage of our abilities to compete.

And I think that is the argument here, the ability to compete. Do not shut the doors of opportunity.

So we need to look at the true picture of the challenge that the industry faces. For the longest time we have viewed radio as competing only with itself, as if it exists in a vacuum. And basically I know something about that because my main competition basically in the advertising business was from the print media. You have to deal with that—and there is competition there—in order to stay economically viable.

Radio goes head-on with other forms of mass media for the audience and for those advertising dollars that fuel its well-being. We need to start acknowledging this important distinction and give radio the tools it needs to compete with all other information providers. That is why I urge you to vote against the Simon amendment.

Mr. President, I ask unanimous consent that the attached letters from the broadcasters that I mentioned be printed in the RECORD.

There being no objection, the letters were ordered to be printed in the RECORD, as follows:

BEE BROADCASTING, INC.,
Whitefish, MT, June 14, 1995.

Senator CONRAD BURNS,
Washington, DC.

DEAR SENATOR BURNS: It was great visiting with you the other day when you were home in Montana and I hope the conference went well.

The reason I am writing is I know that you will be introducing legislation that is going

to have a tremendous impact on small market broadcasters like myself. I can't express how important it is that the markets be opened up and the ownership caps be taken off. Broadcasters like myself need to be able to compete with the large cable companies, which offer several channels as well as bulk discounts. Also, the ''Information Super Highway'' is just around the corner, which will allow large market radio stations to come in via satellites, competing with the smaller market operators for audience and advertising dollars. For us to compete at the local level, we need to be able to own and market several different formats. By owning four or five stations and formats, operating costs would drop dramatically, allowing us to pass tremendous savings on to the advertiser. Also, the audience benefits by having multiple choices of formats to listen to. And of course, we the broadcasters benefit by being able to compete with the ''big boys'' in our much smaller markets.

Senator, I urge you to defeat the Simon Amendment and help move broadcasters forward as we go into the Twenty First century. If I can be of ANY assistance on this matter, please don't hesitate to call.

Yours sincerely,

BENNY BEE, Sr.,
President.

SUNBROOK COMMUNICATIONS,
Spokane, WA, April 3, 1995.

DEAR FELLOW BROADCASTERS: We have very little time to act on a matter which will significantly impact our future. As you know, Congress is rewriting the Communications Act to reflect the new realities in which media operate. This bill is expected to be brought to the floor of the Senate so soon, that we have little time to make our feelings known to our Senators. However, it's imperative that we do so.

I urge you to support the Lott/Bryan Amendment on Radio Ownership. Here's why.

All of us are likely to soon be competing against an additional 30–60 new over-the-air radio stations in each of our markets. They will broadcast in digital stereo direct from a satellite, provided by 1 or 2 owners. If you add these stations to the recent addition of audio channels from your local cable company, plus still more channels from your telephone company which is likely to get into the cable biz, plus the additional channels offered by DirecTV satellite, it's obvious that local radio broadcasters are facing a serious threat.

If this weren't bad enough, the terrible news is that we local radio broadcasters . . . we who have worked so hard to provide service to our communities . . . are currently being left out of the deregulation of audio services. The rewrite of the telecommunications bill, as it stands today, would take the handcuffs off of the cable companies, the phone companies, and the national satellite broadcasters, giving each of them the ability to flood our markets with dozens of new channels. But as it stands, the bill leaves the handcuffs on local radio broadcasters!

Without the economies of scale provided by multiple-station ownership, we will be left unable to compete. To have just a single channel (or even 4 in the largest markets) would make our survival highly unlikely, in a world where other audio providers are operating without ownership restrictions, and without public service obligations.

Therefore, it's imperative that we support the Lott/Bryan Amendment. It would remove all radio ownership rules. It would put us on a level playing field with all of these new competitors. It would provide us with the freedom to excel and succeed. It will not only allow us to compete more effectively, it will also increase the value of our radio stations.

No matter how comfortable the past has been, with its artificial barriers to ownership, the times have changed. The issue before us is not whether radio's ownership environment will be changed from the past. It is being changed. The only question is whether it will be changed for the better, by the adoption of the Lott/Bryan Amendment, or whether it will be changed for the worse, by not allowing radio broadcasters the same freedoms of ownership that are being provided to non-traditional radio broadcasters.

Please call your Senators now and ask them to support the Lott/Bryan Amendment!

Sincerely,

LARRY ROBERTS,
President.

THE CROMWELL GROUP, INC.,
Nashville, TN, March 25, 1995.

Re lifting ownership restrictions—Locally, Nationally.

To: Small/Medium Market Licensees.

DEAR ASSOCIATES: As you know, the NAB Radio Board has supported the idea of eliminating restrictions on the number of radio station licenses that an individual operator/company can hold. If approved, the net effect will be to permit you or others to own/operate all the stations in your market area. Before you say ''no'', read on and consider what is happening:

(1) Cable systems operate 30, 40, 100 channels in your town under one owner locally . . . selling local advertising

(2) The telephone company may be offering 30, 40, 100 channels to your home as one owner . . . selling local advertising

(3) Direct TV (Satellite) now offers 30 channels plus to your home with two owners nationally . . . selling regional advertising.

(4) DARS Satellite Radio in a few years will offer 30 plus channels heard in your town with one/two owners nationally . . . selling regional advertising.

(5) Internet is fast growing and offers multiple information sources to the home in your community . . . selling who knows what with lots of options.

All of the above have/will have a subscription source of revenue plus compete with you and other broadcasters for local advertising.

As a small market broadcaster of the old school and with ''localism'' in my blood, I do not like the idea that my station could be owned by the newspaper, my competitor, a national company, Walmart, or others. It goes against my grain.

However, the Congress and the FCC are on track to permit telephone and cable companies, Satellite providers, and others to be single owners with multiple channels serving your and our communities. In the future the competition will be fierce. For a small market broadcaster with only one product (ie: one format) competing against other broadcasters AND the new technologies, survival will be a real difficult challenge.

Current rules hinder only the local broadcaster. All the others are free to operate. We may think we are protected by having ownership rules, but in the future we will be hamstrung. We won't be able to compete and we won't be able to sell because our value will have declined. Historically regulation has held broadcasters back in the face of new technology. Unless we act now, that could again be the case.

Eliminating ownership rules (as distasteful as it sounds to me today) makes it possible to have ''localism'' in the future. You or your buyer will be able to provide ''multiple'' signals in your community and be able to compete with the new technologies. As you think ''NO'' today, please consider that you might wish tomorrow you'd said ''YES'' and supported a chance to get in a position to compete. We can't use old regulation to protect against a horse that's already out of the barn.

Large and small market broadcasters (corporate vs small operators) do have different business objectives. But remember, one Baby Bell Operating Company is larger than the entire Radio/TV industry. There are seven Bell Operating Companies, plus all the cable, satellite, and others, so you can see that's coming and what we're up against.

I know it may go against your grain to support eliminating ownership limits today, but please do it to insure you have positive options in the future.

Sincerely,

BUD.

SORENSON BROADCASTING,
Sioux Falls, SD, March 27, 1995.

JOHN DAVID,
NAB Radio
Washington, DC.

DEAR FELLOW BROADCASTERS: Broadcast Ownership Rules, particularly Radio Ownership Rules are ''up for grabs'' in Washington, D.C. As a broadcaster who has built a career on Local-Service-Radio, I feel it's imperative you and I protect our Stations, Communities, and the concept of Local-Service-Radio. . . . Now.

What am I asking? (1) You and I must consider strong support of the position voted by our NAB (National Association of Broadcasters) Board of Directors, and (2) You and I need to contact our Congressmen . . . especially Senators on the Commerce Committee.

I grew up in a different world than we're now experiencing. It's excitingly scary what is being proposed for the future. However, I am certain. . . . I want to be able . . . as a local radio broadcaster to play in the new technologies . . . whatever they happen to end up being.

Experience shows it's hard to ''Out localize'' the local radio station. However, if the Ownership Rules are changed to give the ''trump card'' to other media in the changing and future world of technologies . . . we could find ourselves embarrassed into a ''position of weakness.'' This could also affect the present and future value of the radio stations you and I own and operate.

In the communities where we operate . . . Cable systems are now offering 45–75 channels, complete with 10 channels of music (radio)! Telephone companies are throwing serious money at new business opportunities, and if satellite radio comes to my town, as Direct TV already has. . . . I'm not certain yet what those changes mean. But . . . I do realize the importance of my company . . . as the local radio folks . . . being able to compete on a level field.

And if ownership of the local newspaper makes sense. . . . I would like not to be forbidden from the chance to own it.

I have talked personally with our friends who serve on the NAB's Radio Board of Directors. They have thoughtfully presented a position which deserves our support. I ask simply that you familiarize yourself with that position . . . then begin explaining your position to your Congressman.

Enthusiastically,

DEAN SORENSON,
President.

OGALLALA BROADCASTING CO., INC.,
Ogallala, NE.

DEAR FELLOW BROADCASTERS: I was stunned to hear that some Senators and the NAB were receiving calls from some broadcasters opposing the idea of deregulation for the radio industry. Are you kidding me? In my tiny market my local TCI cable system

with 3500 paid subscribers delivers 30 Music Express channels, sells local commercials for $1.25 per 30 second spot and they have plans to deliver more TV signals with more local access all over the country. No ownership limits, no FCC intervention in anything but technical standards. Why shouldn't I as a broadcaster be afforded the same?

Soon (by year 2000) one DBS operator will be able to deliver 50 to 60 radio channels into every market in the country with none of the rules I labor under (localism, main studio, public file, lowest unit rate, FCC rules, etc.). The Baby Bell's will be able to do the same thing at even less cost. Our Public Interest Standard is a one way street that keeps us 2nd class and Government controlled. (1st Amendment freedoms do not apply to us, right?) We do have a shot at these freedoms if we're not afraid to take it.

Some local operators say, the FCC must protect us from someone buying everything up. Why? They protected us in the 80's with 80/90. Wasn't that fun? If I can't compete with the big boys that can and will buy multiple markets (yes, maybe even WalMart) at least a market has been created for my stations that will bring a better price than if we don't have a level playing field with the new technologies and players.

I am fortunate enough to have been able to take advantage of the small market duopoly rule and buy the other station in this town of 5,000. It is a very worthwhile venture that everyone should be able to do if they so desire.

Tell your Senators to help broadcasters by not protecting us. Cut us loose from ownership and everything but technical regulation so we can take advantage of our abilities to compete. It is the future of our ''over the air'' broadcast industry we're dealing with. Get involved if you're not!

Remember, a Government that is big enough to give you the protections you want today is big enough to take them away tomorrow.

Mr. BURNS. Mr. President, I urge that this amendment be defeated. For the first time, only 40 percent of the radio stations operating in the United States today are really making a profit. So some kind of consolidation is needed to keep them viable. It is like I said. If I own two newspapers in the same market, would I format those newspapers just exactly alike? Even with first amendment rights, would I slant them the right way? Or whatever. I think what I would do is be diverse with them, to broaden the base of the advertising market in that particular locale. That is also true whenever you start trying to attract national dollars on national advertising campaigns. And it is how good your reps are when they start representing your station.

So I appreciate the amendment because I think the American people have a right to know just what is happening in the broadcast industry. I understand where the Senator is coming from, but he also has to look at what is happening in the real world as far as radio broadcasting is concerned.

I thank the Chair. I yield the floor and reserve the remainder of my time.

Mr. SIMON addressed the Chair.

The PRESIDING OFFICER. The Senator from Illinois.

Mr. SIMON. I yield 5 minutes to the Senator from North Dakota [Mr. DORGAN].

The PRESIDING OFFICER. The Senator from North Dakota.

Mr. DORGAN. Mr. President, I stand in support of the amendment offered by the Senator from Illinois.

As I listen to some of the debate on this amendment, as well as the debate on the amendment I offered previously which tried to restore the restrictions on television station ownership, it occurred to me that we ought to really remove some desks in the Senate and provide a stretching area. When you go to a baseball game, you see these folks stretch out before the game, getting all limber. I do not know of anyone who can stretch quite so well as those who stand in this Chamber and preach the virtues of competition and then decide to advocate concentration of economic ownership by lifting the restrictions on ownership of television stations and radio stations.

That is some stretch. But it does not quite reach. It does not prevent people from trying, however. You cannot, in my judgment, preach the virtues of competition and take action that will eventually end up resulting in a half a dozen or a dozen companies owning most of America's television stations. With respect to this amendment, we will end up with conglomerates owning the majority of America's radio stations.

It is as inevitable as we have seen in other industries that concentration means less competition. Concentration is the opposite of competition. How people can preach competition and come to the floor of the Senate and advance the economic issues that lead to more economic concentration is just beyond me.

Even if that were to escape the folks who preach this unusual doctrine, one would think that at least the issue of localism would matter.

Let me read a quote, if I might, to my colleagues. Bill Ryan, of Post Newsweek, recently stated:

> The whole world is trying to emulate the local system of broadcasting that we have in this country, and here we are creating a structure that will abolish it or put it in the hands of a very, very few.

I do not know how you express it more succinctly than that. I understand why these things emerge in this legislation: It is big money, big companies, big interests. I understand the stakes here. But the stakes, it seems to me, that are most important are the stakes with respect to what is in the public interest in our country. Is it in the public interest to see more and more concentration of ownership in the hands of a few in television and radio, or is it not? In my judgment, the answer is clear; it is no.

So I just wish we could find a circumstance where those who preach competition would be willing to practice it. Practicing competition in this area would be to support this modest amendment. The Senator from Illinois comes to us with an amendment that provides for a limit of 50 AM and 50 FM stations that one person may own. I, in fact, think it ought to be lower than that. But the Senator from Illinois has proposed a modest approach, and then finds himself struggling because the very preachers of competition are suggesting that somehow the Senator from Illinois is proposing something that is wrong.

I tell you, there is a total disconnection of logic on the floor of the Senate on this issue. My friend from Montana grins about that. But I would bet all the cattle in North Dakota against all the cattle in Montana that 10 years from now if the broadcasting ownership deregulation provisions in this bill passes, that we will see the consequences that I have suggested. We will see massive concentration in television ownership and massive concentration in radio ownership.

The Senator from Montana will say, ''Well, that would be OK, because, they wouldn't compete against themselves, they would have different formats.'' They would have a couple different stations. One would be producing country western music and the other classical music. They will both be extracting, if they control the marketplace, the maximum amount of money from the advertisers in that marketplace.

The issue here is competition. If you bring this bill to the floor with a dozen flowery opening statements and talk about the virtues of competition, then there seems to me there is some obligation to practice competition with respect to the amendments and the language in this bill. This is exactly the opposite of the tenets of competition. These provisions which eliminate the ownership restrictions, will inevitably, lead to greater concentration of ownership.

That is the point I make, and that is why I support the amendment of the Senator from Illinois. We had a close vote on the ownership of television stations yesterday. I won that vote for about an hour. But that was before dinner. Then after dinner, we had a bunch of folks limping into the Chamber all bandaged up and changing their votes. What happened was apparently before dinner, they believed concentration of ownership in the television industry was not good. Then they had something to eat, or ate with someone who convinced them that concentration of ownership was good.

It would be interesting for me to hear how they explain that conversion over dinner, but I understand that you do not weigh votes, you count them.

I hope when we get to the issue of concentration of radio ownership that maybe we can win this one and maybe win for more than an hour. I think it would be in the public interest if we adopt the amendment offered today by the Senator from Illinois.

The PRESIDING OFFICER. The Senator's 5 minutes have expired.

Mr. DORGAN. I yield the remainder of my time.

Mr. LEAHY addressed the Chair.

The PRESIDING OFFICER. The Senator from Vermont.

Mr. SIMON. Does the Senator want to speak on this amendment?

Mr. LEAHY. Mr. President, I ask unanimous consent that I be able to proceed for not to exceed 10 minutes on the Lieberman-Leahy amendment, amendment No. 1298.

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

AMENDMENT NO. 1298

Mr. LEAHY. Mr. President, I think the Lieberman-Leahy amendment is necessary because we have to make sure that if we deregulate cable rates, we do not do it on the backs of the consumers. And, right now we are. In most areas in this country, consumers are captive to monopoly cable service providers. In fact, the only thing that stands between the consumers' wallets and the monopoly cable company is regulation.

Under the telecommunications bill, the sure-fire way for a cable company to avoid regulation is to raise their rates across the country. It is very, very interesting what we are doing. If we sent this up for a national referendum, the Lieberman-Leahy amendment would be agreed to overwhelmingly. If we had a referendum by only some of the well-heeled PAC's and lobbyists around here, well then, of course, it goes down. So the question is: Who do we stand with?

We all get paid enough money so that $10 or $20 added onto our cable rates each month probably does not seem like a lot. But to most people living in Vermont or any other State in this country, that is a big difference. Ask people who get cable television in this country whether they think their cable rates would go up or down if monopoly cable companies are left to themselves to decide what the rates would be.

The American people are pretty smart. They know darn well if we let the cable companies have a monopoly and have no regulation, those rates are going to go up. They are never going to come down. The only times they have come down is when Congress stepped in. In fact, when we passed the 1992 Cable Act, President Bush vetoed it, and we overrode the veto, because consumers were being gouged by cable company monopolies. Cable rates were rising three times faster than the inflation rate. Every American knew it, and finally Congress got the message and they overrode the Presidential veto.

Consumers demanded action to stop the rising cable rates. The law worked. In fact, since passage of that law, consumers have saved an estimated $3 billion, and they have seen an average 17 percent drop in their monthly rates. As rates have gone down, more people have signed up. Last year alone, over 1.5 million new customers signed up for cable service. One would think the word would get across: If you keep the rates reasonable, more people are going to join.

The telecommunications bill would lift the lid on cable rates.

Under current law, cable rate regulation is dispensed with only when the FCC finds there is ''effective competition'' in a local market.

The telecommunications bill, as reported, would change this law by deeming ''effective competition'' to be present wherever a local phone company offers video programming, regardless of the number of subscribers to, or households reached by, the service.

The bill would also lift rate regulation for upper tiers of cable service, unless the cable operator is a ''bad actor'' and charges substantially more than the national average. Of course, the national average could be set by the two largest cable companies. They almost have an incentive to raise the national average and the rates.

In fact, the day after Senator LIEBERMAN and I held a press conference to voice our concerns over the cable deregulation parts of the bill, the managers' amendment to this bill was adopted in an effort to provide more protection to consumers from the spiraling cable rates after deregulation. But I do not believe it goes far enough.

The managers' amendment ties rate regulation to whatever the national average was on June 1 of this year, to be adjusted every 2 years. But that still means if the two or three largest cable companies raise their rates, the national average will go up, and rates for all consumers would spiral upward.

Now, Mr. President, if any one of us went to a town meeting in our State and we said: Here is the way we are going to set cable rates. We are going to allow two or three huge cable companies to determine what the national average will be for your rates, and we will leave it to their good judgment. Should they raise rates, well, then everybody's rates would go up. If they lower rates, everybody's rates will go down. And now, ladies and gentlemen in this town meeting, what do you think those big cable companies are going to do? Will they raise your rates, or will they say their subscribers are paying enough—''Let us lower the rates, let us give the average household a break?''

Well, just asking the question, we would get laughed out of the hall. Every American who gets cable knows the cable companies are not going to just lower the rates on their own. I hear this back home. I do not care if a person is Republican, Democrat, independent, whatever, they are saying the same thing: Cable rates are too high. They also say that unless you have real competition to bring rates down, do not leave the cable companies to set the rates, because they are never going to bring them down. They are always going to raise them. Under this bill, the more cable operators raise rates, the more they can avoid regulation of their rate increases. If cable rate regulation is lifted before you have effective competition, then you can expect the rates to go up at least $5 to $10 a month. We are trusting in the generosity and good will of the cable companies. Good Lord, Mr. President, we are all adults; we ought to be smart enough to know better than that.

The Lieberman-Leahy amendment would fix the cable rate regulation problems in the bill. Our amendment would use competitive market rates as a benchmark for whether rate regulation is needed to protect consumers. Instead of letting a few cable companies control the cable rates for all consumers in the Nation, our amendment would ensure that rates are fair. Regulators can step in to protect consumers when rates are out of line with competitive markets.

Small cable companies, particularly in rural areas, of course, have different economic pressures on them than operators in high-density areas. Our amendment would exempt small cable companies from rate regulation. If you are in rural Pennsylvania or rural Vermont, and your house is maybe a mile or two a part, it obviously would cost you more to set up your cable system than if you are wiring high-rise apartments in a high-density area.

I do not think we have to give cable companies any incentive to raise rates. Mr. President, I have a feeling the cable companies will figure out how they can raise rates, without us encouraging them to do it. I do not think any one of us wants to go back home and tell our constituents that we passed legislation that actually encourages cable companies to raise rates, rather than doing something to hold them down.

We stepped in once before, over a Presidential veto, to curb spiraling cable rates. The Lieberman-Leahy amendment ensures that consumers have the protection they need. Do you not think we ought to do this?

Now, if we have a situation where we have two or three cable companies in one community or one area, I would rely on competition to bring the prices down, and it will. But when you only have one cable company, or if you have a telephone company that has come in and bought out the cable company, so that you have a monopoly on top of a monopoly, Mr. President, altruism is not going to bring those rates down. People are not going to see their rates come down just out of good will on the part of the cable company. We are either going to have effective competition or regulation. If we have effective competition, let cable companies set their own rates. But if you have a monopoly, you should have regulation that is going to bring the rates down.

Again, I will tell you this. Any member of the public that is getting cable television would agree that if this was a referendum among the taxpayers of this country who have cable television, they would vote overwhelmingly for the Lieberman-Leahy amendment. If you are somebody representing one of the cable monopolies, of course, you

are not going to want it because it is going to say that you do not have a license to print money. That is basically what they are going to have—a license to print money—if we do not have some regulation on them.

Let us at least wait until there is real competition. Some have said that these new satellite dishes will do it. Well, there is only, I believe, 600,000 or so of those in the country. Less than 1 percent of the people get their service that way. It is about $600, $700 to set it up. Let us wait until there is real competition.

Mr. President, I yield the floor.

Mr. PACKWOOD addressed the Chair.

The PRESIDING OFFICER. The Senator from Oregon is recognized.

Mr. PACKWOOD. Mr. President, I thank the Chair. I come to speak in strong opposition to this Lieberman-Leahy amendment. Seldom has something been so misguided, misconceived, and antimarket as what we have attempted to do to cable over the last decade.

I can speak with some degree of knowledge and history on this, because I was chairman of the Commerce Committee when we deregulated cable in 1984. When we deregulated them, we asked two things of them. One, give us lots more channels. Two, give us more diverse programming.

Mr. President, we got that in spades. There is hardly a person so young in this Chamber that they cannot remember precable days, when what you got was ABC, NBC, and CBS, through your local affiliates, maybe a public broadcasting station, and maybe an independent, unless you were in Los Angeles or New York. That was basically it on television. You got it with your rabbit ears.

Cable came in initially to fill a void where people could not get signals. Instead of growing from urban to rural, they grew from rural to urban. They began to realize if they were going to compete, they had to do more than just carry the signal of the major networks. And so when they were deregulated in 1984, they gave us what we asked for. Today, we have, unfortunately, limited them with that foolish 1992 act. But you could ''channel surf,'' as we have learned to call it, and be fascinated. I find Spanish language stations here in Washington. You can find three or four in Los Angeles, and a number of them in Corpus Christi. They program to the market on things that the over-the-air networks could not do because, by the very nature of the fact that you were over the air, you had to have a wide audience. You could not program to a narrow audience. Cable can.

Cable can make money on programming to a narrow audience. So consumers got services and programs that they wanted, that they could never get before. You cannot probably justify a history channel on NBC or ABC or CBS, broadcasting over the air to a broadband audience; probably could not on MTV, if you had to cover the entire audience in an area. But you can on this narrow broadcast.

Now this argument about competition, holy mackerel, Mr. President. The argument about a referendum, put this to a referendum, people would vote down what they are paying for cable. My hunch is if you put to a referendum what they pay for phone bills, they would put that down. And electric bills.

I hesitate to say what they would do if you gave them a referendum on congressional salaries. My hunch is they would vote that down. Is that the standard this representative body will be —whatever a referendum might be, that will be it?

If you were to pose the question in a different way to people, do you want to cut your cable prices in half and have your programs cut in half and have the channels taken off, you might get a different answer. But if the question is, do you want some costs lowered, what answer do you expect to get? I would like to have the price of gasoline lowered. I might put that up for a referendum and see what we get.

Now look at the competition argument. I heard the Senator from Vermont talk about 600,000. This is not 600,000 direct broadcast satellite over the year, but 600,000 what we call wireless cable.

This is growing. You normally have to have flat terrain, but this does not come from the satellite. Wireless cable, as we call it, is line-of-sight from a transmitter. Because the terrain is relatively flat, the line-of-sight is good.

Corpus Christi is a good example where the line-of-sight has taken a fair portion of the market and the prices are cheaper than normal cable, and you can transmit a good program over the air because you have a straight line-of-sight.

Obviously, that kind of programming is limited, but it is growing. That is the 600,000 subscriber figure that the Senator from Vermont talks about. They expect to have 600,000 within 2 years grow to 1.5 million, and 3.4 million by the year 2000.

In addition, you already have Bell Atlantic, NYNEX, Pactel, phone companies, all of them experimenting in small areas with carrying the equivalent of cable on their phone wire system.

That is going to expand. But then beyond that, direct broadcast satellite. Here is a business, 2,000 new subscribers a day. The company that makes the dishes cannot make them fast enough. Mr. President, 2,000 additional subscribers a day. We will have over 5 million subscribers to this by the year 2000, and I bet that is an underestimate.

Except for the local news, you can get every program from the direct broadcast satellite you can get from cable. If you want the local news, you know that 94 percent of the people in this country can get local news with rabbit ears. Local is local, you do not broadcast very far.

All you have to do is turn the switch on your television set from cable to over the air and you can get the local news. So the fact that the direct broadcast satellite cannot physically carry it at the moment is not an impediment.

Mr. President, the market works. While we are talking about communications, the best example to probably use is the cellular telephones. Again, I speak with some degree of history on this.

In 1981, when I was chairman of the Senate Commerce Committee, we passed a bill restructuring AT&T. They had to have separate boards for Bell labs, and we worked out an agreement that was satisfactory to a lot of parties.

The bill went to the House. Before the House acted, the antitrust settlement between AT&T and the Government was arrived at. The so-called modified final judgment. Therefore, the bill became moot.

AT&T and everybody else agreed to a different method of restructuring than we passed in the Senate Commerce Committee, and that agreement was that they would spin off all the local Bell companies. They would get out of the local business and keep the long distance business.

That was not the only agreement in the modified final judgment. There were lots of things that the local Bells could not go into—local information services, manufacturing. This was a structured settlement. Still regulatory, but very structured.

The one thing that the settlement left out was cellular telephones, because there was no future in cellular telephones of any great consequence, and nobody cared about it.

An analogy I used the other day was the dividing up of the Middle East by Britain and France after World War I. All of the Middle East had been part of the Turkish sovereign area. Turkey was allied with Germany in World War I, and Britain and France in the middle of the war said, ''When this is over we will take a lot of Turkey's territory in the Middle East and divide it among ourselves.''

At the end of the war, Britain took what has become now Israel and Jordan and Iraq. France took what has become Lebanon and Syria. Nobody wanted Arabia. It was not worth anything. Nothing but sand. So it got left out, on its own devices.

Today, it occupies a position of more extraordinary influence because of its oil reserves than all of the other countries, save Israel, put together.

Cellular telephones are the same analogy. They were left out of the modified final judgment. There were 100,000 of them in existence in 1982. AT&T predicted by the year 2000 there might be a million cellular telephones. Today, there are 25 million subscribers. Predictions are in 10 years that will be 125 million subscribers. I bet that underestimates the number.

This has happened because we did not regulate it. We left it to the marketplace. Does anybody think there is no competition in cellular telephone today? All you do is turn on your radio, turn on your television, open your newspaper, and you have company upon company stumbling over each year to compete for your business. ''Sign up, we will give a free phone.'' And you have to understand that you have to make so many phone calls or pay so much.

People are pretty darn smart and managed to figure this out. They have done well figuring out long distance, watching MCI ads, AT&T ads, the Sprint ads. They have also discovered that there are lots of small long distance companies.

I have over 40 long distance phone companies in Oregon that are what you would call niche carriers. They rent their time from AT&T. They are a bulk buyer, they will buy it. Then they say we have 24 hours of time over the week, or 10 hours of time over the day on such and such, and they go out and sell it. They are specialists in certain niches. Some sell to the medical profession. Some to the insurance profession. They figured out a way—the companies are not big, some 8 or 10 employees, and they are renting everyone else's facilities—to do something very narrowly and good that is better than the big company can do it.

We have seen this in telecommunications. The innovators in this field are not always IBM and AT&T. They are more often new companies that are spinoffs—not spinoffs, been formed by some 35-year-old engineer who left the company, mortgaged his house, sold his hunting dog, and both he and his spouse put up everything that they had to take a chance. And they succeeded.

Come back again to cable. There is no need for any regulation of cable at any level. They have more competition now than they can handle, and they will have more competition than they can handle. The consumer is going to be the beneficiary.

I hope, Mr. President, that the Lieberman-Leahy amendment would be defeated overwhelmingly. If there is any example of where the market is working, and will get even more and more competitive, it is in communications generally. It is in cable specifically.

I think to adopt this amendment to further regulate cable beyond which we have already regulated in 1992—and we should not—would be a terrible mistake.

Mr. LIEBERMAN. Mr. President, if I may respond very briefly to my friend from Oregon.

The PRESIDING OFFICER. The Senator from Connecticut should be advised he has used all the time on his amendment.

Mr. LIEBERMAN. Mr. President, I ask unanimous consent that I be allowed to speak for no more than 5 minutes.

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

Mr. LIEBERMAN. Mr. President, my friend from Oregon has spoken against my amendment which would maintain some kind of consumer protection in the pricing of cable, based on the wonderful service and the extraordinary range of programming that cable provides. Since I got into this fight when I was attorney general in Connecticut in 1984 when cable prices were deregulated and most consumers in America were left facing a monopoly with no competition, I have said I was very supportive of cable. I think cable is an extraordinary service to the American people. It has been delivered well, and I like the expansion of the program.

What I do not like is allowing that expansion to occur without giving consumers some protection, because they have only one choice to make, and what is significant to me is that the programming has continued to expand even since the regulation, the consumer protection that went on in 1992. So there is no reason to believe that, if we sustain some protection for consumers until they face competition, that will stop.

The second point is this. There just is not adequate competition at this time to existing cable. If there were, then the FCC would have pulled off regulation for cable in more than 50 markets where they say there is now effective competition out of more than 10,000 in the country. The fact is, the direct broadcast satellites which were thought to be the next wave of great competition for cable are only used by less than 1 percent of the cable consumers in America.

Telephone companies may get into this. They probably will. But the question is, When? Until that time, most cable consumers in America will have no alternative except the local cable company, and if this bill passes without the amendment Senator LEAHY and I have offered, the consumer will not only not have a choice of another system to offer multichannel services, cable as we know it, but will have no benefit of consumer protection. History tells us where there is no competitive market, where there is a monopoly supplier and no regulation, the consumer is in real danger of being taken advantage of.

So in my humble opinion, respectfully, I think this amendment is all that stands between millions of cable consumers and what I would take to be a definite increase in their rates over the coming years until there really is effective competition to hold the rates down.

Again, I love cable. My family watches; selectively, of course. But I do not, any more than any other consumer, including a lot of the elderly out there, people on fixed incomes, I do not want only one choice and no consumer protection.

This system has worked. It saved consumers money. The industry has continued to thrive. They continue to be able to raise capital. There is simply no reason to remove these consumer protections. I will say respectfully again, to me what has happened here is that, in the Trojan horse of this great telecommunications bill, there has been inserted inside a repealer of cable consumer protection without cause and at great cost to American consumers.

I hope my colleagues will support this amendment so none of us will have to explain to our consumers back home why rates have risen, as they surely will in the years ahead if this amendment is not agreed to.

I thank the Chair.

The PRESIDING OFFICER. The Senator from Montana.

Mr. BURNS. Mr. President, I really like this debate. But I would like to draw your attention to one thing. He says there is no competition. What is 2,000 subscribers a day being added to the DBS that provides the same channels, the same service—CNN, ESPN, all of those we enjoy now, and the USA, Lifetime, the History Channel, all of those—off direct broadcast satellite? What is that other than competition? If the rates get competitive, whether you are on a fixed income or not a fixed income, it makes no difference. And it is going to make both services better when they compete equally. There are no restrictions on DBS. Nobody is setting their rates.

If one remembers, since way back in 1990 when we were talking about this, there was a great groundswell that went across the country, what about cable rates? Did you take into consideration—when you used to buy maybe three Salt Lake stations and two Billings stations and a PBS station for $5 or $6 a month and then all at once we pay $21 now for 45, I think, something like that—our cost per channel? One does not have to take it. Nobody is standing there with a gun to your head saying, You have to sign up for cable. They go by more houses than they service. It is another part of the market. We are trying to sell a service.

At the same time we said, Do not reregulate the cables; allow effective competition. DBS was part of that; C-band; satellite dishes, they were a part of that. I think also in the same time—and the chairman and ranking member remember this—I offered the amendment on a telco bill to allow them in the cable business to provide effective competition, to add an entity that already has a wire into the house. They would have to change their technology a little bit, and that is what we are really doing is providing the new technologies that will travel on this great thing called fiber optics, or fiber and coaxial interphased for broadband, two-way, interact telecommunications. That is where we are going. That is why we need Mickey Mouse to pave the way for other things that we have in store, and that is distance learning and telemedicine and these types of things.

So what, is C-band competition? Sure it is. Is telco competition? Yes, they are. Is DBA competition? Yes, they are. Even the store down the street that sells videos to rent is competition to the same service the cable operators are trying to provide over that wire into the house.

I said this before: The glass highway, the information highway, may be already in place and it has been done by this marvelous growth industry called cable television. The competition is there, and I urge the colleagues to defeat this amendment.

Mr. President, the solution to the cable problem is competition, not continued regulation. In fact, after the 1984 Cable Act, deregulation of the cable industry resulted in substantial benefits.

The cable industry has made substantial investments in programming, plant and equipment, investments that have directly benefited consumers, in particular my constituents in Montana.

If all we heed and hear are the problems of cable, then I am afraid that we will have lost an opportunity, a chance to look into the future and to shape it; for we do shape the future of this Nation when we shape its telecommunications infrastructure. It is an infrastructure that is critical to the whole Nation—from the Lincoln Center in New York City, to Lincoln, NE, to Lincoln County, MT.

So in the continuing debate over what to do about the so-called cable problem, there are two alternatives. Solution one is competition. And solution two is regulation. It has been my experience that regulation can actually harm consumers by slowing innovation and stifling new services. On the other hand, nothing is more proconsumer than competition, most especially competition where there is a level playing field. And on no playing field can the benefits of competition be seen more clearly than on the field of communications. History teaches us that you cannot regulate technological advancements.

Regulation does a very poor job of guaranteeing a market choice for consumers. Most ironically, under a price regulatory regime, prices are unlikely to fall when they are effectively propped up by regulation.

On the other hand, we have all seen many instances where competitive market forces spur competitors to innovate in order to reduce costs and improve efficiency. And as costs come down, new technologies and new services can be extended to unserved areas. Those are the types of truly competitive market forces that I want to introduce, and the people of Montana need, to ensure that our State is fully served.

Again, I am not merely talking about video entertainment, I am talking about the communications revolution, and I want my constituents to benefit from that revolution and not be left behind by it.

Moreover, I want our Nation to lead that revolution much as we have led the revolutions for democracy around the world. Thus, I do not want the guarantee of participation in the electronic information age for the people of Montana to rest solely on heavy-handed regulation. I want Montanans to be able to rely on good old American know-how as stimulated by good old American competition.

I believe this competition is already arising through such technologies as DBS, wireless cable, the home satellite dish market, and even those technologies yet to be discovered. And I believe that with this legislation we have provided perhaps the best opportunity for competition in the video market by permitting the telephone companies to compete for cable services. And we have done so by promoting telco entry with safeguards and restrictions.

This legislation, drafted by this Congress, promotes the greatest public good by unleashing competition and technology to meet the Nation's needs. It will be this competition that will help ensure that a modern telecommunications infrastructure and innovative services are available to all Americans—and, most importantly, all Montanans—at reasonable prices. When telephone companies are able to compete with cable companies, as this legislation allows, a competitive cable market would:

First, put downward pressure on cable service rates;

Second, lead to greater diversity of television programming and program choices;

Third, accelerate the introduction of new services; and

Fourth, increase consumer access to high quality service.

I have been involved in this debate since I first arrived in the Senate. I believe that we are finally on the verge of passing a historic piece of legislation. I think that the Lieberman amendment is a significant step backward in our efforts. Competition is the answer, not re-regulation. I urge my colleagues to reject this amendment.

The PRESIDING OFFICER. All time on the amendment has expired.

The Senator from Connecticut.

Mr. LIEBERMAN. Mr. President, I ask unanimous consent to speak for 30 seconds.

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

Mr. LIEBERMAN. Mr. President, very briefly. My friend from Montana says 2,000 additional subscribers to direct broadcast satellites go on every day. That is compared to over 60 million cable customers. We are getting there, but we do not really have effective competition in most places in America. When we do, the FCC will pull this consumer protection off and then the consumers will be protected by competition.

I thank the Chair.

The PRESIDING OFFICER. The Senator from South Dakota.

AMENDMENT NO. 1283, AS MODIFIED

Mr. PRESSLER. Mr. President, I rise in strong opposition to the amendment by my good friend, Senator SIMON. The financial health and competitive viability of the Nation's radio industry is in our hands. We all agree that the telecommunications legislation we are considering is about competition and deregulation and not picking winners and losers. And we also agree that this legislation goes a long way toward giving cable, satellite, and the phone companies the freedoms they need to compete. We now need to agree to extend these same freedoms to the over 11,000 radio broadcasters in this country.

No other audio service provider, be they cable, satellite or telcos, has the multiple ownership restrictions that radio has. The language we are offering today eliminates those outdated radio-only rules.

It is imperative we in Congress end this discrimination against radio sooner by adopting this language, rather than wait for the bureaucracy to come around to it later, as this legislation as currently drafted would have it. Immediate action is critical because the FCC is on the verge of authorizing digital satellite radio service, whereby 60 new radio signals will broadcast in every market in the United States. This satellite service will be mobile and available in automobiles, homes, and businesses. Also, cable already provides 30 channels of digital radio broadcasting in markets across the United States under a single operator. Obviously, an incredible diversity of voices has been achieved with even more competition to radio quickly making its way down the information highway. Yet, let us not lose sight of the fact that all of these welcome new voices are also aggressive competitors for radio's listeners and advertisers, and, unlike radio, these competitors are not burdened with radio's multiple ownership restrictions nor do they have the same public service obligations as radio broadcasters.

Our Nation's radio broadcasters have a strong tradition of providing the American people with universal and free information services. In a telecommunications environment increasingly dominated by subscription services and pay-per-view, it is essential that we not foreclose the future of free over-the-air radio by restricting ownership options, for radio serving the public interest and competing are not mutually exclusive. They are complementary.

So it is left up to us to empower radio so it can grow strong well into the next century and continue to serve our communities as it has done so well for the past 70 years.

The last point I would like to make is perhaps the most important. Relief from ownership rules works. In the early- and mid-1980's the FCC issued hundreds of new radio licenses, and the market became oversaturated with

radio stations without sufficient advertising revenues to support the increase. However, in 1992 the FCC granted limited relief in radio ownership restrictions. After many years of financial losses, suddenly radio became an attractive area for investment and an alarming multiyear increase in stations going off the air was arrested. The economies of scale kicked in. Stations gained financial strength through consolidation, and its overall ability to serve its markets and compete for advertising improved.

Allow me to quickly cite some statistics. In 1993, a year after the new limits took effect, the dollar volume of FM-only transactions almost tripled—$743.5 million—while radio station groups sales grew 44 percent.

In 1994, sales prices of single-FM stations rose 12.7 percent from 1993's $743.5 million to $838 million, and from 1993 to 1994, the total volume of AM radio station sales shot up 84 percent, totaling $132 million.

There is every reason to believe that all of these positive trends will continue to flourish if we remove radio's outmoded multiple ownership restrictions.

Clearly, maintaining local and national radio ownership limits in the face of tomorrow's competitive environment is not only unfair but it is a major step back.

Mr. President, let me emphasize that I understand some statements have been made. I understand that CBS does not support the Simon amendment. Bill Ryan is the NAB Joint Board Chairman. He supports the NAB position which is adamantly opposed to the Simon amendment. Mr. Ryan's comments, which Senator SIMON cited, related to TV ownership and not radio ownership.

Mr. President, I urge Senators to come to the floor to make their statements on the various pending amendments.

I note the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The bill clerk proceeded to call the roll.

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

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

AMENDMENT NO. 1298

Mrs. HUTCHISON. Mr. President, I would like to speak against the Lieberman-Leahy amendment. The Lieberman-Leahy amendment will finish this bill once and for all.

The PRESIDING OFFICER. The Senator will be advised that all time has expired on the Lieberman-Leahy amendment.

Mrs. HUTCHISON. I ask unanimous consent that I be allowed to speak for up to 5 minutes on the bill and on the Lieberman-Leahy amendment.

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

Mrs. HUTCHISON. Thank you, Mr. President.

Mr. President, the Lieberman-Leahy amendment will reregulate cable.

What we are trying to do with this bill is deregulate so that we have a level playing field, so that more people can come into the competitive market, and so that the consumers will benefit from the lower costs and lower prices. The Lieberman amendment will take away the balance that has been established in this bill. It will put the FCC back into the regulatory business. It will cause these cable companies to have to come to the FCC to spend their money paying lawyers' fees instead of dropping their prices and going to the bottom line.

I am sure that the intent of the amendment is very good. They want to make sure that we have low cost if there is not competition. But what we are trying to do here is promote competition so there will be choices, so that the consumers will have the ability to pick and choose.

The Lieberman amendment will put one more hassle to the cable companies even when it is not necessary.

I have watched day after day after day the chairman of the committee, on which I serve, and the ranking member talking about the need for this bill. It will put $3 billion into our economy in new jobs, and it will be a benefit to consumers. They have done a wonderful job. But what is very important to remember here is that we must keep a level playing field. And we have tried to balance.

Sometimes we have done something that the long distance companies do not like. Sometimes we have done something that the local Bell companies do not like. Sometimes we have done things that the cable companies think is onerous. This would be an onerous regulation that would put the FCC back in the mix when we do not need the FCC. We are trying to take the FCC out of every arena that we possibly can. The FCC is very much in the bill, I must say, of course. For instance, in broadcast ownership, we want the FCC to look at broadcast ownership to make sure there is not the concentration that would take away the diversity of voices in a market. But it is very important that we keep the balance. We must be able to say at the end of this bill that probably everybody does not like it as a perfect bill but we have allowed people to come into the process to compete, and we have tried to make the cost the least possible, and we have tried to make the cost fair. But the underlying element of this bill is that we take the regulations out to the greatest extent possible.

Mr. President, if we are going to even look at the Lieberman-Leahy amendment, it is going to gut the bill from the standpoint of keeping the level playing field, continuing to encourage competition, and giving the consumers the benefit of all the choices that will be available. If we can pass this bill and keep it fair, the telecommunications industry in this country is going to explode. It is going to be a wonderful boon to our economy. New jobs will come into the market. Consumers will get more choices. We will have choices that we have not even dreamed of today. We will have choices of technology that will give us the ability to research and grow because we are taking the regulations out of this bill to the greatest extent possible.

So, Mr. President, I think the chairman of the committee and the ranking member have done a terrific job. They have cooperated. There has been disagreement on every major part of this bill, but we have not worked on this bill for days. We have not work on this bill for weeks. We have not worked on this bill for months. In fact, we have worked on this bill for years. We have talked about telecommunications deregulation for years in this country. I am a person who is not even a regulator. I do not like any regulations. I would like for Congress not to even be in the process. But because technology has exploded and because we have had a regulatory environment that has caused an unfair and unlevel playing field, we have had to correct the wrongs, and we are doing that by trying to reach a balance. That is what this bill does. The LIEBERMAN amendment will take that balance away, and we must not allow that to happen.

So I thank the Chair. I thank the chairman of the committee and the distinguished ranking member for their leadership. We must stick with the committee on this amendment. It is very important for the future of our jobs, of our economy, and for the consumers of our Nation.

I thank the Chair. I yield the floor.

Mr. PRESSLER. Mr. President, I thank the Senator from Texas for her great work and leadership on this telecommunications bill. She has been a stalwart in drafting this bill and in making it happen. Her leadership was crucial and I thank her very, very much.

Mrs. HUTCHISON addressed the Chair.

The PRESIDING OFFICER (Mr. SHELBY). The Senator from Texas.

Mrs. HUTCHISON. Will the Senator yield for a question and comment?

I just wish to say that I did not mention this because I was talking about the level playing field of all of the competitors, but the other element here that the chairman and the ranking member have worked so hard on is the protection of our cities and our State regulatory boards.

Our cities have rights-of-way that they must control, and that is something that we worked very hard to make sure was not encroached on. We would have chaos if someone came in and said, Well, I now have the right to dig a hole in the middle of your street, without the city maintaining that control.

So I wish to say that that is another element of this bill that is protected,

and the cities of America owe a great debt of gratitude to the chairman and the ranking member.

I thank the Chair.

Mr. PRESSLER. I thank the Senator.

AMENDMENT NO. 1325, AS FURTHER MODIFIED

Mr. PRESSLER. Mr. President, at this time, we are prepared to call up an amendment that has been agreed to that we will not have to have a vote on, and that is the Warner amendment. I would like to call up amendment 1325.

The PRESIDING OFFICER. The pending question is amendment No. 1325, as modified. Is there further debate?

Mr. HOLLINGS. Is there a modification?

Mr. PRESSLER. I have the perfecting amendment. I send an amendment to the desk and I ask for its immediate consideration. It is a perfecting amendment.

Mr. HOLLINGS. It should be a substitute, I think. It should be drafted as a substitute for the amendment.

The amendment (1325), as further modified, is as follows:

1. On page 102, after line 25, insert a new subsection as follows:

''(e) INFORMATION ON PROTOCOLS AND TECHNICAL REQUIREMENTS.—The Commission shall prescribe regulations to require that each Bell operating company shall maintain and file with the Commission full and complete information with respect to the protocols and technical requirements for connection with and use of its telephone exchange service facilities. Such regulations shall require each such Bell company to report promptly to the Commission any material changes or planned changes to such protocols and requirements, and the schedule for implementation of such changes or planned changes.''.

2. Redesignate subsequent subsections accordingly.

The PRESIDING OFFICER. If there is no objection——

Mr. PRESSLER. Mr. President, I would just like to say a word or two.

The PRESIDING OFFICER. The Senator from South Dakota.

Mr. PRESSLER. I would like to praise Senator WARNER. In his usual gracious way, we worked on this amendment for a few days, and we had various meetings with Senator WARNER and some of his constituents who are concerned about this manufacturing clause.

His original amendment he has agreed to set aside in favor of this modification. My colleague from South Carolina, the ranking member of the committee, has long been an expert in this area, having authored the bill on manufacturing that passed the Senate. He has graciously agreed to this modification.

The PRESIDING OFFICER. The Senator from South Carolina.

Mr. HOLLINGS. Mr. President, this deals, of course, with the technical requirements for connection to the telephone exchange service facilities, which is quite appropriate. It does not allude to the research and design with respect to manufacturing. That has been cleared.

I join in the distinguished chairman's praise of Senator WARNER and his efforts here to clarify this to make certain that everyone could be prepared and on notice as to facilitating the interconnection services. So I join in the amendment as amended, I take it.

The PRESIDING OFFICER. If there is no objection, the amendment as so modified is agreed to.

So the amendment (No. 1325), as further modified, was agreed to.

Mr. HOLLINGS. Mr. President, I move to reconsider the vote.

Mr. PRESSLER. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. KERRY addressed the Chair.

The PRESIDING OFFICER. The Senator from Massachusetts.

Mr. KERRY. Mr. President, is time controlled at this point?

The PRESIDING OFFICER. Time is controlled on each amendment.

Mr. KERRY. Mr. President, I rise and will only speak for a very few minutes, but I would like to indicate my support for the cable provisions of S. 652 as it has been brought to the floor by the distinguished chairman and ranking member and the committee, of which I am a member.

AMENDMENT NO. 1298

Mr. KERRY. I want to voice, therefore, my opposition to the Lieberman-Leahy amendment. All of us are concerned about cable rates. We made a major effort a number of years ago to try to regulate that and guarantee that the consumer is going to have the lowest possible price. In my judgment, the fundamental thrust of this bill which has been very carefully tailored to work a balance between many varied very powerful interests, the fundamental effort of this bill is to create competition which will reduce rates across the board.

I think all of us have learned that when you have regulation, you inevitably have a skewing of the market which impacts the capacity of people to take risks, people to raise capital, people to invest and diversify. It is my belief that the upper tier versus the lower tier of regulation is sufficiently well tailored in the legislation that we sent out of committee that the interests of consumers are protected.

In point of fact, it is my belief that the availability of direct broadcast satellite today and the availability of video dial that is going to come on so rapidly people are going to be dizzy when they begin to see it, that to maintain a regimen of strict upper tier regulation on cable would be to disadvantage cable's capacity to be able to make the kind of investment necessary that this bill envisions, precisely to be able to compete with the regional Bell operating companies and to begin to create the dynamic synergy that we are looking for in the marketplace.

So I believe the greatest protection for consumers is, in fact, going to come from competition for video services, and I believe that competition is well structured and maintained in the format that has been brought to the floor.

When consumers have a choice and the marketplace is not artificially constrained, then that marketplace is going to provide for rates that are reasonable. I think that anybody who looks at the current intentions of the regional Bell operating companies and long distance operators and those who are going to be moving into the provision of video services will understand that if cable all of a sudden went out and started raising its rates at any tier, it is going to be significantly noncompetitive, it will build resentment among consumers, and they will quickly move to the new provision of services.

I can speak to this on a very personal level because I have recently been making choices about where to put what kind of service in my own residence. I was amazed at the number of direct broadcast capacities versus cable that I could make a choice on right now.

Second, Mr. President, consumers do not only care about rates, they also care about the quality of the service and they care about the breadth of programming that is available to them. They want both of those as well, and they want that from cable. If cable all of a sudden ceases to do that, they are going to have the opportunity to make another set of choices because of the very things that we are proposing in this legislation.

Finally, this bill incorporates a so-called bad actor provision, so that the FCC can step in immediately if a cable company begins to move in a direction which is clearly anticonsumer or out of order with what the rest of the companies in the Nation are doing.

So, in my judgment, our objective should not be to strengthen the regulation of rates that cable now is allowed to collect for its upper-tier service. On the contrary, our objective ought to be to maximize competition and to get the Government out of the way of allowing these companies to begin to compete and the price mechanism to be able to provide the maximum amount of consumer benefit.

I think anybody who looks at what has happened in the last 5 or 10 years in this field cannot help be amazed at the way in which competition and private-sector initiative has changed the landscape of the provision of these services, and it will do so at such an extraordinary rate over the course of the next few years that Americans will, I think, understand the attributes of what the committee has brought to the floor.

So I urge my colleagues to stay with the committee mark and the chairman's and ranking member's efforts to try to maximize competition and to oppose the Lieberman-Leahy amendment.

At this time, I also express my admiration for the long efforts of the distinguished chairman and ranking member, and for the efforts of the ranking

member when he was chairman, to really structure this. This has been a long road. I think that the balance, which is so difficult to maintain in this, has been maintained throughout, and I think we are going to be able to get a solid piece of legislation to the conference committee where further improvements can be made.

Mr. HOLLINGS. Mr. President, let me thank the Senator from Massachusetts. It has been a long road for all of us on our Committee on Commerce. We have been working veritably about 4 years to revise and bring to modern technology the provisions of the 1934 act. The distinguished Senator from Massachusetts has been a leader in participating as his staff has worked around the clock. I appreciate his comments.

Mr. BRYAN addressed the Chair.

The PRESIDING OFFICER. The Senator from Nevada.

Mr. BRYAN. Mr. President, I inquire of the floor manager, I would like about 3 minutes to speak in opposition to the Simon amendment.

Mr. HOLLINGS. Go right ahead.

AMENDMENT NO. 1283, AS MODIFIED

Mr. BRYAN. Mr. President, I rise in opposition to the Simon amendment which would strike language currently in the bill which removes radio ownership caps. I must say, I do so with reluctance because I have a great deal of affection and find myself generally in support of my good friend from Illinois when he takes the floor. In this instance, I believe his concerns are misplaced.

Currently, there are approximately 11,000 radio stations in this country. Unfortunately, far too many are losing money. The last figures that have been called to my attention would indicate that about half of those stations are actually losing money. If we do not take some action to help these stations, an increasing number will continue to fail.

One way to help radio stations get out of the red is to permit them to use economies of scale that they can achieve from consolidating their operations. Lifting the ownership cap will permit radio stations to achieve these efficiencies.

When the FCC raised the cap several years ago, we found that, in fact, this is what happened. Without ownership caps, economic forces will determine the appropriate size of stations. This, in my judgment, is a decision better left to the marketplace instead of some Government-mandated number.

I believe an ownership cap was put on radio stations many years ago because of the concern for undue concentration. In this day and age, such a concern, in my opinion, is unwarranted. With the avalanche of entertainment sources available to the public today, there is no need to worry that a concentration will cause public harm.

Cable systems already provide up to 30 channels of digital audio in a single market under a single owner. Satellite digital audio will soon be able to deliver 60 channels of digital music in every market across the country. Satellite television, like direct TV, now offer 30-plus radio channels to homes. This deluge of new entrants into the radio business will ensure that competition exists.

Extending the artificial restrictions on radio ownership will give the industry the wherewithal to compete against other mass media providers. It is my view that by ending these artificial restrictions, we encourage more competition and give the public greater choice. I urge my colleagues to oppose the Simon amendment.

I yield the floor.

The PRESIDING OFFICER. Who yields time?

Mr. HOLLINGS. I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The bill clerk proceeded to call the roll.

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

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

Mr. PRESSLER. Mr. President, I urge that Senators come to use time on these amendments. We are down to about an hour before the majority leader will start us voting, and we are trying to get agreements on amendments and we are negotiating. If anybody who wants to make a speech, we will make arrangements to speak in general on the bill or on an amendment. I urge Senators to come to the floor to finish this bill.

I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The bill clerk proceeded to call the roll.

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

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

Mr. BRYAN. I ask unanimous consent that I might speak for a period of time not to exceed 7 minutes as in morning business.

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

The Senator from Nevada is recognized.

Mr. BRYAN. I thank the Chair.

(The remarks of Mr. BRYAN pertaining to the introduction of S. 926 are located in today's RECORD under ''Statements on Introduced Bills and Joint Resolutions.'')

AMENDMENT NO. 1298

Mr. CRAIG. Mr. President, S. 652, as modified by the Dole-Daschle leadership amendment, balances reduced regulations with increased competition. That is exactly what the goal of the chairman has been all along.

I think the legislation recognizes that investment in new technology is an essential part of developing an advanced telecommunications infrastructure here in the United States.

Therefore, S. 652 provides a more stable and reliable business environment for both cable and television companies by reducing regulations and encouraging competition.

Mr. President, S. 652, as reported by the Commerce Committee, includes the following:

First, maintained the regulation of basic cable rates until there is effective competition.

Second, redefined the effective competition standard to include a telephone company offering video services.

Third, allowed competition from phone companies.

Fourth, deregulated upper tier programming, but kept it subject to a bad-actor provision. The bad-actor provision allows the FCC to make expanded tier services subject to regulation if rates are unreasonable and substantially exceed the national average of rates for comparable cable programming services.

These provisions were certainly a step in the right direction: away from regulations and toward more competition.

During consideration of S. 652, the Senate adopted the Dole-Daschle leadership amendment by a vote of 77 to 8, which included language addressing the concerns of those who believe that, despite the safeguards already contained in S. 652, it might lead to unreasonable rate increases by large cable operators.

It established a fixed rate, June 1, 1995, for measuring the national average price for cable services and only allows for adjustments to occur every 2 years. This provision eliminates the possibility that large cable operators could collude to artificially inflate rates immediately following enactment of S. 652.

The bill, as amended, establishes a national average based on cable rates in effect prior to the passage of S. 652 when rate regulation was in full force.

It excluded rates charged by small cable operators in determining the national average rate for cable services.

This provision addresses the concerns that deregulation of small system rates, which was included as part of the Dole-Daschle amendment in S. 652, would inflate the national average against which rates of large cable companies would be measured.

It specified that national average rates are to be calculated on a per channel basis.

This provision ensures that national average is standardized and takes into account variations in the number of channels offered by different companies as part of their expanded program packages.

It specified that a market is effectively competitive only when an alternative multichannel video provider offers services comparable to cable television.

This provision ensures cable operators will not be prematurely deregulated under the effective competition provision if, for example, only a single

channel of video programming is being delivered by a telco video dial tone provider in an operator's market.

In addition, the leadership amendment also included critical provisions deregulating small cable operators.

In short, Mr. President, the reason I have given this explanation is the Dole-Daschle amendment tightened the bad-actor provision on expanded tier services and further limited the definition of effective competition.

This compromise closed any possible loophole that would allow large cable operators to unreasonably raise rates. It gave relief to our small cable companies and maintained the delicate balance struck in S. 652 of reduced regulations with increased competition.

The reason, again, I think it is important that we understand this, Mr. President, is that the Lieberman amendment puts us back at square one in this effort to move toward more competition in the cable industry. While it does include language similar to the leadership amendment that would deregulate small cable operators, the Lieberman amendment would undermine the competitive objectives of S. 652.

The amendment further restricts the national average standard by limiting it to the ''national average rate for comparable programming services in cable systems subject to effective competition.''

Mr. President, this is a backdoor route that leads back to the restrictive rate regulation standard similar to what now exists: regulating rates that substantially exceed those of companies subject to effective competition. It is precisely this standard that has created the highly bureaucratic regulatory morass that has stymied cable television investment, and therefore service to the consumer.

As I stated in my opening remarks on this bill last week, I opposed the Cable Act of 1992, and I voted against passage of that bill.

Since the enactment of S. 12—that was the Cable Act—I have received numerous complaints from fellow Idahoans who felt that the changes resulting from S. 12 worsened, rather than improved, their cable service and cost.

In addition, a number of very small independent cable systems in Idaho have been in jeopardy as a result of that near closure and have been forced to pay astronomical costs associated with implementing the act.

A rural community hardly benefits if it loses access to cable service because the local small business that provides service cannot handle the burden of Federal regulations. Quite the opposite is true.

Competition, not regulation, will encourage growth and innovation in the cable industry, as well as other areas of telecommunications, while giving the consumer the benefit of competitive prices.

Mr. President, I would again suggest to my colleagues the importance of not losing sight of the ultimate goal of reforming the 1934 Communications Act, which should be to establish a national policy framework that will accelerate private sector deployment of advanced telecommunications and information technologies and services to all Americans by opening all telecommunications markets to competition.

In addition, working toward the goal will spur economic growth, create jobs, increase productivity, and provide better services at a lower cost to consumers.

The balance of reduced regulations with increased competition contained in the provisions relating to cable in S. 652 will lead to the very important goals I just stated.

In addition, Mr. President, I am concerned if we continue to restrict the ability of cable companies to obtain capital necessary to invest in new programming and services, we will also be limiting the ability of cable companies as competitors to local phone monopolies.

Cable companies will require billions of dollars of investment to develop their infrastructures in order to be competitive providers.

The Federal regulation of cable television has restricted the cable industry's access to capital, made investors concerned about future investments in the cable industry, and reduced the ability of cable companies to invest in technology and programming.

Mr. President, rate regulation will not maintain low rates and quality services in the cable industry. Quite the opposite will occur. We have already seen it. Only competition will provide the kind of services that our consumers want.

New entrants in the marketplace such as direct broadcast satellites and telco-delivered video programming will provide competitive pressures to keep cable rates low and fit within the framework of the market. Cable companies are likely to provide the needed competition to keep the telephone local exchange market operating.

In short, Mr. President, deregulation of the cable industry is essential for a competitive telecommunications market, and it is necessary as the element of S. 652 and the competitive model envisioned in this bill.

I urge my colleagues to vote ''no'' on the Lieberman amendment. It is not a step forward. It is a step backward to the industry. It is clearly a step backward to the consuming public.

Mr. PRESSLER. Mr. President, could I briefly state that I have received a series of letters—the first of which I became aware of last night, from Time Warner. The first letter stated something that was not true, and it was sent to various people.

As discussed with you and your staff, this agreement is entirely contingent on the removal of the program access provisions . . .

And so forth. That was not true. So last night, I faxed to Timothy Boggs a letter stating in part:

At no time during our conversation did I indicate that any specific action by Time Warner would result in deletion of the program access provisions. I have had no further conversation with HBO/Time Warner about this matter since that meeting. My staff has not portrayed my position as being anything other than the industry negotiations suggested on May 4. Nothing I said during our short meeting could be construed as suggesting some sort of quid pro quo, which would be wrong, if not illegal. I resent the inference in your letter that I suggested something other than an industry-negotiated solution.

I have this morning obtained a letter from Time Warner saying ''* * * the facts are exactly as outlined in your letter.'' It goes on to say that ''* * * at no point did we seek or reach understanding with you or your staff regarding any change in the legislation.''

Mr. President, I ask unanimous consent to have these three letters printed in the RECORD.

There being no objection, the letters were ordered to be printed in the RECORD, as follows:

TIME WARNER,
June 13, 1995.

Hon. LARRY PRESSLER,
Chairman, Committee on Commerce, Science, and Transportation, U.S. Senate, Washington, DC.

DEAR CHAIRMAN PRESSLER: As you requested, the attached signature page confirms that Home Box Office has reached an agreement with the National Cable Television Cooperative, Inc. for HBO programming. As discussed with you and your staff, this agreement is entirely contingent on the removal of the program access provisions at Section 204(b) of S. 652, prior to Senate action on the legislation.

On behalf of Time Warner and HBO, I am pleased to report that we have reached this agreement and respectfully request that this provision be removed from the bill at the earliest possible opportunity. Without removal of this provision from the bill, the HBO distribution agreement with the NCTC will be void.

Thank you for your leadership on this matter. Please feel free to contact me if I can be of any assistance to you or your staff. I can be reached at my office at 202/457–9225 or at home at [redacted].

Warm regards,

TIMOTHY A. BOGGS.

U.S. SENATE, COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION,
Washington, DC, June 15, 1995.

Mr. TIMOTHY A. BOGGS,
Senior Vice President for Public Policy, Time Warner, Inc., Washington, DC.

DEAR MR. BOGGS: Your faxed letter of June 13 contains misleading statements which do not accurately reflect my position.

On May 4, 1995, I met briefly with you, Ron Schmidt and HBO/Time Warner executives, in the presence of my staff, regarding the program access provision of S. 652. During that meeting, HBO/Time Warner urged me to support deletion of the program access provisions of the bill.

I stated that the program access provision was of enormous importance to small cable operators, including those in South Dakota. I suggested that if the program providers disliked the provision, they ought to negotiate with the small cable operators to reach an agreement which might address the problems this portion of S. 652 is attempting to solve. Specifically, since Ron Schmidt is from my home state, I suggested that he talk to a

small cable operator from South Dakota, Rich Cutler, to see if an industry compromise were possible.

At no time during our conversation did I indicate that any specific action by Time Warner would result in deletion of the program access provisions. I have had no further conversations with HBO/Time Warner about this matter since that meeting. My staff has not portrayed my position as being anything other than the industry negotiations suggested on May 4. Nothing I said during our short meeting could be construed as suggesting some sort of quid pro quo, which would be wrong, if not illegal. I resent the inference in your letter that I suggested something other than an industry-negotiated solution.

Your letter indicates that failure to delete the program access provisions from the bill would vitiate any negotiated agreement HBO/Time Warner had reached with the small cable operators. While HBO/Time Warner is free to negotiate contracts as they see fit, such tactics, in my opinion, cannot be considered as good faith negotiations. Your letter implies that I tacitly approved such a condition, which is not the case.

I expect you to send this letter to the same individuals who received your letter to me. Your letter is misleading, and does not accurately characterize my position as presented in my May 4 meeting with HBO/Time Warner.

Sincerely,

LARRY PRESSLER,
Chairman.

TIME WARNER,
June 15, 1995.

HON. LARRY PRESSLER,
Chairman, Committee on Commerce, Science, and Transportation, U.S. Senate, Washington, DC.

DEAR MR. CHAIRMAN: Thank you for your letter of today. I write to respond and to join you in setting the record straight.

First, I am as distressed as you that any statement I have made could be misconstrued or infer anything other than the facts.

Second, the facts are exactly as outlined in your letter.

Third, at no point did we seek or reach understanding with you or your staff regarding any change in the legislation. Any understanding Time Warner and HBO have reached on this matter has been entirely with our private business associates.

Finally, as stated in my letter of June 13, Time Warner has urged that the Senate remove Section 204(b) from S. 652 because we are confident that industry negotiations, by ourselves and others could result in a change of business practices that would make Section 204(b) no longer necessary. Our good faith negotiations have borne out this confidence. I remain pleased to report that HBO and NCTC have reached a distribution agreement.

In closing, let me personally apologize for any misunderstanding my letter has caused. I deeply regret this confusion and remain available to discuss this matter with any interested party. As you request, I will distribute your letter of today to the very few people who received a copy of my letter to you of June 13.

Sincerely,

TIMOTHY A. BOGGS.

The PRESIDING OFFICER. The Senator from Nebraska.

Mr. EXON. Mr. President, I very much appreciate the remarks my friend and colleague from South Dakota just made. He has had printed in the RECORD an outrageous letter, an outrageous letter from Time Warner on June 13, addressed to Senator PRESSLER, chairman of the Commerce Committee. Any lobbyist who would write a letter like this, especially when it is not true, should make a public apology. And his powerful employer, Time Warner, should do likewise. I am referring to the letter of June 13 that the Senator from South Dakota has just entered into the RECORD.

He has also entered in the RECORD a letter of June 15, which is supposedly an apology from Timothy Boggs for the letter he earlier wrote. However, in the letter of June 15, while admitting that his previous letter was in error, and in a way apologizing for it, I do not see anything in the letter that indicates to me that Time Warner may not have had or thought they had a quid pro quo with some other Members of the U.S. Senate.

What we are talking about here is money, and that is one of the problems with this whole telecommunications bill, in which I have had an integral part to play. I want to say Senator PRESSLER is an honorable man. He is a good and hard-working Member of the Senate and has a very decent staff. He is a friend and a colleague I respect, and I congratulate the Senator on his letter to Time Warner and their response. I object to the action taken by Time Warner and Viacom—two of the big giants today—for putting the U.S. Senate in a difficult if not compromising position.

Probably nothing else better demonstrates the power of the lobbyists around this place, who overreach and overreach and overreach, and get not only themselves but the reputation of this body in some degree of disrepute. There are good and substantive arguments for and against the cable volume discount provision in the committee-passed bill. Time Warner and Viacom have told the Senate they will give discounts to the small cable operators, as we had provided for in the bill, if and only if, Mr. President—they have not gotten themselves off the hook as far as this Senator is concerned—they will agree to these discounts that they never would have thought of had we not incorporated this in the bill, and they simply say that if and only if the Senate removes the volume discount language for the small cable operators will they carry out their commitment.

They still have a quid pro quo and it is wrong. That is why this Senator last night objected to any unanimous consent requests that by voice vote we change the committee's position. I will insist on a rollcall vote. There may well be good reasons for the Senate to change that provision that came out of the Commerce Committee. Time Warner has obviously put all kinds of pressure on the small cable operators around the United States, which they can do. So now we have a situation, as I understand it, where the small cable operators, whom we wanted to protect to some degree with regard to insisting on some discounts, now have been pressured by Time Warner to appeal to us to eliminate the proviso of the bill.

I do not want to see the Senate agree to something like that, because I think whether we do it knowingly or unwittingly, we place ourselves in a position of being influenced when maybe that is not the case.

There comes a time when the U.S. Senate, despite money, despite power, despite pressure from competing interest groups, has to stand up and do what we think is right. Just because of the action of the Commerce Committee to provide some measure of relief for the smaller cable operators, who by and large are at the complete indirect control by the biggies like Time Warner, the little guys are now appealing that the big guys have said they will go along with what we want to do if we will knock it out of the piece of legislation.

This has gone way too far. Time Warner and Viacom have taken the small cable operators hostage, just like hostages are being taken in Bosnia today. They have taken these little guys hostage and they say, ''If you will knock this out of the bill, then somehow we will get along.'' I think this is the time to teach Time Warner and every other lobbyist—and there are a lot of good lobbyists around this place—that they overstep their bounds. They clearly overstepped their bounds when they wrote the referenced letter I had just cited and which was placed in the RECORD by my friend and colleague, an honorable man, the Senator from South Dakota, Senator PRESSLER.

I hope we will recognize that Time Warner is attempting to take hostages. I think we should say to Time Warner, grab them right by the throat if we have to, and say: Mister, you may be very big and you may have control like no one else has ever had of our entertainment industry, but you cannot control the U.S. Senate.

Therefore, I will insist upon a vote and I will be against any kind of a voice vote because I think this is the time to teach some of these larger companies that enough is enough. These large companies are saying to the Senate, ''If you do not remove this provision, we will not give fair prices to the small cable operators.'' They are trying to take the U.S. Senate hostage, also. If we, the U.S. Senate, do what Time Warner and Viacom want us to do, this type of contingency is dangerously close to a quid pro quo. It is not right and is probably illegal. The U.S. Senate should not negotiate with hostage takers.

Mr. President, because of this tactic, I insist on a rollcall vote on trying to knock out the volume discount provisions. The Senate can work its will but I will stick by the committee's provisions.

Mr. BYRD. Will the Senator yield?

Mr. EXON. I will be glad to yield to the Senator.

Mr. BYRD. Mr. President I thank the Senator for his clear and forceful statement. And I share his views. May I say

that I am glad he will insist on a vote. If he does not, I will.

It seems to me—I will have more to say later—that the good work, the efforts, and the many hours and days and weeks and months that the committee has devoted to this legislation run the risk now of coming to naught, as far as this Senator is concerned.

It appears to me that in our efforts to control bigness, bigness is weighing in, and I am not going to be impressed by bigness or by money or by heavy lobbying.

I think this also goes to show we should not have voted for cloture yesterday. I voted against cloture. This is a massive bill. It is an important bill. I am sure it has a lot of good elements in it. But here at the last minute, we are under pressure now. Cloture has been invoked. And some kind of an agreement has been entered into to stack amendments with 2-minute explanations.

I thank the distinguished majority leader for including the ''2-minute explanation'' in the agreement. I went to him personally yesterday and asked him to do that. If there are going to be stacked votes, at least we should have some explanation.

But I think this situation should cure us of stacking votes, great numbers of votes with only a minute or 2 minutes of explanation. This is the United States Senate where debate is unlimited, unless we invoke cloture or enter into time agreements.

From now on, I am not going to be very congenial with respect to stacking a large number of votes. But to have a string of stacked votes on a very complicated bill that I do not understand, and I am not sure any other Senators will understand what is in this bill by the time this amendment process is completed, to call up amendments, and debate them for only 30 minutes; very complicated amendments; the kind of amendments that should be offered in committee, or, if they are going to be offered on the floor, there ought to be adequate debate so that we all know what we are doing—is going too far, especially if the vote on final passage is to occur immediately following the disposition of the enumerated amendments.

So I thank the Senator for stating that he will insist on a vote, and I want to put leadership on notice that in the future this one Senator is going to be a little more reluctant to enter into time agreements on complex matters like this and stack votes, to be followed by the immediate passage of a bill. There seems to be a mindset here that we have to finish any complex bill in 3 days or 4 days. I am not sure that Senators ought to be in such a hurry.

I am disturbed by the Time Warner letter. It is disturbing. It may be that this will be one of the straws that breaks the camel's back as far as this Senator is concerned in respect of the vote on this bill.

I thank the Senator for yielding.

Mr. EXON. Mr. President, may I have just one second to thank my friend from West Virginia for his usually thoughtful remarks? I appreciate them very, very much. As one who has presided over and has put the U.S. Senate on course, I think his words are well taken.

Mr. SIMON. Mr. President, I take 3 minutes of my time on my amendment.

I first want to comment on what Senator BYRD just had to say. I think in general we can say there are rare occasions when we take too much time on a bill. There are too many occasions when we take too little time on a bill, as far as legislative process.

AMENDMENT NO. 1283, AS MODIFIED

Mr. SIMON. I would like to just speak very briefly on an amendment that I have in. The present practice of the FCC is to limit radio station ownership by any one entity to 20 AM and 20 FM stations. The most any one entity now has is 27 total. The bill, without my amendment, takes the cap off completely. My amendment says let us put a cap of 50 AM, 50 FM, far more than we have now by any one entity. It is a 150-percent increase. But let us not move to the day when we have too much concentration of the media. I think that is not a healthy thing.

One of my colleagues speaking against my amendment says this is what is happening in the newspaper business. It is. It is not healthy in the newspaper business. But we do not have any control over that. We do have control through Federal licensing of radio stations and television. My amendment goes further than some people would want. I say let us increase that 40 limit now to 100. But let us not let anyone who wants control of the radio stations of this Nation to have unlimited ability to get those radio stations.

I hope my amendment will be approved.

The PRESIDING OFFICER. Who yields time?

Mr. SIMON. Mr. President, if no one wishes the floor, I question the presence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

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

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

UNANIMOUS-CONSENT AGREEMENT

Mr. PRESSLER. Mr. President, I ask unanimous consent that at the hour of 12:15 p.m., the Senate proceed to a vote on or in relation to the McCain amendment No. 1285, to be followed by a vote on or in relation to the Simon modified amendment No. 1283, to be followed by a vote on or in relation to the Lieberman amendment No. 1298, with the remaining provisions of last night's consent agreement remaining in place.

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

AMENDMENT NO. 1285

The PRESIDING OFFICER. The hour of 12:15 p.m. having arrived, there are 2 minutes—1 minute per side—for discussion of the amendment and then voting will occur on the amendment offered by the Senator from South Dakota, [Mr. PRESSLER] for the Senator from Arizona [Mr. MCCAIN].

The Senator from South Dakota is recognized.

Mr. PRESSLER. Mr. President, I urge my colleagues to vote for the McCain amendment and to vote the other amendments down. The arguments have been made. So I yield back the remainder of my time. I yield back all time.

The PRESIDING OFFICER. The question is on agreeing to amendment No. 1285 offered by the Senator from South Dakota for the Senator from Arizona. The yeas and nays have been ordered. The clerk will call the roll.

The legislative clerk called the roll.

Mr. LOTT. I announce that the Senator from Utah [Mr. HATCH] is necessarily absent.

I further announce that, if present and voting, the Senator from Utah [Mr. HATCH] would vote ''yea.''

The PRESIDING OFFICER. Are there any other Senators in the Chamber desiring to vote?

The result was announced—yeas 98, nays 1, as follows:

[Rollcall Vote No. 264 Leg.]

YEAS—98

Abraham	Feingold	Lugar
Akaka	Feinstein	Mack
Ashcroft	Ford	McCain
Baucus	Frist	McConnell
Bennett	Glenn	Mikulski
Biden	Gorton	Moseley-Braun
Bingaman	Graham	Moynihan
Bond	Gramm	Murkowski
Boxer	Grams	Murray
Bradley	Grassley	Nickles
Breaux	Gregg	Nunn
Brown	Harkin	Packwood
Bryan	Hatfield	Pell
Bumpers	Heflin	Pressler
Burns	Helms	Pryor
Byrd	Hollings	Reid
Campbell	Hutchison	Robb
Chafee	Inhofe	Rockefeller
Coats	Inouye	Roth
Cochran	Jeffords	Santorum
Cohen	Johnston	Sarbanes
Conrad	Kassebaum	Shelby
Coverdell	Kempthorne	Simpson
Craig	Kennedy	Smith
D'Amato	Kerrey	Snowe
Daschle	Kerry	Specter
DeWine	Kohl	Stevens
Dodd	Kyl	Thomas
Dole	Lautenberg	Thompson
Domenici	Leahy	Thurmond
Dorgan	Levin	Warner
Exon	Lieberman	Wellstone
Faircloth	Lott	

NAYS—1

Simon

NOT VOTING—1

Hatch

So the amendment (No. 1285) was agreed to.

Mr. PRESSLER. Mr. President, I move to reconsider the vote, and I move to lay that motion on the table.

The motion to lay on the table was agreed to.

AMENDMENT NO. 1283, AS MODIFIED

Mr. PRESSLER. Mr. President, I move to table the Simon amendment and I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second? There is a sufficient second.

The yeas and nays were ordered.

Mr. SIMON. Mr. President, parliamentary inquiry. My understanding is that before these next two amendments are voted on, the supporters get 1 minute, and the opposition gets 1 minute to explain.

The PRESIDING OFFICER. The Senator is correct. Two minutes are equally divided.

Mr. SIMON. Mr. President, if I may have the attention of my colleagues, the present FCC rule says one entity can own 20 AM stations and 20 FM stations, or a total of 40. Right now, the maximum owned by any one entity is 27.

This bill takes the cap off completely. My amendment says we will put a cap of 50 AM, 50 FM, a 150-percent increase, but do not take the cap off completely.

We should not concentrate media ownership in this country. It is not a healthy thing for the future of our country. I hope Members will resist the motion to table my amendment.

Mr. PRESSLER. Mr. President, I hope my colleagues will table this amendment. We voted on this last week in the leadership package, the Dole - Daschle - Pressler - Hollings package. We voted something like 78 to 8. This matter has been settled in this bill. It takes apart the leadership package. I urge everyone to table it. It is more regulation and I ask we proceed.

I yield the remainder of my time.

The PRESIDING OFFICER. The question occurs on the motion to table amendment No. 1283 offered by the Senator from Illinois [Mr. SIMON]. The yeas and nays have been ordered.

The clerk will call the roll.

The bill clerk called the roll.

Mrs. KASSEBAUM (when her name was called). Present.

Mr. LOTT. I announce that the Senator from Utah [Mr. HATCH] is necessarily absent.

I further announce that, if present and voting, the Senator from Utah [Mr. HATCH] would vote ''yea.''

The PRESIDING OFFICER. Are there any other Senators in the Chamber who desire to vote?

The result was announced—yeas 64, nays 34, as follows:

[Rollcall Vote No. 265 Leg.]

YEAS—64

Abraham	Chafee	Exon
Ashcroft	Coats	Faircloth
Baucus	Cochran	Ford
Bennett	Cohen	Frist
Bond	Coverdell	Glenn
Breaux	Craig	Gorton
Brown	D'Amato	Graham
Bryan	Daschle	Gramm
Burns	Dole	Grams
Campbell	Domenici	Grassley
Gregg	Lugar	Shelby
Hatfield	Mack	Simpson
Heflin	McCain	Smith
Hollings	McConnell	Snowe
Hutchison	Moseley-Braun	Specter
Inhofe	Murkowski	Stevens
Inouye	Nickles	Thomas
Jeffords	Nunn	Thompson
Kempthorne	Packwood	Thurmond
Kohl	Pressler	Warner
Kyl	Roth	
Lott	Santorum	

NAYS—34

Akaka	Feinstein	Moynihan
Biden	Harkin	Murray
Bingaman	Helms	Pell
Boxer	Johnston	Pryor
Bradley	Kennedy	Reid
Bumpers	Kerrey	Robb
Byrd	Kerry	Rockefeller
Conrad	Lautenberg	Sarbanes
DeWine	Leahy	Simon
Dodd	Levin	Wellstone
Dorgan	Lieberman	
Feingold	Mikulski	

ANSWERED ''PRESENT''—1

Kassebaum

NOT VOTING—1

Hatch

So, the motion to lay on the table the amendment (No. 1283), as modified, was agreed to.

Mr. PRESSLER. Mr. President, I move to reconsider the vote by which the motion was agreed to.

I move to lay that motion on the table.

The motion to lay on the table was agreed to.

AMENDMENT NO. 1298

Mr. PRESSLER. Mr. President, I move to table amendment No. 1298, and I ask for the yeas and nays.

The PRESIDING OFFICER (Mr. ABRAHAM). Is there a sufficient second?

There is a sufficient second.

The yeas and nays were ordered.

The PRESIDING OFFICER. Under the order, there are 2 minutes equally divided between the proponents and the opponents of the amendment.

The Senator from Connecticut.

Mr. LIEBERMAN. I thank the Chair.

I rise to speak against the motion to table. I ask my colleagues to listen for these 60 seconds.

I usually do not make predictions on the floor of the Senate. But based on my experience in cable consumer protection for more than a decade, I will predict to my colleagues that, if this bill passes unamended, most American cable consumers will see significant rate increases in the next couple of years. These rate increases are not necessary. In 1984, Congress removed regulation from cable consumers. It was a disaster. Rates skyrocketed.

In 1992, on a bipartisan basis, we came back and put in reasonable consumer protections, and they have worked brilliantly. Rates are down 11 percent, and the cable companies are thriving, with the highest profit margins in the telecommunications industry, and with a great ability to continue to raise capital. There is no reason to remove the protections that cable consumers have in this bill.

My amendment simply restores a standard of the marketplace saying that no cable company will be regulated unless it charges more than the average in markets where there is effective competition.

This amendment is not perfect, but it is all that stands between our constituents and significant cable rate increases every month for the next several years.

I thank the Chair.

Mr. PRESSLER. Mr. President, I ask my colleagues to table this amendment. This amendment is undoing the leadership package, the Dole-Daschle package, which we voted on already. The Dole-Daschle package and the committee bill will increase competition and will cause consumer rates on cable to go down as more entrants enter the market.

I urge that we table this amendment.

The PRESIDING OFFICER. The question is on agreeing to the motion of the Senator from South Dakota to lay on the table the amendment of the Senator from Connecticut. The yeas and nays have been ordered, and the clerk will call the roll.

The legislative clerk called the roll.

Mr. MACK (when his name was called). Present.

Mr. LOTT. I announce that the Senator from Utah [Mr. HATCH] is necessarily absent.

I further announce that, if present and voting, the Senator from Utah [Mr. HATCH] would vote ''yea.''

The PRESIDING OFFICER. Are there any other Senators in the Chamber who desire to vote?

The result was announced—yeas 67, nays 31, as follows:

[Rollcall Vote No. 266 Leg.]

YEAS—67

Abraham	Faircloth	McCain
Akaka	Ford	McConnell
Ashcroft	Frist	Moseley-Braun
Baucus	Gorton	Murkowski
Bennett	Gramm	Nickles
Bond	Grams	Nunn
Breaux	Grassley	Packwood
Brown	Gregg	Pressler
Bryan	Harkin	Reid
Burns	Hatfield	Robb
Campbell	Heflin	Roth
Chafee	Hollings	Santorum
Coats	Hutchison	Shelby
Cochran	Inhofe	Smith
Cohen	Inouye	Snowe
Coverdell	Jeffords	Specter
Craig	Kassebaum	Stevens
D'Amato	Kempthorne	Thomas
Daschle	Kerrey	Thompson
DeWine	Kerry	Thurmond
Dole	Kyl	Warner
Domenici	Lott	
Dorgan	Lugar	

NAYS—31

Biden	Glenn	Moynihan
Bingaman	Graham	Murray
Boxer	Helms	Pell
Bradley	Johnston	Pryor
Bumpers	Kennedy	Rockefeller
Byrd	Kohl	Sarbanes
Conrad	Lautenberg	Simon
Dodd	Leahy	Simpson
Exon	Levin	Wellstone
Feingold	Lieberman	
Feinstein	Mikulski	

ANSWERED ''PRESENT''—1

Mack

NOT VOTING—1

Hatch

So the motion to lay on the table the amendment (No. 1298) was agreed to.

Mr. HOLLINGS. Mr. President, I move to reconsider the vote by which the motion was agreed to.

Mr. STEVENS. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. STEVENS addressed the Chair.

The PRESIDING OFFICER. The Senator from Alaska.

AMENDMENT NO. 1303

Mr. STEVENS. Mr. President, the next item to be taken up is my amendment No. 1303, which I have offered along with my good friends, the Senator from Hawaii, Senator INOUYE, and the Senator from New York, Senator D'AMATO.

This amendment would clarify the resale provisions of section 255 by requiring the Bell companies to make resale service available at prices reflecting the actual cost of providing those services or functions to another carrier.

The amendment seeks to carry out and really clarify the delicate balance of the bill. It really is just that, an amendment to clarify the relationship of sections 251 and 255. I do believe, however, that we have developed a situation where there is a misunderstanding about the actual terms of my amendment.

I might state that when I offered it, I thought it was an amendment that had support. I offered it along with a series of other amendments. As the Senate realizes, all of those amendments have been accepted by agreement. There has been no dissension concerning them.

I feel it essential this amendment have further study in order that it will maintain the delicate balance that this bill requires. I will be a conferee on this bill, and it is my intention to make certain that this subject is called up in the conference.

Any amendment clarifying these two provisions would be within the scope of the conference, in my opinion, and it is my intention to ask that this amendment be withdrawn at this time.

I want my friend from Hawaii to have a chance to make a comment about this before I do, however, because I want to make sure everyone understands that we are not abandoning this subject, we are going to postpone it to the conference in the hope that we will be able to work out an amendment there which will have the same success as the other amendments we have worked on so long, which have been adopted by unanimous consent.

I yield to my friend from Hawaii.

Mr. INOUYE addressed the Chair.

The PRESIDING OFFICER. The Senator from Hawaii.

Mr. INOUYE. Mr. President, I wish to join my colleague from Alaska in assuring all those who support the measure that it is not our intention to let it die at this stage. We will most certainly, as conferees, insist that this matter be discussed and, hopefully, we will be able to convince our colleagues in the House and the Senate to adopt it.

So, reluctantly but I believe necessarily, I will concur with the action that is about to take place.

Mr. PRESSLER addressed the Chair.

The PRESIDING OFFICER. The Senator from South Dakota.

Mr. PRESSLER. Mr. President, I want to pay tribute to the two Senators from Alaska and Hawaii. They are two giants of the Senate and giants in our committee. They will both be conferees. They have provided enormous leadership.

We just feel, at this time, that we have carefully crafted an agreement, and the checklist, and so forth, might come apart. So we have decided to delay this discussion until conference. I want to pay tribute to both of them being willing to help move this bill forward. I thank them very much.

Mr. DOLE. Let me concur in the statement made by the manager. This is a controversial area. I think the managers have indicated they are both going to be conferees. It will be considered at that time, and it is within the scope of the conference. There is a disagreement, but this may help solve it. I thank my colleagues.

Mr. STEVENS. Mr. President, I ask unanimous consent that we may withdraw amendment 1303.

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

So the amendment (No. 1303) was withdrawn.

AMENDMENT NO. 1292

The PRESIDING OFFICER. The pending question is amendment No. 1292, offered by the Senator from West Virginia [Mr. ROCKEFELLER].

Mr. HOLLINGS. On behalf of the distinguished Senator from West Virginia, Senator ROCKEFELLER, I ask unanimous consent that the amendment be withdrawn.

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

So the amendment (No. 1292) was withdrawn.

AMENDMENT NO. 1341

The PRESIDING OFFICER. The pending question now is amendment No. 1341, offered by the Senator from South Dakota, Senator PRESSLER, for the majority leader.

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

The PRESIDING OFFICER. The clerk will call the roll.

The bill clerk proceeded to call the roll.

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

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

Mr. PRESSLER. Mr. President, I hope we can turn now to the Heflin amendment.

Mr. HOLLINGS. Mr. President, I ask unanimous consent that the pending Dole amendment be set aside so we can bring up the Heflin amendment.

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

AMENDMENT NO. 1367

Mr. HEFLIN. Mr. President, I believe this has been cleared by both sides. This deals with amendment 1367, which I previously sent to the desk.

This deals primarily with a rule, in urban areas, where there is a small town that has a limited number within the incorporated area or the urbanized area, and has a high percentage of customers in rural areas.

It is a unique situation in regard to cable systems that have gone out beyond the incorporated limits, and they have sold to customers there. That is a pretty expensive type of thing.

When they go out, there is not the density on the lines that you have in the city. In rural areas, you might have one customer per mile, and in the cities you may have 1,200 customers to a mile, or 1,000 customers to a mile.

This sort of takes care of a situation for rural areas. It affects those where I believe there are no more than 20,000 subscribers, and a high percentage is in urban areas. I move the adoption of this amendment.

Cable systems with less than 20,000 subscribers are extremely concerned that they will be unable to compete with the telephone companies once they enter the cable business, a very legitimate concern. Because of the very real possibility that they will be run over by their local telephone company if the only option is to compete head-to-head, small cable systems would like to have the option to form a joint venture with their local telephone company or to be acquired by their local telephone company.

The bill as it is currently written would disallow small cable systems in urbanized areas to form joint ventures or to be acquired by their local telephone company. Due to the broad definition of an urbanized area, many small cable systems serving very rural areas will be ineligible to form a joint venture or to be acquired by their local telephone company because they technically fall within the definition of an urbanized area.

My amendment would allow cable systems in an urbanized area that serve a significant number of subscribers in nonurbanized areas to be eligible to participate in joint ventures or to be acquired.

These small cable operators serving a significant number of rural subscribers but who are swept into the urbanized area definition should be given the option of forming joint ventures or of selling to their local telephone company. Without these options, S. 652 could well force many of them out of business.

Mr. PRESSLER. Mr. President, I want to commend the Senator from Alabama. I know he is leaving the Senate next year. We will miss him.

This is a good amendment. We agree to it. I think it will help smaller cities in rural areas. We are prepared to pass

the amendment. I move we adopt the amendment. I congratulate my friend.

The PRESIDING OFFICER. The question is on agreeing to the amendment.

The amendment (No. 1367) was agreed to.

Mr. HEFLIN. I move to reconsider the vote.

Mr. PRESSLER. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

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

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

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

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

Mr. DOLE. Mr. President, I think one of the remaining two amendments is the amendment of the Senator from Kansas.

The PRESIDING OFFICER. That is correct. That is the pending question.

AMENDMENT NO. 1341

Mr. DOLE. Mr. President, let me state very simply the purpose of this amendment. I do not know anything about all the Time Warner material. It has nothing to do with this amendment. I heard the Senator from Nebraska. I thought we would be able to accept this amendment, but I understand he has a problem with it.

As I understand it, not being a member of the committee, the current bill is tantamount to Government price-setting in the programming market. The language in the bill would remove programmers from taking advantage of universally accepted marketing practices such as volume discounts.

It seems to me all I am doing is to strike out this section. It strikes a provision of the bill that would have the effect of regulating the prices paid by small cable TV companies for programming. And the intent of the provision was to crack down on those programmers who were gouging small operators. But, unfortunately, it also impacts on good programmers who did not engage in the price-gouging effort.

Finally, small cable TV companies have now negotiated good contracts. I have a letter from the National Cable Television Cooperative, Inc., and also a letter from Turner Broadcasting, which suggests that Discovery Communications, Black Entertainment Television, and Turner Broadcasting support my motion to strike section 204(b). They set forth the reasons:

Although described as a ''small cable operator'' amendment, section 204(b) would effectively entitle every cable operator to the price charged to the largest cable operator. . . .

Which was never the intent. So we were just going to take it out. They have now negotiated good contracts.

I also include the letter from Turner Broadcasting and the letter from the National Cable Television Cooperative. Let me quote a part of that.

We are pleased to report that the National Cable Television Cooperative has reached agreements with Time Warner's Home Box Office Unit, Showtime Network, Inc.'s Showtime and the Movie Channel Services, and Viacom's MTV Network Services. . . . As a result of this important change in circumstances, we no longer believe that the changes to the program access provisions of the Cable Act proposed in Sec. 204(b) of S. 652 are necessary, and we can accept the removal of those provisions from the bill.

I know the Senator from Nebraska brought in a lot of material on Time Warner. I do not have anything to do with that. I do not know anything about Time Warner. I mentioned their name myself a couple of weeks ago in Hollywood. So I do not have a dog in that fight. I do not understand what it is all about.

All I am doing is striking out a section that is no longer necessary, and it is supported, as I said, by Discovery Channel, Black Entertainment Television, Turner Broadcasting, National Cable Television Cooperative.

I will yield the remainder of my time. There may be time in opposition.

Mr. President, I ask unanimous consent the two letters be printed in the RECORD.

There being no objection, the letters were ordered to be printed in the RECORD, as follows:

NATIONAL CABLE TELEVISION COOPERATIVE, INC.,
Lenexa, KS, June 15, 1995.

Hon. LARRY PRESSLER,
U.S. Senate, Chairman, Committee on Commerce, Science and Transportation, Washington, DC.

DEAR CHAIRMAN PRESSLER: We are pleased to report that the National Cable Television Cooperative has reached agreements with Time Warner's Home Box Office Unit, Showtime Network, Inc.'s Showtime and the Movie Channel Services, and Viacom's MTV Network Services (MTV, VH1, and Nickelodeon). As a result of this important change in circumstances, we no longer believe that the changes to the program access provisions of the Cable Act proposed in Sec. 204(b) of S. 652 are necessary, and we can accept the removal of those provisions from the bill.

As you know, other conflicts remain. Despite repeated attempts by the Cooperative, we have failed to conclude master affiliate agreements with many non-vertically-integrated networks which are exempt from existing law.

For example, we were recently notified by Group W of their intent not to renew our long-standing contract for Country Music Television. (Originally negotiated by NCTC with CMT's former owners in 1989, prior to CMT's purchase by Group W/Gaylord). Group W has also steadfastly refused to conclude a contract with us for The Nashville Network. The most difficult of many other examples we could cite would be that of ESPN.

Please accept our deepest appreciation for lending your support and good offices to bringing about a resolution of this matter which we believe is mutually beneficial to all parties.

Sincerely,

MICHAEL L. PANDZIK,
President.

TURNER BROADCASTING SYSTEM, INC., WASHINGTON CORPORATE OFFICE,
Washington, DC, June 14, 1995.

Hon. ROBERT DOLE,
Hart Senate Office Building, Washington, DC.

DEAR SENATOR DOLE: I am writing on behalf of Discovery Communications, Black Entertainment Television and Turner Broadcasting System, Inc., to support your motion to strike section 204(b) of S. 652, the ''Telecommunications Competition and Deregulation Act of 1995.''

Section 204(b) would remove the words ''legitimate economic benefits'' from current law, thereby outlawing the volume discounts charged by certain programmers (those with 5% co-ownership with cable systems) even where the volume discounts are economically justified.

Although described as a ''small cable operator'' amendment, section 204(b) would effectively entitle every cable operator to the prices charged to the largest cable operator, working substantial economic harm to the affected networks. Moreover, since section 204(b) applies only to some and not all programmers, it would have a very unfair competitive impact.

We deeply appreciate your efforts to correct this problem with the bill.

Sincerely,

BERTRAM W. CARP,
Vice President, Government Affairs.

Mr. DOLE. Mr. President, I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second?

There is a sufficient second.

The yeas and nays were ordered.

The PRESIDING OFFICER. The Senator from South Carolina.

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

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

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

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

Mr. HOLLINGS. Mr. President, I thought the time was limited. I understand the time is not limited on this amendment.

I would simply say, with respect to the merits, that programmers give big cable operators the volume discounts and not to the small cable operators. So, in trying to provide for that universal service and to make sure that it is extended, particularly to the high-cost and rural areas, the provision in the bill is that the small cable operators get the similar discounts.

With the Dole amendment, that would be removed. There would be high-volume discounts to the big cities, let us say, and higher costs thereby and a diminution of universal service to the rural areas of America.

So, this side would oppose the amendment on the merit itself. There is some question in this Senator's mind, without seeing anything further, on how this amendment came to the floor. With that in mind, let me yield to my colleagues who have come.

I understand the distinguished Senator from Iowa wants to talk as in morning business while we are waiting.

Mr. PRESSLER. Mr. President, could I just make a statement on the program access issue?

The PRESIDING OFFICER. The Senator from South Dakota.

Mr. PRESSLER. Mr. President, I rise in strong support of the Dole amendment. Coming from a rural, small-city State, I have long been concerned with program access. In fact, in the 1992 cable bill, my main reason for supporting it was not the pricing side so much as the program access side. It is a controversial thing, but I think the pricing side of it was a mistake but the program access side was a necessary thing.

To understand this amendment, or this issue, remember that program access is not something that everybody has. I remember one of our REA's, which transmit TV signals by microwave, wanted to get ESPN on their channel and they could not even get ESPN to return a phone call because they were too small. So there was a need for program access. And this amendment is continuing in that tradition. So this is a subject that all of us have worked on for years.

The program access portions, I think, of that act have worked at least to help the smaller cities and to help the rural areas where they transmitted by microwave from one farm to the next where it is too expensive for cable lines to run. Nobody will sell those people programming because it is not worth it financially. There are myriad interests concerned with this issue. I know the Black Entertainment Network has endorsed this amendment for the same reason, that they are very much in need of program access.

There has been much discussion over the program access provisions contained in S. 652. From the beginning of this process, I wanted to deal with the problem which many small operators have faced in being charged higher rates for programming. S. 652's program access provision is important to small cable operators, especially those in South Dakota. Program providers strongly object to this provision. I suggested to the program providers that they work with the small cable operators to seek an industry agreement which could make a legislated solution unnecessary. The president of the National Cable Television Cooperative, Michael Pandzik, the organization that purchases programming on behalf of the small cable operators, wrote to me that the cooperative has reached agreement on the small cable rates on programs from the major vertically integrated entertainment companies. As a result, I support the amendment by Senator DOLE to strike the program access language change in S. 652.

The PRESIDING OFFICER. The question is on the amendment.

Mr. EXON addressed the Chair.

The PRESIDING OFFICER. The Senator from Nebraska.

Mr. EXON. Will the Chair advise the Senator from Nebraska what is the pending matter before the Senate?

The PRESIDING OFFICER. The pending matter before the Senate is amendment No. 1341, offered by the Senator from South Dakota for the majority leader.

Mr. EXON. I thank the Chair. This is the amendment I had discussed earlier in the day. As I understand it, the Senator from South Dakota is recommending and has introduced this amendment for the majority leader, notwithstanding the discussions that we had earlier in the day on this specific matter?

Mr. PRESSLER. I am sorry, would my friend——

Mr. EXON. I simply say I want to understand what is being proposed. Do I understand the Senator from South Dakota is offering the amendment for the majority leader?

Mr. PRESSLER. The majority leader offered it for himself and spoke for it.

Mr. EXON. Now you are calling it up for a vote, is that correct?

Mr. PRESSLER. Yes, if the Senator from Nebraska wishes.

Mr. EXON. No, it is fine to have the vote. I am not going to object to that. There is no way I can object to a vote.

I would simply say to my friend from South Dakota, is he, as the leader of the bill, recommending that the Senate vote for the Dole amendment?

Mr. PRESSLER. Yes, I am. I have a long tradition of support for program access. I voted for the 1992 cable bill mainly because of program access issues. Yes, I am recommending that.

Mr. EXON. I would simply say, I think the Senator from South Dakota knows this Senator came to the defense of my friend and colleague from South Dakota earlier because of what I thought was terrible precedent setting with regard to the letters that had been distributed, apologies given on this whole matter.

Notwithstanding the serious objection that the Senator from South Dakota, I thought, had with regard to the lobbying activities that took part on this, notwithstanding that, am I to understand the Senator from South Dakota is still going to support the measure?

Mr. PRESSLER. Yes. I have stated my views in my letter. But the underlying substance of this amendment I support.

Mr. EXON. Is the Senator saying that while he objects to the way this matter has been handled, the end result, in his opinion, is that it is good for rural areas with regard to receiving television material?

Mr. PRESSLER. Yes. I gave an example when the Senator was not here of some of my rural telephone co-ops having difficulty getting ESPN. We had to get the Vice President out there. My reason for supporting the 1992 Cable Act was program access. The substance of the amendment is good for the country, I believe. It is very much in keeping with that.

I wrote a letter back to Time Warner regarding that matter and have placed it in the CONGRESSIONAL RECORD. They wrote me a letter back. The National Cable Television Cooperative group supports it very strongly. I have a letter from them. I cited this earlier.

We are pleased to report that the National Cable Television Cooperative has reached agreements with Time Warner's Home Box Office Unit, Showtime Network, Inc.'s Showtime and the Movie Channel Services, and Viacom's MTV Network Services (MTV, VH1, and Nickelodeon). As a result of this important change in circumstances, we no longer believe that the changes to the program access provisions of the Cable Act proposed in Sec. 204(b) of S. 652 are necessary, and we can accept the removal of those provisions from the bill.

As you know, other conflicts remain. Despite repeated attempts by the Cooperative, we have failed to conclude master affiliate agreements with many non-vertically-integrated networks which are exempt from existing law.

For example, we were recently notified by Group W of their intent not to renew our long-standing contract for Country Music Television. (Originally negotiated by NCTC with CMT's former owners in 1989, prior to CMT's purchase by Group W/Gaylord). Group W has also steadfastly refused to conclude a contract with us for The Nashville Network. The most difficult of many other examples we could cite would be that of ESPN.

So, in any event, I think we are all aware of these problems. I support the substance of the amendment. I disagree with the way Time Warner dealt with that particular letter. I wrote them a strong letter back, and they wrote me a letter stating my letter was absolutely accurate, and they apologized.

Mr. EXON. Just so that I understand this, I would like to have my colleague from South Dakota explain a little bit more. As I understand it, Time Warner and all these other good folks that control massive sections of our entertainment industry were not treating the small cable owners in South Dakota and elsewhere fairly, in the opinion of the Senator from South Dakota and the Senator from Nebraska and the Senator from South Carolina, the ranking Democrat on the Commerce Committee.

Therefore, we wrote into the telecommunications bill that was reported out of committee language that would have required Time Warner and all these other good folks, who were very much concerned about the public interest and public access, and not interested in making money—we wrote that in there to try to force them to treat the subscribers to cable in South Dakota and elsewhere fairly.

Is that accurate? Is that an accurate reflection of what I thought we did in committee?

Mr. PRESSLER. I believe that the legislative process here, as it moves forward, is trying to be fair, and different Senators have different points of view. Senator DOLE has brought his amendment forth and has spoken on it, having made the arguments for it. I think the Senator's comments are most welcome.

I have a long record of fighting hard for program access. The Black Entertainment Network has endorsed this effort by Senator DOLE. I think it is a very good effort.

Mr. EXON. Is it fair to assume that, in the opinion of the Senator from South Dakota, Time Warner and all these good folks would not have made this arrangement at this very late hour had it not been for the actions that we in the Commerce Committee took to address some things that were going on with regard to the way Time Warner and others treated rural areas? Is it safe to assume, in the opinion of the Senator from South Dakota, that this grand compromise at the last minute would not have been reached had we not taken the action that we did in the Commerce Committee on the telecommunications bill?

Mr. PRESSLER. It is hard to say. But let me say that I have for years fought hard for program access for smaller cable people, for our rural people, and there is an understanding with the president of South Dakota East River Electric. We could not get ESPN even to return our calls. Finally, we called the head personnel up in New York and they sent a person out, and ultimately Time Warner may be responding to that.

The point is that there is a constant battle, trying to balance between price and program access. The same thing happened when Hubbard put up his satellite, DBS. He had a hard time getting program access.

All of us on the Commerce Committee, including the Senator from Nebraska, I am sure, and others, worked on this. That is a key part. Program access is a key part of this whole business. That is what we are working on.

Mr. EXON. So the Senator from South Dakota cannot confirm my suspicion that the grand compromise being offered by the Dole amendment would not likely have taken place had we not acted in the committee.

Mr. PRESSLER. The Senator from Nebraska will have to reach his conclusions. Obviously, he has reached some. If an intraindustry solution can be reached, a legislative mandate is not necessary. The NCTC has negotiated for small cable, and those intraindustry negotiations will undoubtedly continue.

We can reserve the opportunity to restore this language if the programmers of small cable cannot reach an accommodation in conference. My friend from Nebraska will no doubt be in that conference. So we welcome him.

Mr. EXON. I simply say that I will not take any more time on this. There will be others who may want to speak on it.

I happen to think this whole proposition is a pretty sorry mess. It seems to me that if we approve the Dole amendment, which Time Warner and others would like to have, we would simply be saying, regardless of your improper activities, regardless of the letters that you wrote within the last few days, which I thought was unfair to the Senator from South Dakota and others, and certainly unfair to the processes and workings, legitimate processes and workings, of the U.S. Senate, then I think it would be entirely proper to vote for the Dole amendment.

On the other hand, if you feel as I do that this is kind of a blot on the U.S. Senate, and that if we vote for the Dole amendment we are just going to be saying to Time Warner and others to come in with your strong-arm lobbying, come in with your accusations in the form of letters about Senator PRESSLER and others, but we are all going to have one happy ending here now, because we have gotten together in a grand compromise and, therefore, this is a good for everyone.

The fact that Time Warner, in my opinion, has taken hostages through the small cable operators that you in South Dakota and myself in Nebraska, and my colleague from Nebraska, Senator KERREY, have tried to protect, it seems to me that we in the Senate, if we adopt this amendment, are winking and saying: You should not have done that, but you are going to get what you want in the end anyway.

I urge rejection of the Dole amendment.

Mr. HOLLINGS. Mr. President, let me join in the sentiment of the Senator from Nebraska. And to elaborate on my previous remark, I just quietly said it disturbed me—the process by which this particular amendment has reached consideration in the U.S. Senate. I figured, as the expression was used earlier, that I did not have a dog in the fight because I had been shown a letter to the Honorable LARRY PRESSLER, the chairman, dated June 13, which has already been included in the RECORD.

I will let my previous remarks be sufficient except that now I am shown another letter that is signed by Timothy Boggs, talking of the agreement. That letter, being dated June 13, says:

> As you requested, the attached signature page confirms that Home Box Office has reached an agreement with the National Cable Television Cooperative, Inc. for HBO programming. As discussed with you and your staff, this agreement is entirely contingent on the removal of the program access provisions at Section 204(b) of S. 652, prior to Senate action on the legislation.
>
> Without the removal of this provision from the bill, the HBO distribution agreement with NCTC would be void.

I had nothing to do with it, and nothing was addressed to me. I have now sent the staff to look, because these things surface.

I have been given another letter, dated June 13, 1995, signed by Mr. Mark M. Weinstein, with a copy to Senator BOB DOLE and Senator ERNEST F. HOLLINGS. I ask unanimous consent that the letter in its entirety be printed in the RECORD.

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

VIACOM, INC.,
New York, NY, June 13, 1995.

Hon. LARRY PRESSLER,
U.S. Senate, Senate Russell Office Building, Washington, DC.

DEAR MR. CHAIRMAN: As you know, at your request, Showtime Networks Inc., a cable programming division of Viacom, has been negotiating in good faith with the National Cable Television Cooperative (NCTC) to reach an agreement regarding carriage of its cable programming services.

We are pleased to report that we have reached an agreement between NCTC and Showtime for carriage of our premium cable services. NCTC also requested, just recently, that MTV Networks (MTVN) begin discussions over the basic cable services. Accordingly, MTVN has been negotiating in good faith with NCTC over carriage of the basic cable services. We are committed to continuing to negotiate and hope to reach an MTVN agreement in the near future.

We ask for your support in ensuring the adoption of an amendment deleting the volume discount language in S. 652, as previously agreed. Thank you for your assistance in this matter.

Sincerely,

MARK M. WEINSTEIN,
Senior Vice President.

Mr. HOLLINGS. I will read that to make certain that my comments are right to the point. This is to Chairman PRESSLER.

Dear Mr. Chairman: As you know, at your request, Showtime Networks, a cable programming division of Viacom, has been negotiating in good faith with the National Cable Television Cooperative to reach an agreement regarding carriage of its cable programming services.

We are pleased to report that we have reached an agreement between NCTC and Showtime for carriage of our premium cable services. NCTC also requested just recently MTV Networks, MTVN, begin discussions over the basic cable services. Accordingly, MTVN has been negotiating in good faith with NCTC over carriage of the basic cable services. We are committed to continuing to negotiate and hope to reach an MTVN agreement in the near future.

We ask for your support in ensuring the adoption of an amendment deleting the volume discount language in S. 652 as previously agreed. Thank you for your assistance in this matter.

Now, it is incumbent on me, Mr. President, and my dear colleagues of the Senate, I can tell you here and now ''as previously agreed,'' by Mark M. Weinstein—he signs the letter—I can tell you I do not know the gentleman. I have never seen and have never spoken with him. And I have checked with my staff, and we have not had this letter or anything else, have we?

It could be that this has been faxed. We are searching the records now because we have been in the Chamber for a week.

Mr. PRESSLER. If my good friend will yield for a minute.

Mr. HOLLINGS. Yes.

Mr. PRESSLER. As my friend knows, when I discovered that same language in the Time Warner letter, I requested immediately a correction. I wrote a two-page letter, and they sent me not only a correction but an apology. I think I can obtain the same thing from these folks very quickly, because that is not true.

Mr. HOLLINGS. I understand so. The distinguished chairman is absolutely correct. And I think his letters have been made a part of the RECORD showing that he had nothing to do with it. The inference is not by the Senator from South Carolina that the Senator from South Dakota was in any way engaged in this kind of shenanigan. I can tell you here and now the Senate is going to operate not only with the correction but with the appearance of correct conduct here.

I just did not want this to pass. I would have hoped that this amendment would have not been pursued on the basis of its merits, and I hope it will be defeated on the basis of the process so that everyone knows you cannot deal this way and get your amendments passed. I just think this reflects on the Senate. I agree with the Senator from Nebraska. And since my name is on the Weinstein letter and the first I have seen it is here this morning, I wanted to make that record absolutely clear. I hope we kill the amendment.

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

Mr. HOLLINGS. I will be glad to yield for a question.

Mr. EXON. I would like to ask the managers of the bill, both my friend from South Carolina and my friend from South Dakota, about exactly what we are doing here.

As I understood the Senator from South Dakota, the chairman of the committee, he said that if we accept the Dole amendment, it will fix or cure the problem that we have with regard to availability for small cable operators to get certain types of program from the likes of those good folks, Time Warner and Viacom. Is that right?

Mr. HOLLINGS. No. If you are asking this Senator a question, I can tell you my judgment. If this change on the amendment is adopted, then the rates are bound to go up. The bill provides very properly that small and rural cable television operators get the volume discount.

Now, what they want to say is, no, that is going to be stricken, and they are not going to get these volume discounts. Obviously, the price is going up on these small entities, and that is going to destroy the universal service theme of our particular S. 652.

Mr. EXON. I would like to ask a reply to my question from the Senator from South Dakota.

Did I understand the Senator from South Dakota to correctly say that if we pass the Dole amendment, it is the understanding of the Senator from South Dakota that we would fix or repair the essential problem that the Senator from South Dakota has recognized is an important player in including some protection for small cable operators in the measure that has passed out of his committee? Is the Senator saying he thinks that is repaired or fixed with the Dole amendment?

Mr. PRESSLER. Let me say that I think we should recognize that private agreements and private negotiations are underway, have been underway, and that is something that goes on in our country.

Let me say that I shall seek corrections on these other letters, just as I have received a strong correction from the first one.

Let me say that if these private negotiations break down or do not work—we are now in a situation where Black Entertainment Network, the small companies, and so forth, are endorsing these private negotiations. And certainly I prefer private negotiations to Government activity, and that has been something that has been a cornerstone. But I have long been a champion of program access for smaller cable owners, for REA's, and I will continue to be so.

Also, it is my general observation—by the way, I did not make any requests here of anybody, and we are sort of arguing on two levels here because I agree with the Senator from Nebraska that the letter sent me was incorrect. I requested that it be corrected, and it was instantly.

Mr. EXON. What I am trying to get at, though, Mr. President, it obviously is the Senator's feeling——

Mr. PRESSLER. If I may conclude, if my friend will yield.

Mr. EXON. I am sorry.

Mr. PRESSLER. Basically, I would prefer that these problems be settled in private negotiations as opposed to being legislated by this Senate all the time. But if they cannot be solved, we have the conference coming up. There are additional opportunities. I think at the moment the materials read by Senator DOLE and myself here indicate very clearly that there are various small companies ranging from the National Cable Television Cooperative onward that are supporting Senator DOLE's efforts.

That is where we stand presently.

Mr. EXON. Could I rephrase my question? I took it from the statements that the Senator from South Dakota just made that he is recommending we accept the Dole amendment because he believes, with the private negotiations that are going on, the Dole amendment would satisfy or solve the situation as of now, and that is why he has supported the Dole amendment. Is that a fair interpretation of what the Senator from South Dakota is saying?

Mr. PRESSLER. No, the Senator from South Dakota has his own reasons for supporting the Dole amendment. I am supporting the Dole amendment because we have private agreements that are working these problems out, because the small cable companies and many other entities such as Black Entertainment Network, have supported that concept, that is, as of this time.

If problems arise, if the private parties cannot work it out, then the Government should get involved. This is my opinion.

I ask my friend from Nebraska, is he opposed to these things being worked out privately?

Mr. EXON. No, I am not opposed to something being worked out privately at all, except that I am opposed to the concept that nothing privately is worked out until the last minute when changes are made, which leads me to my next question.

It seems to me that what we are seeing is that Viacom and Time Warner, and all those other public-minded folks, are now at the last minute offering to have private negotiations with some of the smaller cable operators that they were not willing to do previously.

Let me phrase the question this way: Why would it not be wise to leave the amendment as it came out of committee in place and not adopt the Dole amendment? Am I to understand that unless we adopt the Dole amendment under the pressure and under the unsavory acts that I think have taken place in the last few days, that unless we can accept the Dole amendment that negotiations will break down?

Mr. PRESSLER. I think the Senator from Nebraska is tying things together here more than I would, in the sense that if one group of lobbyists behaves in a certain way, that does not mean that the underlying substance is changed.

It is my strong feeling, and I have been on this same subject for years, that program access is a very important thing. Sometimes it is negotiated privately. For example, we have ESPN involved privately, without a law. I always prefer to do something in the free enterprise system privately than with a Government law, with a Government regulation. That is what we are talking about.

I do not know what more to say to the Senator from Nebraska, except that I feel that the Dole amendment is a very positive thing.

Mr. EXON. Just let me add, I could not disagree more with my friend and colleague from South Dakota. I happen to feel that we have a gun to our heads and probably a gun to the heads of the small cable operators, where all those good folks I mentioned before, Viacom and those other public-minded nonprofit operations, have a gun to the heads of the small cable operators and, as part of that, they are taking the United States hostage.

It seems to me——

Mr. PRESSLER. If the——

Mr. EXON. I have the floor. It seems to me it would be much better to leave the measure as it is in hand and let them continue their negotiations. I point out again that I think anyone who understands the process knows we would not have had the Dole amendment had we not had action taken by the Senator from South Dakota, myself and others that forced their hand. It seems to me that we have forced their hand to try and give the small cable operators a decent chance. Now they are coming to us saying, ''We will give them the decent chance, maybe, if you don't pass the law.'' I think that is

putting the cart before the horse, but I have nothing further to say on the matter at this time.

Mr. PRESSLER addressed the Chair.

The PRESIDING OFFICER (Mr. GRAMS). The Senator from South Dakota.

Mr. PRESSLER. Mr. President, I have the highest regard for my friend from Nebraska, and I have said so on this floor many times. He is a giant in this Senate and on our committee.

I was watching Harry Truman's life story on TV the other night on ''Biography.'' He was trying to settle the rail strike, I believe. He was speaking to Congress with proposed legislation when one of his Secretaries handed him a note, and he said that the parties have privately begun to negotiate and are going to arrive at a private settlement and he withdrew his legislation, or he lessened his legislation.

Many criticized him. They said, ''Well, Harry Truman is a little too flexible, he is not standing as he said he would.''

I like to read about Harry Truman. I found this a very interesting episode. And I am certainly not comparing myself to Harry Truman. I think he was a man of enormous stature.

Analogously in the same case, private agreements are coming into place, and if we get letters from the various groups, small cable and Black Entertainment Television, and so forth, why would we have Government regulation at that point, just for the sake of having it? A lot of times parties negotiate, realizing that down the road if they do not, there is going to be a problem. Certainly, there is that interaction.

So, in conclusion, I say I have great regard for my friend from Nebraska, but I think we are talking about two separate things here. I strongly support the Dole amendment.

Mr. KERREY addressed the Chair.

The PRESIDING OFFICER. The Senator from Nebraska.

Mr. KERREY. Mr. President, I come to the floor this afternoon to speak and vote against the Telecommunications Competition and Deregulation Act of 1995. I am deeply disappointed that I am not able to speak and vote in favor of it. For the past 10 years, I have been arguing for a radical overhaul of our telecommunications laws. They have not been changed significantly in the past 60 years, a time of unprecedented, breathtaking and, for many of us, I must confess, nearly incomprehensible change in the technologies of communication.

The short description of what has happened in the past six decades since the 1934 Communications Act was passed is this: The need to continue monopoly franchises and the line of business restrictions has evaporated. The heat which turned the water of our law into steam is technology. Our laws have been overrun by changes in technology. Failure to acknowledge this and to liberate the businesses to compete has been detrimental to the consumer. Thus, the time for rewriting the people's law is long overdue.

However, Mr. President, technology does not have a vote, people do, and the American people have a love-hate relationship with technology. They love it when it entertains or amuses, but they hate it when amusement turns violent, pornographic or threatening.

They love it when they have the skills needed to survive the downsizing chain saw but hate it when a lifetime of dedication to doing a job well ends with a pink slip.

Not only do the American people have mixed feelings about technology, but the attitude of the people and the attitude of corporations toward technology is decidedly different.

Successful communication corporations must follow technology wherever it takes them. Successful communication corporations treat technology as if its status were somewhere between King and God. As people, we have learned the hard way that to worship technology is to select a graven image with a double-edge potential of doing grave harm and great good.

All of this is said, Mr. President, to put a brake on the wild and woolly expressions of enthusiasm for the glory of these new technologies. No doubt they can serve us well, no doubt they can expand our reach and improve our capacity to produce, to learn and to govern ourselves. However, there is also no doubt they can lead us astray if we do not think carefully about where we want to go.

We, the people, in our minds and our hearts, must drive these new technological wonders, or, most assuredly, they will drive us.

Regrettably, the rewriting of our law we have witnessed has created the perception that this was not paramount in our deliberation. Indeed, the amendment before us now reinforces that perception. The perception is that the law was not done for or by the people of the United States of America. The perception has been created that it was done by and for the telecommunications corporations of America. Rather than being a Contract With America, this legislation looks like a contract with corporations.

This is one reason Americans feel they have no power over their Government. Indeed, despite the scope of its impact on their lives, Americans neither asked for this bill, nor do many of them even know we engaged in this debate.

To be clear, I have nothing against corporations, or the people who temporarily run them. Indeed, most Americans work for a corporation. However, corporations—particularly public corporations—are not people. Incorporation is a charter granted by the people's laws to an organization, usually for the purpose of ensuring perpetual life and providing many of the beneficial powers of an individual, like entering into contracts, buying and selling property, while shielding the organizations from many of the detrimental liabilities of being an individual, such as conscience and public responsibility.

Public corporations provide first for shareowners and investors. If the analysts say that a CEO did the right thing by laying off 10,000 employees with no severance pay, health care, or retirement, then a CEO would be judged incompetent not to make this move. If plant closings and downsizing are judged to be sound business decisions, the market will bid up the value of the stock and the salary of the responsible CEO. If selling products that turn America into a society of efficient players of electronic games and selectors of video programs is good for business, then a corporate board would fire any CEO whose conscience interfered with the need to produce revenue.

This is not to say the managers of the leading telecommunications companies—who must be given credit for crafting and enacting this legislation—are heartless. They are not. This is not to say they are not concerned about the future of America or the quality of life in our country. They are. Nor does it mean that America does not benefit when tough-minded business executives make tough-minded business decisions. We do.

However, it is to say that we should take care when corporations appeal for changes in the law on eleemosynary grounds. When they tell us the new law is going to be good for America and American consumers, we should take care to remember who it is that butters their bread: their share owners. And we should take care and remember who butters ours: American consumers, citizens, and voters.

Over and over in this debate, we heard the phrase, ''We have struck a delicate balance between the various corporate interests,'' used in defense of a specific provision. Over and over when changes were proposed which would have given consumers and citizens some protection, this ''balancing of corporate concern'' was raised as a barrier.

Regrettably, this has resulted in a law which will not guarantee that American households will have robust, competitive choices which would have ensured lower prices and higher quality. Regrettably, this law gives the power to those monopolies who already have the power to control the market and who will give consumers two choices: Take it or leave it.

The regret I feel is a child of lost opportunity. We have lost an opportunity to seize a three-part promise. The promise I see with the technologies of communication is to create jobs, improve the performance of America's students, and strengthen democracy by helping our citizens become better informed. And while this legislation will undoubtedly produce some gains in all three areas, narrow corporate concerns prevented us from doing all that was possible.

The regret I feel, as well, is also a consequence of believing that telecommunications is much more than just another business. Telecommunications defined is to communicate across a geographical space, across distances. Communication defined is one human being telling a story or delivering information to another. To communicate is to define what it means to be a human being.

We are not just deregulating another business with this law. We are deregulating businesses which have been granted the right to control what we read, hear, and see. They decide what is news and what stories are worth telling. When it comes to defining who we are as people, it is not an exaggeration to suggest that these businesses are as powerful an influence as parents or religious leaders or teachers.

What are the flaws of this bill which cause me to withhold an affirmative vote? The most important occurred before we started writing the legislation. The most important flaw was our attitude. We worried too much about liberating businesses and not enough about liberating people.

As a consequence, we made a crucial error when we wrote the law. The most important flaw is that we did not give the Antitrust Division of the U.S. Department of Justice a determinative role in ensuring that robust competition occurs at the local level before allowing the monopoly to enter other lines of businesses. Competitive choice means that households have the power to tell a company they do not like the price or quality of the service. Consumers must be able to buy from someone else before they have real power over the seller.

Substituting a checklist for the Antitrust Division of the Department of Justice is not an equal trade. A corporation could easily satisfy the checklist without giving the consumer competitive choice. And without competitive choice, this law will concentrate power away from the consumer.

Last year, under the leadership of Senator HOLLINGS of South Carolina, the Senate Commerce Committee reported a bill I could have supported. All but two members of the committee voted for a bill which gave the Department of Justice this determinative role. Unfortunately, in the distance and time traveled from November 8, 1994, to June 15, 1995, the law was changed, and I can no longer support it.

Why is it so important, Mr. President, to American consumers to have the Department of Justice with a determinative role? The answer can be found by following one of the most frequently used arguments in support of this bill: Consumers benefited when AT&T was forced to compete in 1982. Well, guess who was responsible for forcing them to compete? Was it the Congress? Was it the Federal Communications Commission?

Listening to the arguments against the Department of Justice role, or looking at the law itself, you might assume that the answer would be that Congress or the FCC made them compete. If you did, Mr. President, you would be wrong. It was the Antitrust Division of the Department of Justice that sued AT&T. It was the Antitrust Division of the Department of Justice that forced AT&T to compete. It was the Antitrust Division of the Department of Justice that should be given credit by consumers for the lower prices and higher quality service in long distance.

Neither Congress nor the Federal Communications Commission had the guts or the power to take on AT&T. So I guess it should not be surprising that under the banner of competition and deregulation, we pass a law that perpetuates the power of the monopolies.

Mr. President, this legislation is not without merit. It will help America's schools and America's school children take advantage of the technologies information age by ensuring affordable infrastructure, connectivity, and rates. It does preserve the goal of universal service for all of America's communities. It does encourage some competition by smaller carriers at the local level through joint marketing, a strong section favoring network interoperability and good interconnection and unbundling requirements in section 251.

It contains strengthened provisions for rural customers: Comparable services at comparable rates; geographic toll rate averaging; evolving national definition of universal service; support for essential telecommunications providers; waivers and modifications of interconnection requirements for rural telephone companies, and infrastructure sharing.

We fought for and succeeded in including in the law some protections for consumers including the prohibition of cable/telco joint ventures and buyouts except in rural markets of 50,000 or less, allowing State regulators to consider profits of telephone companies when using rate regulation methods other than rate of return, ensuring that price flexibility should not be used to allow revenues from noncompetitive services to subsidize competitive services, and protecting ratepayers from paying civil penalties, damages, or interest for violations by local exchange carriers.

With all of these good things, Mr. President, I regret the absence of a Department of Justice determinative role all the more. With the Department of Justice ensuring competition, consumers would not have to doubt that they would have a courageous, procompetitive Federal force on their side. Without it, we must trust that the corporations will do the right thing.

Mr. President, this legislation burdens trust too much. Ultimately this bill is about power. The bottom line is that in this case, corporations have it and consumers do not. Accordingly, I must vote ''no''.

Some things have been said in the heat of debate about the Department of Justice and the Antitrust Division that just are not true, and I would like to take this opportunity to correct the record.

For example, it has been said that the Antitrust Division has 800 or 900 attorneys. It has been said that it has several hundred lawyers acting as regulators. The fact is that the Antitrust Division had 323 attorneys total—to carry out all of its responsibilities—at the end of fiscal year 1994. This number is about 30 percent lower than the number of attorneys the Antitrust Division had in 1980 and is about equal to the number that it had more than 20 years ago during the Nixon administration, when the economy was much smaller, less global and less complex and when antitrust enforcement was less challenging.

When we talk about growth of bureaucracy, we certainly cannot reasonably mean the Antitrust Division. The Antitrust Division has for years been doing what we now ask of all Government agencies—carrying out vital missions more effectively, more efficiently and with fewer resources. With its relatively limited number of attorneys, the Antitrust Division has pursued vigorously criminal enforcement of the antitrust laws, a strong merger review program, civil antitrust enforcement and all of its other responsibilities.

It has been said that DOJ has failed to comply with a court order to review MFJ waiver requests within 30 days. The fact is that Judge Greene in 1984 issued instructions regarding how DOJ should handle specified waivers then pending and established a schedule under which DOJ had 30 days to handle those specific waivers. Those waivers, incidentally, were far less complex and sensitive than the waivers pending today. DOJ complied with that order and has fully complied with all schedules set by Judge Greene.

It has been said that DOJ has refused to conduct triennial reviews. In 1989, while the appeal of the first triennial review was still pending—it would not be finally resolved until 1992—Judge Greene gave DOJ complete discretion whether and when to file any subsequent triennial reviews.

He noted that the need for triennial reviews was not as great as had been anticipated when originally conceived. As it turned out, Judge Greene observed, there had been ''a process of almost continuous review generated by an incessant stream of regional company motions and requests dealing with all aspects of the line of business restrictions.'' United States versus Western Electric Co., slip op. at 1, July 17, 1989, [emphasis added]. Judge Greene pointed out that he had ''repeatedly considered broad issues regarding information services, manufacturing, and even long distance.'' Id. He explained that ''as soon as there is a change, real or imaginary, in the in-

dustry or the markets, motions are filed and all aspects of the issue are reviewed in dozens of briefs.'' Id. at n.2. Further triennial reviews thus would have been duplicative of work that was already being done.

Judge Greene's observations are still valid. Over the life of the MFJ, incredible as it sounds, the Bell companies have filed an average of one waiver request every 2 weeks. They have buried the Department of Justice in an avalanche of paper—something never expected when the MFJ was entered. Now, some say they are ''shocked, shocked'' that the Bells do not expeditiously receive the approval they claim their requests merit.

And in fact, what amounts to a triennial review is underway right now, as DOJ investigates a motion pursued by three Bell companies to vacate the entire decree without any of the safeguards in S. 652, even in States where local competition is still illegal. This investigation will be completed in the next few months, with a report that will provide a comprehensive review of the need for continuing the line of business restrictions.

It has been said that the Bell companies' so-called generic request—that is, a consolidated request joined by all the Bell companies—for a wireless waiver is still awaiting action. In fact, Judge Greene has approved that request.

A colleague referred to that wireless waiver as simple. It was not. The initial request was very broad. It attracted a tremendous amount of comment and concern at the outset and each time it changed substantially. And change it did—it went from a very broad waiver to one carefully tailored and conditioned to protect competition. The long distance companies and the Bell companies disagreed with DOJ's ultimate recommendation to Judge Greene. That is not unusual. But Judge Greene adopted most of the provisions that DOJ recommended. DOJ exercises its responsibility by doing what is best for competition, not what one industry or another prefers.

It has been said that DOJ has not acted on a request for a waiver that would allow the Bell companies to offer long distance service in connection with information services. In fact, DOJ has recommended to Judge Greene that he approve the request, as modified after extensive negotiations between DOJ and the Bell companies.

The case of the information services waiver illustrates how any purported delay in resolving waiver requests relates to the overbreadth of the original Bell companies' requests. Much of the time between the filing of the initial waiver and DOJ's recommendation in favor of a heavily modified waiver occurred after DOJ rendered a decision based on the original waiver and informed the Bell companies that it would not support the waiver.

The details of the information services case are worth recounting at some length, because they belie some of the charges that have been leveled over the past several days.

In 1987, DOJ asked Judge Greene to eliminate the restriction on the Bell companies' provision of information services. DOJ did so over intense opposition from the information services industry, because of DOJ's conclusion that eliminating the restriction would promote competition in the information services market. But DOJ's focus was on competition and consumers. DOJ was not trying to protect vested industry interests or some role as a regulator. DOJ's position was initially rejected by Judge Greene, but after a reversal and remand by the Court of Appeals, the information services restriction was removed in 1992.

While seeking to lift the information services restriction, DOJ did not support authorizing the Bell companies to bundle interexchange service with their information services. The reason for this is that there is no clear distinction between information services and conventional telephone services. The FCC has been struggling for nearly two decades to define and enforce such a distinction in its Computer I, Computer II, and Computer III proceedings, which have tried to distinguish between basic services—including interexchange voice services—which are regulated, and enhanced services—or information services—which are unregulated. This has been one of the most prolonged and difficult proceedings in the history of the FCC.

Because there is no clear distinction between information services and basic services, a decision to allow the Bell companies to bundle interexchange services would substantially eliminate the core MFJ prohibition against their provision of interexchange service. The Bell companies tried to argue in court that the court's decision to lift the information services restriction meant that they could engage in such bundling, without any restrictions or safeguards. This interpretation by the Bell companies would have given them much more freedom than S. 652 proposes to do today. But that argument was firmly rejected by DOJ, Judge Greene and a unanimous panel of the Court of Appeals.

Judge Silberman of the Court of Appeals concluded that the Bell companies ''urge a rather strained interpretation of the language of the decree—The Bell companies' interpretation—it seems rather obvious, would create an enormous loophole in the core restriction of the decree.'' 907 F.2d 160, at 163

Against this background, the Bell companies filed a waiver request in June 1993 that would have allowed them to bundle their information services with interexchange service. In doing so, they again sought to create what Judge Silberman had described as an enormous loophole in the interexchange restriction. In effect, they would have been able to offer interexchange service without the safeguards that are required by S. 652.

The Bell companies' waiver request naturally provoked strong opposition from the interexchange carriers and information services providers. DOJ gave the Bell companies an opportunity to respond to the arguments against their waiver, and the Bell company responses were filed in February 1994. After reviewing the Bell companies' arguments and the many arguments that had been submitted in opposition to the request, the DOJ told the Bell companies that it would not support the waiver request. The Bell companies were free at that time to challenge the DOJ decision in court. But presumably because they recognized that they had little chance of winning in the face of a clear decision by the Court of Appeals, the Bell companies chose to narrow their original waiver request to seek a more reasonable waiver.

The Bell companies submitted a somewhat narrower proposal to DOJ soon thereafter. DOJ again rejected the proposal, because it still did not deal with the loophole that the Court of Appeals had identified.

The Bell companies finally submitted a third proposal that was substantially narrower. This time, DOJ indicated that it would support the proposal. This last proposal has now been briefed and is awaiting decision by Judge Greene.

The reason for the delay in processing this waiver was that the Bell companies submitted—not once but twice—a waiver request that was very broad. Their proposal would have resulted in an enormous loophole in the core restriction of the MFJ. As a practical matter, this loophole would have given them much of the relief that S. 652 would give them, but without any of the safeguards that accompany such relief in S. 652. It does not make sense to criticize the Department of Justice for refusing to give the Bell companies what the authors of S. 652 certainly do not intend to give them in S. 652.

DOJ acted to protect competition and consumers. When DOJ supported the removal of the information services restriction in 1987, it did so over strong opposition from the information services industry. DOJ's support for the recent information services waiver has been strongly opposed by the interexchange carriers and by information services providers. DOJ isn't protecting industry turf; it's doing what's right for competition.

As the information services case demonstrates, the Department always has been willing to take the time to work with the Bell companies to fix waiver requests so that the Bell companies can get as much MFJ relief as is consistent with the consent decree's protection of competition in markets that the Bell companies seek to enter. Of the waivers approved by the Court in 1993–94 that were not mere duplicates of waivers filed by another Bell company, fully 60 percent were the product of negotiations between DOJ and the Bell companies that resulted in

a modification of the original waiver request.

To be sure, these complex, negotiated requests generate a lot of public comment and concern. The number of comments per waiver for waivers filed in 1993–1994 is nearly six times the comments per waiver in 1984–1992. This is not surprising, as the more recent waivers go to the MFJ's core restrictions. This modification and comment process works to obtain workable waiver proposals while still protecting competition, as the information services case illustrates.

The fundamental point is that DOJ acted to protect competition and consumers. DOJ's support for the revised information services waiver has been strongly opposed by long distance and information services providers. But again, DOJ doesn't protect industry turf—it does what is right for competition.

Of course, no discussion of purported delay in the waiver process would be complete without noting the Bell companies' filing of overlapping and duplicative waiver requests. For example, several Bell companies filed a request to vacate the MFJ, seeking to completely eliminate its restrictions without replacing those restrictions with any safeguards or requirements, such as those contained in S. 652. Once again, the Bell companies sought relief that the Congress likely would not approve. The Bell companies argued that this motion was critically important to them, and urged prompt action on it. DOJ agreed that it would make this request its first priority.

But less than a week after submitting the request to vacate the MFJ entirely, one of the companies filed a separate waiver request for so-called out-of-region relief. But that request is completely subsumed in the motion to vacate. And the other Bell companies that had filed the sweeping motion to vacate the MFJ apparently delayed and stalled in producing documents that DOJ required in order to evaluate the merits of the motion.

The AirTouch story that has been repeated during this debate is also not nearly as simple as has been suggested. Loosely casting aspersions on the independence and integrity of the Department of Justice in relation to its position on the AirTouch matter is deeply wrong. DOJ has enforced the terms of the MFJ through Republican and Democratic administrations of vastly different ideologies.

The Department has explained its position on the AirTouch matter in a letter to House Commerce Committee Chairman BLILEY. Regardless of what one thinks of the merits, the bottom line is that the Department has a responsibility under existing law to uphold the terms of the MFJ that differs from that of Congress, which can write new laws. I will include that letter in the RECORD.

It has been said on the Senate floor that DOJ has repudiated the VIII(C) test of the MFJ through the Ameritech plan, which I have supported since Ameritech introduced its Customers First program. The Ameritech Plan is completely consistent with the standard established by Section VIII(C) of the MFJ, because it builds on the idea that one possible basis for satisfying VIII(C) is if the development of local competition removes the ability of the Bell company to use the local monopoly to hurt competition in long distance. I encourage colleagues to read the Department's Ameritech brief, which the distinguished Senator from South Carolina put in the RECORD a few weeks ago.

The plan does not preclude Ameritech or any other Bell company from seeking VIII(C) relief in spite of the continued existence of the local monopoly. In fact, DOJ has supported numerous waiver requests where—in spite of the existence of the local monopoly—safeguards or other constraints ensured that there was no substantial possibility that the Bell company could use the local monopoly to impede competition in the market it sought to enter. Most recently—and after it outlined the approach of the Ameritech plan—DOJ supported the Bell companies' request for a waiver to provide long distance service in connection with information services.

It has been said that DOJ forced the Ameritech plan on Ameritech. In fact, the Ameritech plan originated with Ameritech itself. The plan now enjoys an unprecedented breadth of support among interested parties. It is supported by a Bell company, AT&T, Sprint, other long distance competitors, local competitors like MFS, consumer groups, the FCC, state regulators from all the States in Ameritech's territory, the Republican governor of Illinois and numerous other industry participants. In joint comments filed with the court in support of the plan, which I will include in the RECORD, the regulatory commissions from Illinois, Indiana, Ohio, and Wisconsin praised the proposal as a decisive step toward the goal of a competitive telecommunications market. This remarkable consensus is a lot more than S. 652 has attracted, and I commend Ameritech for taking this historic step.

DOJ has been criticized in this debate because the draft Ameritech order is 40 pages long. Forty pages doesn't seem like too much, when one considers that the order seeks to do something that has never been done before by anticipating the opening of a complex, monopolized market to competition and allowing a Bell company to enter a long distance market measured in the billions of dollars. But this criticism is especially ironic because it comes in a debate over a bill that seeks to do much the same thing as the Ameritech proposal—but that is some 150 pages long and getting longer as we speak. And while this 150-page bill has been the subject of much debate—to say the least—the 40-page Ameritech order enjoys unprecedented support from a broad array of interested parties.

It has been said that the Ameritech plan will shift power from State and Federal regulators to the Department of Justice. In fact, the implementation of the market opening provisions agreed to by Ameritech will be handled by State regulators and industry participants. The DOJ's role is to assess the end result: the marketplace effects of those market opening provisions.

The plan fully preserves the traditional functions of State and Federal regulators, as evidenced by the fact that the plan enjoys the support of all the State regulatory commissions in Ameritech's region and of the FCC. Moreover, the plan has the sort of safeguards and standby authority for DOJ that are well suited to an untried and groundbreaking initiative.

I have here, Mr. President, a letter to Assistant Attorney General Bingaman from Craig Glazer, the chairman of the Ohio Public Utilities Commission. Writing on behalf of all the State regulatory commissions in the Ameritech region, he praises the Department of Justice for its efforts in negotiating the Ameritech plan. Mr. Glazer writes, in part, that ''the willingness of the Department of Justice to work with and specifically accommodate a number of State concerns represented an exemplary level of cooperation and teamwork between the Department and the State commissions.'' I will include the entire letter in the RECORD.

The point that comes through loud and clear from this letter and from the briefs that State officials have filed with Judge Greene in support of the Ameritech plan is that DOJ is not trying to displace regulators or become a regulator itself. Governor Edgar of Illinois, for example, lauded ''the Proposed Order's reliance on State regulators to complement the Department's supervisory role of the proposed trial.'' I will conclude Governor Edgar's comments in the RECORD. DOJ has proposed a well-crafted plan that maintains the traditional roles of all involved agencies. The State regulators and the FCC regulate; the Department of Justice assesses competition.

Mr. President, this bill deals with complicated issues, and there is a lot of room for reasonable people to disagree. But a lot of the things said about the Department of Justice were just plain wrong. I appreciate this opportunity to correct the record.

Mr. President, I ask unanimous consent to have the letters and other material printed in the RECORD.

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

DEPARTMENT OF JUSTICE,
ANTITRUST DIVISION,
Washington, DC, January 31, 1995.

Re AirTouch Communications, Inc.

Hon. THOMAS J. BLILEY,
Chairman, Committee on Commerce, House of Representatives, Rayburn House Office Building, Washington, DC.

DEAR CHAIRMAN BLILEY: Thank you for your letter of January 27, 1995 concerning the status of AirTouch Communications, Inc. (''AirTouch'') under the Modification of Final Judgment (''MFJ'') in United States v. Western Electric, Co., Inc. I appreciate your interest in this matter, and I understand that this issue has significant implications for AirTouch and perhaps other cellular telephone companies.

As I will explain, the Department's recent action concerning AirTouch's status under the MFJ does not reflect a decision about the important competition policy issues to which your letter refers. We fully agree with you on the importance of those policy questions, and look forward to working with you to resolve them. As you know, I testified before a subcommiteee of the Committee on Commerce last year in favor of comprehensive telecommunications legislation based on competitive principles.

The only competition policy issue with respect to this AirTouch matter is whether we are willing to work with AirTouch on an appropriate waiver of the applicable MFJ provision—and you should know that we offered to do so before announcing our decision on the complaint that prompted our review of this matter. AirTouch did not accept that invitation.

I provide additional background below in response to your letter, including the respective roles of the Department and court under the MFJ on questions such as the AirTouch issue; the benefits to competition and consumers from the MFJ: the Department's reasoning and position on the AirTouch matter; and the Department's cooperation with AirTouch to facilitate court action now.

THE DEPARTMENT'S ROLE UNDER THE MFJ

First, let me put our role under the MFJ in context. As you know, the MFJ is a court decree which resolved a hard-fought litigation. Relief from the MFJ can only be given by a court, not by the Department of Justice. While we make our position known to the court, it is the court and not the Department which determines disputes about the coverage of the MFJ.

The court also has the power to give relief from provisions of the MFJ which become unnecessary. As you are aware, the Department is supporting an MFJ waiver which would allow cellular service providers affiliated with RBOCs to provide long-distance services, subject to certain safeguards, and this waiver is pending before the Court. The cellular market will be moving from the duopoly model toward more vigorous competition, a trend that will accelerate with completion of the spectrum auction and deployment of PCS. We also hope that landline local exchange competition will become lawful and real. If such developments occur, more relief will certainly be appropriate.

THE BENEFITS OF THE MFJ

In discussing how the MFJ is applied, it is useful to bear in mind what I know you understand—the pivotal role of the MFJ in unleashing the competition that has put our country at the forefront of the telecommunications revolution. I am also particularly pleased that the case against the telephone monopoly and supervision of the MFJ has been a priority at Democratic and Republican Departments of Justice alike, and that my antitrust professor, Bill Baxter, who served as Assistant Attorney General for Antitrust during the Reagan Administration, successfully negotiated the historic MFJ.

Since the MFJ, multiple fiber optic networks have been constructed by long distance competitors, consumers have reaped steeply lower long distance prices while dramatically increasing their minutes of usage, and according to a January 21, 1995 front page story in the New York Times headlined ''No-Holds Barred Battle For Long-Distance Calls,'' at least 25 million residential telephone customers exercised a choice in 1994 by switching long distance carriers. The telecommunication equipment and services market have simply exploded.

Moreover, it is this growing competition, which can be accelerated through legislation which opens local markets to real competition while continuing to protect consumers and competition from monopolists, that will provide opportunities for deregulation.

THE DEPARTMENT'S AIRTOUCH POSITION

Our position in the AirTouch matter does not reflect an antitrust or policy judgment about the cellular industry. Instead, it reflects our interpretation of a narrow, but extremely important, question concerning the continuing applicability of antitrust decrees after the sale or reorganization of corporate antitrust defendants. Section III of the MFJ includes a provision, contained in *virtually all* of the government's antitrust decrees, making its limitations applicable to ''successors'' to the corporate entities originally bound by the decree. Such provisions are included to ensure that a decree's requirements cannot be avoided simply through a reorganization or transfer of ownership of the businesses that are subject to the decree. Without such limitations, of course, it would be relatively easy for an antitrust defendant to avoid its legal obligation to comply with a decree through a transfer of significant assets, restructuring or reorganization, thereby rendering the decree ineffective.

The position the Department has taken in response to the complaint submitted to it concerning AirTouch was made in the context of this history. AirTouch was spun off from one of the seven regional holding companies. It continues to operate, among other things, the cellular telephone business previously owned by that regional holding company and is subject to a common consent decree provision applying the decree to ''successors.''

In your letter, you refer to the purpose of the ''spin off'' from Pacific Telesis as to avoid MFJ objections. In this regard I want to advise you that neither AirTouch nor Pacific Telesis chose to submit any request for written guidance on this question to the Court or to the Department at the time of the transaction. Moreover, AirTouch's disclosure documents reflect that they understood and told the public that there was a risk that a determination such as we just made might ensue. (See Attachment)

After careful consideration of the history of the MFJ and the decisions interpreting its provisions, and after detailed consideration of AirTouch's arguments about the meaning of the relevant MFJ provisions, the Department concluded that AirTouch is a ''successor'' within the meaning of Section III of the MFJ.

OUR COOPERATION WITH AIRTOUCH

We have worked with AirTouch to assure that it will be able to continue its current business activities while seeking a ruling by the District Court on the question of whether it should be considered a ''successor'' under the MFJ. This is a legal question AirTouch can bring to the court. In the meanwhile, in light of the assurances AirTouch has given us that they will not undertake any new activities that could be viewed as violating the MFJ, we informed AirTouch that we have no intention of seeking enforcement action against them pending a decision by court as to their status under the MFJ.

Also, as you know, the MFJ contains provisions that allow parties to seek waivers or modifications if their activities, although technically covered by the decree, do not pose competitive problems. We have stated clearly to AirTouch that our position on the complaint before us rests solely on the meaning of the ''successor'' provision of the MFJ, and that they should *not* construe our position as reflecting a decision to oppose a waiver of MFJ restrictions which might be sought pursuant to section VIII (C) of the MFJ. Rather, we informed AirTouch that we would work with them to seek an appropriate waiver. Although AirTouch has not sought a waiver at this time, the opportunity to do so will continue to be available to them.

I know that you and the Committee understand and appreciate the importance and flexible nature of section VIII (C) where market conditions are changing. That is no doubt one of the reasons that the telecommunications legislation reported last Congress by the Committee on Commerce, which passed the House of Representatives with more than 420 votes, provided that the Department of Justice should apply this test to determine when, among other things, the RBOCs should be permitted to enter the long distance market.

I hope that this information is helpful to you in analyzing the Department's position in the AirTouch matter. With respect to the ATT matter that you briefly touch upon, this was addressed primarily under the Clayton Act and not under the MFJ, and requires separate discussion.

I would be very happy to discuss these or other telecommunications matters with you at our scheduled meeting or at your convenience.

Sincerely,

ANNE K. BINGAMAN.

[From the Wall Street Journal]

PACIFIC TELESIS IGNORED U.S. ON AIRTOUCH

(By Leslie Cauley)

NEW YORK.—Pacific Telesis Group ignored statements by the Justice Department in 1993 suggesting that its cellular spinoff could run afoul of the court decree governing the Baby Bells, a senior department official said.

Now the spinoff, AirTouch Communications, is scrambling to win a federal judge's approval lest it be forced to scale back drastically its ambitious plans for future expansion.

Rules governing the Bell System breakup prohibit the seven Baby Bells and their service spinoffs from offering long-distance communication services or making phone gear.

But Pacific Telesis, based in San Francisco, brushed aside these restrictions when it spun off the unit almost two years ago, said Robert Litan, deputy assistant attorney general for the Justice Department's antitrust division.

''We indicated to them at that time that it was an open question,'' Mr. Litan said, particularly since the unit had retained network facilities it had used as a Bell entity.

Air-Touch recently began transmitting long-distance calls on its cellular network, and it is developing phone equipment. On Jan. 11, the Justice Department formally notified AirTouch that it must abide by the terms of the decree just like its former parent.

Officials at Pacific Telesis and Air-Touch expressed surprise at the department's

stance, noting that Justice Department officials had known for at least two years of AirTouch's intention to enter markets banned to the Bells.

''We could not have been more clear about what we were talking about,'' said Richard Odgers, Pacific Telesis' general counsel. Moreover, he added, three law firms hired by the company came to the same conclusion that the decree didn't apply to AirTouch.

Justice Department officials counter that its antitrust division, as a prosecuting arm of the government, doesn't offer casual assessments. Pacific Telesis ''could have made a request for a formal (legal) opinion'' when the spinoff was being contemplated in 1993, Mr. Litan said. ''But they never did that. They went ahead and took their chances.''

AirTouch's public documents issued at the time it went public indicate that it knew it might be jumping the gun if it pursued business barred by the decree. The company's November 1993 prospectus, released in anticipation of its initial public offering last spring, noted that there was no assurance ''that DOJ or a third party might not object at some time in the future or that the courts might not agree'' with AirTouch's opinion that it wasn't subject to the decree restrictions.

The prospectus added that AirTouch had advised the Justice Department of ''its belief that the [decree] would not apply to the company after the spinoff. . . . [and] DOJ has not stated any intention to object [Pacific] Telesis' position.''

Margaret Gill, an AirTouch senior vice president, maintained last week that ''that statement was made because we had carefully noted conversations with appropriate senior officials at the department.''

Department opinions aren't binding with the courts, and even when it finds nothing objectionable, the agency can take action later. But it is virtually unheard of for the Justice Department to prosecute a company for engaging in activities that have been subject to a formal review, a process that can take several months or more to complete.

AirTouch has big plans. Besides operating one of the nation's largest cellular phone networks, the company already has begun offering highly profitable long-distance services in its territories. AirTouch is also building systems in international markets that will be tied through a sophisticated satellite network.

The company has proposed merging with the cellular unit of former sibling US West Inc. Together, AirTouch and US West are bidding with two other Baby Bells—Bell Atlantic Corp. and Nynex Corp.—for new wireless ''personal communications services'' licenses, with plans to build a nationwide PCS network offering anywhere-anytime wireless calling.

Efforts by AirTouch to boost growth and profits by also providing the long-distance links to its subscribers could be cut off if the company doesn't win a favorable ruling from the courts. A $7.5 million investment by the company in a satellite venture also seems in jeopardy.

AirTouch didn't reveal the department's concerns until last week, when it asked federal Judge Harold Greene for an immediate ruling saying AirTouch isn't subject to the decree. In the meantime, AirTouch has agreed to stop further expansion into prohibited businesses and the department has agreed not to take action against the company until a decision is rendered.

AirTouch's predicament underscores the gravity with which the U.S. government still views the restrictions on the regional Bell monopolies. the crackdown on the fledgling Bell spinoff could presage similar moves against the other Bell affiliates that were cut loose but are still considered local service bottlenecks.

Many telecommunications attorneys believe AirTouch won't get a favorable ruling from Judge Greene, who has historically taken a hard line in interpreting the decree. But they think it will prevail in the courts.

But that could take years, according to some attorneys. However, AirTouch could ask for a waiver from the courts that could ask for a waiver from the courts that would allow it to continue its operations unchanged.

Even with its current predicament, AirTouch still has a healthy core business providing cellular services in its territory. The company's fledgling long-distance business is a miniscule part of total operations, and it has a stock market value of about $14 billion. The company, which has had growth rates of greater than 30%, is expected to release fourth-quarter earnings on Wednesday.

THE PUBLIC UTILITIES
COMMISSION OF OHIO,
April 25, 1995.

MS. ANNE BINGAMAN,
Assistant Attorney General, U.S. Department of Justice, Antitrust Division, Washington, DC.

DEAR MS. BINGAMAN: I am writing to you in my capacity as Chairman of the Ameritech Regional Regulatory Committee (ARRC). ARRC is an ad hoc group of the five state regulatory commissions in the Ameritech region: Illinois, Indiana, Michigan, Ohio, and Wisconsin. The ARRC mission is to facilitate the exchange of information among the public utility commissions of the five states regarding telecommunications issues in general and telephone companies operating within the five respective jurisdictions in particular. The ARRC is made up of representatives of the commissions and/or staffs of the Illinois Commerce Commission, Indiana Utility Regulatory Commission, the Michigan Public Service Commission, the Ohio Public Utilities Commission and the Public Service Commission of Wisconsin.

On behalf of the ARRC, I want to thank you and members of the Department Staff for devoting many hours to meeting with the ARRC to seek input from and accommodate concerns raised by the respective state regulatory commissions and/or their staffs concerning the proposed request to Judge Greene to authorize an interLATA experiment in parts of Michigan and Illinois. Specifically, Mr. Willard Tom and Robert Litan of your Staff traveled to the region and met with the ARRC staff on a number of occasions concerning the proposed experiment. Moreover, the ARRC staff representatives received and were allowed to have input on the various drafts leading up to the proposed modification of the Decree filed with the Court on April 3, 1995. Although there may still be issues which individual state commissions and the ARRC may be raising in comments before Judge Greene, I can say on behalf of all of the ARRC states that the willingness of the Department of Justice to work with and specifically accommodate a number of state concerns represented an exemplary level of cooperation and team work between the Department and the state commissions.

Should the modification to the Decree be adopted by Judge Greene, by its own terms it calls for various regulatory and enforcement activities to be undertaken both by the States and the Department of Justice. I am heartened by the cooperative process that has occurred to date and feel that it bodes well for implementing the proposed trial in a manner which is in the public interest.

Again, on behalf of the ARRC, I express my sincere thanks for the Department's extra efforts to hear and attempt to accommodate state regulatory issues and concerns.

Sincerely,

CRAIG A. GLAZER,
ARRC Chairman.

Mr. KERREY. I yield the floor.

Mr. DOMENICI. Mr. President, I understand I have 3 minutes. I yield myself such time as I may need. I ask for 1 minute as in morning business out of my time.

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

A CELEBRATION OF DAD'S DAY

Mr. DOMENICI. Mr. President, as we approach Father's Day 1995, I want to share with the Senate and the American people a letter I have received from a fellow New Mexican, Chuck Everett. Mr. Everett originally wrote this letter while he was serving in Korea to his father who was back home in the United States.

Mr. Everett's father described the letter as ''a masterpiece of simple truths.'' I could not agree more. In Mr. Everett's cover letter to me, he says to ''delete the word 'Communism' and insert the word 'terrorism' and we have a thought that is as true today as in 1952.'' His prophetic and patriotic words are as valid now as they were when he first wrote them. I trust you will find the text of Mr. Everett's 1952 letter a hopeful and encouraging sample of a young man's commitment to America and its values. These are indeed ''simple truths.'' Times have changed the face of totalitarian and Communist regimes, but new dangers are substituted for the old. As Mr. Everett says, we ''are on a mission, so that next year and the years that follow, free people all over the world can celebrate Dad's Day.'' I respectfully ask unanimous consent that the text of Mr. Everett's letter be printed in the RECORD.

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

OCTOBER 1952

It's a beautiful morning, the kind of a day when a fellow likes to get up early in the morning, gather up his golf clubs and head for an early morning bout with fairways, roughs, greens and caddies.

I'd like to sit down to a nice roast beef dinner, with diced carrots, peas, Brussels sprouts, chopped salad, blue-berry pie and a big glass of milk. In the afternoon I'd like to siesta, then pack a picnic lunch of cold cuts, cheese and lemonade, and head for Stone Park. I left out something. Oh, yes, of course, church. I'd like to go to church after golf, where the services would be devoted to Father's Day.

That's how I'd like to spend the day. But some of us are on a mission, so that next year and the years that follow, free people all over the world can celebrate Dad's Day. We know we will succeed in our mission here, but will those at home remember our efforts and strive to realize our purpose? The battles we fight here cannot, in themselves, assure us that we will have a free world. It takes the combined efforts of educators, industrialists, politicians and religious leaders to assure a free world. The shackles of communism are not bound about the legs of only