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ANTITRUST MERGER REVIEW ACT

● Mr. DEWINE. Mr. President, I rise today in support of the "Antitrust Merger Review Act" (S. 467), a bill that I introduced with Senator KOHL, the ranking minority member of the Antitrust, Business Rights and Competition Subcommittee.

S. 467 is, plain and simple, a bill that imposes time limits on the FCC review of telecom mergers. This bill will not limit the scope of the FCC review, or attempt to dictate to the FCC how to evaluate these mergers; instead, it will simply impose a deadline for FCC action.

As I have stated before, telecommunications mergers have a major impact on competition, and they require careful scrutiny from the FCC. However, careful scrutiny does not mean endless scrutiny. These mergers must be evaluated in a timely fashion, so that the merging parties and their competitors can move forward. The longer these deals remain under review the longer the market remains in limbo, and the longer it will be before we see vigorous competition.

Accordingly, Senator KOHL and I have introduced S. 467, and plan to work with our colleagues on the Judiciary Committee and with Senator MCCAIN and Senator HOLLINGS and the rest of the Commerce Committee, to move this bill forward and help increase the pace of competition in the telecommunications industry.●

● Mr. KOHL. Mr. President, I rise today in support of the "Antitrust Merger Review Act" (S. 467), a bill that I introduced with Senator DEWINE, my colleague on the Antitrust Subcommittee. This measure sets a deadline on the Federal Communications Commission when it reviews mergers. In other words, our bill says to the FCC: approve a merger, reject it, or apply conditions. But don't sit on it.

All too often, telecommunication companies, their customers, and their employees are left to mercy of a time-consuming merger review process—a process in which the two lead agencies, the Department of Justice and the FCC, act in sequence rather than in tandem. Like the DOJ and the Federal Trade Commission, who have deadlines under the Hart-Scott-Rodino laws, there is no compelling reason to let the FCC "hang back" and wait until the end.

Our bill is simple, effective and straightforward, and sets reasonable time limits for the FCC to follow. When a license transfer application is filed, the FCC will have 30 days to decide whether or not a "second request" for further information is needed from the merging companies. If this second request phase is needed, the FCC will then have six months after receiving the additional material—so-called

"substantial compliance"—to make a determination. For those familiar with antitrust laws, these time limits are nothing new or shocking. If anything, they make common sense by creating a framework for a timely decision. And this measure is entirely consistent with the thrust of the 1996 Telecom Act, which strengthened the hand of the antitrust laws in addressing telecom mergers. See, e.g., Public Law 104-104 §601(b).

But Mr. President, let me also tell you what this bill is not. First, while our measure sets time limits on the FCC's merger review process, it does not change the FCC's substantive role in approving or rejecting these deals. Others have suggested doing this, but many of us believe that the FCC through application of its "public interest test" can obtain market-opening concessions from merging companies that the DOJ, under antitrust laws, simply cannot. Second, though some in Congress may want to revisit other aspects of the Hart-Scott-Rodino antitrust laws, this bill is not a vehicle for substantive changes—they are best left for other measures at another time.

This is not a perfect piece of legislation to be sure, but it is a step in the right direction. Still, it is a work in progress, so we plan to work together with our colleagues, Senator HOLLINGS and Senator MCCAIN, and to get input from all the affected parties. After that, we will ask for our colleagues' support for this bipartisan proposal, which will help companies get on with their businesses, and employees and consumers get on with their lives.

Finally, Mr. President, I ask that the text of the bill be printed in the RECORD.

The text of the bill follows:

S. 467

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

SECTION 1. SHORT TITLE.

This Act may be cited as the "Antitrust Merger Review Act".

SEC. 2. RESTATEMENT AND IMPROVEMENT OF SECTION 7A OF THE CLAYTON ACT.

(a) IN GENERAL.—Section 7A of the Clayton Act (15 U.S.C. 18a) is amended to read as follows:

"SEC. 7A. (a) Except as exempted pursuant to subsection (c), no person shall acquire, directly or indirectly, any voting securities or assets of any other person, unless both persons (or in the case of a tender offer, the acquiring person) file notification pursuant to rules under subsection (d)(1) and the waiting period described in subsection (b)(1) has expired, if—

"(1) the acquiring person, or the person whose voting securities or assets are being acquired, is engaged in commerce or in any activity affecting commerce;

"(2)(A) any voting securities or assets of a person engaged in manufacturing which has annual net sales or total assets of \$10,000,000 or more are being acquired by any person which has total assets or annual net sales of \$100,000,000 or more;

"(B) any voting securities or assets of a person not engaged in manufacturing which has total assets of \$10,000,000 or more are being acquired by any person which has total

assets or annual net sales of \$100,000,000 or more; or

"(C) any voting securities or assets of a person with annual net sales or total assets of \$100,000,000 or more are being acquired by any person with total assets or annual net sales of \$10,000,000 or more; and

"(3) as a result of such acquisition, the acquiring person would hold—

"(A) 15 per centum or more of the voting securities or assets of the acquired person, or

"(B) an aggregate total amount of the voting securities and assets of the acquired person in excess of \$15,000,000.

In the case of a tender offer, the person whose voting securities are sought to be acquired by a person required to file notification under this subsection shall file notification pursuant to rules under subsection (d).

"(b)(1) The waiting period required under subsection (a) shall—

"(A) begin on the date of the receipt by the Federal Trade Commission and the Assistant Attorney General in charge of the Antitrust Division of the Department of Justice (hereinafter referred to in this section as the 'Assistant Attorney General') of—

"(i) the completed notification required under subsection (a), or

"(ii) if such notification is not completed, the notification to the extent completed and a statement of the reasons for such non-compliance,

from both persons, or, in the case of a tender offer, the acquiring person; and

"(B) end on the thirtieth day after the date of such receipt (or in the case of a cash tender offer, the fifteenth day), or on such later date as may be set under subsection (e)(2) or (g)(2).

"(2) The Federal Trade Commission and the Assistant Attorney General may, in individual cases, terminate the waiting period specified in paragraph (1) and allow any person to proceed with any acquisition subject to this section, and promptly shall cause to be published in the Federal Register a notice that neither intends to take any action within such period with respect to such acquisition.

"(3) As used in this section—

"(A) The term 'voting securities' means any securities which at present or upon conversion entitle the owner or holder thereof to vote for the election of directors of the issuer or, with respect to unincorporated issuers, persons exercising similar functions.

"(B) The amount or percentage of voting securities or assets of a person which are acquired or held by another person shall be determined by aggregating the amount or percentage of such voting securities or assets held or acquired by such other person and each affiliate thereof.

"(c) The following classes of transactions are exempt from the requirements of this section—

"(1) acquisitions of goods or realty transferred in the ordinary course of business;

"(2) acquisitions of bonds, mortgages, deeds of trust, or other obligations which are not voting securities;

"(3) acquisitions of voting securities of an issuer at least 50 per centum of the voting securities of which are owned by the acquiring person prior to such acquisition;

"(4) transfers to or from a Federal agency or a State or political subdivision thereof;

"(5) transactions specifically exempted from the antitrust laws by Federal statute;

"(6) transactions specifically exempted from the antitrust laws by Federal statute if approved by a Federal agency, if copies of all information and documentary material filed with such agency are contemporaneously filed with the Federal Trade Commission and the Assistant Attorney General;

“(7) transactions which require agency approval under section 10(e) of the Home Owners’ Loan Act (12 U.S.C. 1467a), section 18(c) of the Federal Deposit Insurance Act (12 U.S.C. 1828(c)), or section 3 of the Bank Holding Company Act of 1956 (12 U.S.C. 1842);

“(8) transactions which require agency approval under section 4 of the Bank Holding Company Act of 1956 (12 U.S.C. 1843) or section 5 of the Home Owners’ Loan Act (12 U.S.C. 1464), if copies of all information and documentary material filed with any such agency are contemporaneously filed with the Federal Trade Commission and the Assistant Attorney General at least 30 days prior to consummation of the proposed transaction;

“(9) acquisitions, solely for the purpose of investment, of voting securities, if, as a result of such acquisition, the securities acquired or held do not exceed 10 per centum of the outstanding voting securities of the issuer;

“(10) acquisitions of voting securities, if, as a result of such acquisition, the voting securities acquired do not increase, directly or indirectly, the acquiring person’s per centum share of outstanding voting securities of the issuer;

“(11) acquisitions, solely for the purpose of investment, by any bank, banking association, trust company, investment company, or insurance company, of (A) voting securities pursuant to a plan of reorganization or dissolution; or (B) assets in the ordinary course of its business; and

“(12) such other acquisitions, transfers, or transactions, as may be exempted under subsection (d)(2)(B).

“(d) The Federal Trade Commission, with the concurrence of the Assistant Attorney General and by rule in accordance with section 553 of title 5, United States Code, consistent with the purposes of this section—

“(1) shall require that the notification required under subsection (a) be in such form and contain such documentary material and information relevant to a proposed acquisition as is necessary and appropriate to enable the Federal Trade Commission and the Assistant Attorney General to determine whether such acquisition may, if consummated, violate the antitrust laws; and

“(2) may—

“(A) define the terms used in this section;

“(B) exempt, from the requirements of this section, classes of persons, acquisitions, transfers, or transactions which are not likely to violate the antitrust laws; and

“(C) prescribe such other rules as may be necessary and appropriate to carry out the purposes of this section.

“(e)(1) The Federal Trade Commission or the Assistant Attorney General may, prior to the expiration of the 30-day waiting period (or in the case of a cash tender offer, the 15-day waiting period) specified in subsection (b)(1), require the submission of additional information or documentary material relevant to the proposed acquisition, from a person required to file notification with respect to such acquisition under subsection (a) prior to the expiration of the waiting period specified in subsection (b)(1), or from any officer, director, partner, agent, or employee of such person.

“(2) The Federal Trade Commission or the Assistant Attorney General, in its or his discretion, may extend the 30-day waiting period (or in the case of a cash tender offer, the 15-day waiting period) specified in subsection (b)(1) for an additional period of not more than 20 days (or in the case of a cash tender offer, 10 days) after the date on which the Federal Trade Commission or the Assistant Attorney General, as the case may be, receives from any person to whom a request is made under paragraph (1), or in the case of tender offers, the acquiring person, (A) all

the information and documentary material required to be submitted pursuant to such a request, or (B) if such request is not fully complied with, the information and documentary material submitted and a statement of the reasons for such noncompliance. Such additional period may be further extended only by the United States district court, upon an application by the Federal Trade Commission or the Assistant Attorney General pursuant to subsection (g)(2).

“(f) If a proceeding is instituted or an action is filed by the Federal Trade Commission, alleging that a proposed acquisition violates section 7 of this Act or section 5 of the Federal Trade Commission Act, or an action is filed by the United States, alleging that a proposed acquisition violates such section 7 or section 1 or 2 of the Sherman Act, and the Federal Trade Commission or the Assistant Attorney General (1) files a motion for a preliminary injunction against consummation of such acquisition pendente lite, and (2) certifies the United States district court for the judicial district within which the respondent resides or carries on business, or in which the action is brought, that it or he believes that the public interest requires relief pendente lite pursuant to this subsection, then upon the filing of such motion and certification, the chief judge of such district court shall immediately notify the chief judge of the United States court of appeals for the circuit in which such district court is located, who shall designate a United States district judge to whom such action shall be assigned for all purposes.

“(g)(1) Any person, or any officer, director, or partner thereof, who fails to comply with any provision of this section shall be liable to the United States for a civil penalty of not more than \$10,000 for each day during which such person is in violation of this section. Such penalty may be recovered in a civil action brought by the United States.

“(2) If any person, or any officer, director, partner, agent, or employee thereof, fails substantially to comply with the notification requirement under subsection (a) or any request for the submission of additional information or documentary material under subsection (e)(1) within the waiting period specified in subsection (b)(1) and as may be extended under subsection (e)(2), the United States district court—

“(A) may order compliance;

“(B) shall extend the waiting period specified in subsection (b)(1) and as may have been extended under subsection (e)(2) until there has been substantial compliance, except that, in the case of a tender offer, the court may not extend such waiting period on the basis of a failure, by the person whose stock is sought to be acquired, to comply substantially with such notification requirement or any such request; and

“(C) may grant such other equitable relief as the court in its discretion determines necessary or appropriate,

upon application of the Federal Trade Commission or the Assistant Attorney General.

“(h) Any information or documentary material filed with the Assistant Attorney General or the Federal Trade Commission pursuant to this section shall be exempt from disclosure under section 552 of title 5, United States Code, and no such information or documentary material may be made public, except as may be relevant to any administrative or judicial action or proceeding. Nothing in this section is intended to prevent disclosure to either body of Congress or to any duly authorized committee or subcommittee of Congress.

“(i)(1) Any action taken by the Federal Trade Commission or the Assistant Attorney General or any failure of the Federal Trade

Commission or the Assistant Attorney General to take any action under this section shall not bar any proceeding or any action with respect to such acquisition at any time under any other section of this Act or any other provision of law.

“(2) Nothing contained in this section shall limit the authority of the Assistant Attorney General or the Federal Trade Commission to secure at any time from any person documentary material, oral testimony, or other information under the Antitrust Civil Process Act, the Federal Trade Commission Act, or any other provision of law.

“(j) Beginning not later than January 1, 1978, the Federal Trade Commission, with the concurrence of the Assistant Attorney General, shall annually report to Congress on the operation of this section. Such report shall include an assessment of the effects of this section, of the effects, purpose, and need for any rules promulgated pursuant thereto, and any recommendations for revisions of this section.

“(k)(1) The consideration by the Federal Communications Commission of any application for a transfer of license, or the acquisition and operation of lines, that is associated with an acquisition subject to this section shall be governed by the procedures set forth in this subsection.

“(2)(A) Upon receipt of an application referred to in paragraph (1), the Federal Communications Commission may submit to the party or parties covered by the application a request for any documents and information necessary for consideration of the transfer of license, or acquisition and operation of lines, addressed in the application.

“(B) The Federal Communications Commission shall submit a request under subparagraph (A), if at all, not later than 30 days after receipt of the application in question.

“(3)(A) A party subject to a request from the Federal Communications Commission under paragraph (2) shall submit to the Federal Communications Commission the documents and information identified in the request.

“(B) At the completion of the submission to the Federal Communications Commission of documents and information pursuant to a request under subparagraph (A), the party submitting such documents and information shall certify to the Federal Communications Commission whether or not such party has complied substantially with the request.

“(4) Whenever consideration of an application referred to in paragraph (1) includes one or more requests for documents and information under paragraph (2), the Federal Communications Commission shall complete the consideration of the application not later than 180 days after the date on which all parties covered by such requests have certified to the Federal Communications Commission under paragraph (3)(B) that such parties have complied substantially with such requests.

“(5)(A) In any case in which the Federal Communications Commission does not request under paragraph (2) any documents and information for the consideration of an application referred to in paragraph (1), the Federal Communications Commission shall approve or deny the transfer of license, or the acquisition and operation of lines, covered by the application not later than 30 days after the date of the submittal of the application to the Federal Communications Commission.

“(B) In any case in which the Federal Communications Commission requests under paragraph (2) documents and information for the consideration of an application referred to in paragraph (1), the Federal Communications Commission shall approve or deny the

transfer of license, or the acquisition and operation of lines, covered by the application on the date of the completion of consideration of the application under paragraph (4).

“(C) If the Federal Communications Commission does not approve or deny an application for a transfer of license, or for the acquisition and operation of lines, by the date set forth in subparagraph (A) or (B), whichever applies, the application shall be deemed approved by the Federal Communications Commission as of such date. Approval under this subparagraph shall be without conditions.

“(6)(A) Any party seeking to challenge the reasonableness of a request of the Federal Communications Commission under paragraph (2) shall bring an action in the United States District Court of the District of Columbia seeking a declaratory judgment or injunctive relief with respect to that challenge.

“(B) In seeking to challenge the compliance under paragraph (3) of a party with a request under paragraph (2), the Federal Communications Commission shall bring an action in the United States District Court of the District of Columbia seeking a declaratory judgment or injunctive relief with respect to that challenge.

“(C) The period of an action under this paragraph may not be taken into account in determining the passage of time under a deadline under this subsection.

“(7) No provision of this subsection may be construed to limit or modify—

“(A) the standards utilized by the Federal Communications Commission under the Communications Act of 1934 (47 U.S.C. 151 et seq.) in considering or approving transfers of licenses, or the acquisition and operation of lines, covered by an application referred to in paragraph (1); or

“(2) the authority of the Federal Communications Commission under that Act to impose conditions upon the transfer of licenses, or the acquisition and operation of lines, pursuant to such consideration or approval.

“(8) Subsection (g)(1) shall not apply with respect to the activities of a party under this subsection.”.

(b) EFFECTIVE DATE.—(1) Except as provided in paragraph (2), the amendment made by subsection (a) shall take effect on the date of the enactment of this Act.

(2) Subsection (k) of section 7A of the Clayton Act, as amended by subsection (a) of this section, shall take effect 30 days after the date of the enactment of this Act, and shall apply with respect to applications referred to in such subsection (k) that are submitted to the Federal Communications Commission on or after that date.●

TRIBUTE TO MICHAEL A. NAPP

● Mr. SANTORUM. Mr. President, I rise today to pay tribute to Michael A. Napp from Milton, Pennsylvania for achieving the honored rank of Eagle Scout. Scouting is recognized around the world as one of the premiere citizenship and leadership training activities. I am proud of the young people in Pennsylvania, like Michael, who go the extra mile to achieve this honorable rank.

Eagle Scouts learn valuable lessons in leadership, honor and pride in their communities. Since joining the scouts as a Tiger, Michael has served in several leadership positions including Senior Patrol Leader and Historian. In addition to his involvement in scouting, Michael has assisted in a cleanup day

in the borough of Milton and participated in an Adopt-A-Highway program. He is also active in high school track and field and a member of the Junior National Honor Society, the National Spanish Honor Society and the Key Club.

Mr. President, I ask my colleagues to join with me in commending Michael Napp for his outstanding community involvement. He has provided an excellent example for youth in Pennsylvania, and throughout the country.●

TO NULLIFY ANY RESERVATION OF FUNDS DURING FISCAL YEAR 1999 FOR GUARANTEED LOANS UNDER THE CONSOLIDATED FARM AND RURAL DEVELOPMENT ACT

Mr. JEFFORDS. I ask unanimous consent that the Senate proceed to the immediate consideration of H.R. 882 which has been received from the House.

The PRESIDING OFFICER. The clerk will report.

The bill clerk read as follows:

A bill (H.R. 882) to nullify any reservation of funds during fiscal year 1999 for guaranteed loans under the Consolidated Farm and Rural Development Act for qualified beginning farmers or ranchers, and for other purposes.

The PRESIDING OFFICER. Is there objection to the immediate consideration of the bill?

There being no objection, the Senate proceeded to consider the bill.

Mr. JEFFORDS. Mr. President, I ask unanimous consent that the bill be considered read the third time and passed, the motion to reconsider be laid upon the table, and that any statements relating to the bill be placed in the RECORD.

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

The bill (H.R. 882) was deemed read the third time and passed.

EXECUTIVE SESSION

EXECUTIVE CALENDAR

Mr. JEFFORDS. Mr. President, I ask unanimous consent that the Senate immediately proceed to the executive session to consider the following nomination on the Executive Calendar: No. 5; I further ask unanimous consent that the nomination be confirmed, the motion to reconsider be laid upon the table, and any statements relating to the nomination appear in the RECORD, the President be immediately notified of the Senate's action, and the Senate immediately return to legislative business.

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

The nomination considered and confirmed is as follows:

NATIONAL INDIAN GAMING COMMISSION

Montie R. Deer, of Kansas, to be Chairman of the National Indian Gaming Commission for the term of three years.

LEGISLATIVE SESSION

The PRESIDING OFFICER. Under the previous order, the Senate will resume legislative session.

HONORING MORRIS KING UDALL

Mr. JEFFORDS. I ask unanimous consent that the Senate proceed to the immediate consideration of H. Con. Res. 40.

The PRESIDING OFFICER. The clerk will report.

The bill clerk read as follows:

A concurrent resolution (H. Con. Res. 40) honoring Morris King Udall, former United States Representative from Arizona, and extending the condolences of the Congress on his death.

The PRESIDING OFFICER. Is there objection to the immediate consideration of the resolution?

There being no objection, the Senate proceeded to consider the concurrent resolution.

Mr. JEFFORDS. I ask unanimous consent that the concurrent resolution be agreed to, the preamble be agreed to, a motion to reconsider be laid upon the table, and a statement of explanation appear in the RECORD.

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

The concurrent resolution (H. Con. Res. 40) was agreed to.

The preamble was agreed to.

MEASURE READ THE FIRST TIME—S.J. RES. 13

Mr. JEFFORDS. Mr. President, I understand that S.J. Res 13, which was introduced earlier by Senator ABRAHAM and others, is at the desk, and I ask for its first reading.

The PRESIDING OFFICER. The clerk will read the resolution for the first time.

The bill clerk read as follows:

A joint resolution (S.J. Res. 13) proposing an amendment to the Constitution of the United States to protect Social Security.

Mr. JEFFORDS. Mr. President, I now ask for its second reading, and I object to my own request.

The PRESIDING OFFICER. The objection is heard.

The bill will be read the second time on the next legislative day.

ORDERS FOR TUESDAY, MARCH 9, 1999

Mr. JEFFORDS. Mr. President, I ask unanimous consent that when the Senate completes its business today, it stand in adjournment until 10:30 a.m. on Tuesday, March 9. I further ask consent that, on Tuesday, immediately following the prayer, the Journal of the proceedings be approved to date, the morning hour be deemed to have expired, the time for the two leaders be reserved, and there then be a period for morning business until 11:30 p.m., with the following limitations: 10:30 to 11:30 under the control of Senator DURBIN or