

## News from Senator

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### STATEMENT OF SEN. BOB DOLE FEDERAL TELECOMMUNICATIONS POLICY ACT OF 1986

MR. DOLE. MR. CHAIRMAN, FIRST LET ME SAY THAT I AM APPRECIATIVE OF YOUR EFFORTS IN SCHEDULING HEARINGS ON THIS IMPORTANT SUBJECT. I KNOW THE CHAIRMAN HAS HAD A FULL AGENDA THIS SUMMER WITH THE TAX BILL, PRODUCTS LIABILITY, TRADE LEGISLATION, ETC., AND I APPRECIATE THE FACT THAT HEARINGS ARE BEING HELD ON THIS BILL, WHICH I INTRODUCED IN LATE JUNE, IN A TIMELY MANNER.

WE ARE NOT FACED WITH THE QUESTION OF WHETHER AT&T AND THE BELL OPERATING COMPANIES OUGHT TO BE REUNIFIED. THE CONSENT DECREE SETTling THE ANTITRUST LITIGATION WAS MADE FINAL MORE THAN FOUR YEARS AGO AND DIVESTITURE OCCURRED NEARLY THREE YEARS AGO. IT WAS WITHOUT A DOUBT THE MOST MASSIVE RESTRUCTURING OF AN INDUSTRY THAT I HAVE WITNESSED. THERE HAVE BEEN STOPS AND STARTS, EXTRAORDINARY REMEDIES AND EXTRAORDINARY PROCEDURES UTILIZED ALONG THE WAY. BUT IT SEEMS TO ME WE MUST KEEP IN MIND THAT THE FUNDAMENTAL DECISIONS ABOUT THE DIVESTITURE OF AT&T ARE BEHIND US.

IT IS NOW TIME TO REVIEW THE WAY IN WHICH OUR TELECOMMUNICATIONS INDUSTRY HAS BEEN AND IS BEING REGULATED, AND TO DECIDE HOW TO BEST REGULATE THIS INDUSTRY IN THE FUTURE SO THAT THIS COUNTRY MAINTAINS THE BEST TELECOMMUNICATIONS SYSTEM IN THE WORLD.

#### CURRENT REGULATORY ENVIRONMENT

THE MODIFIED FINAL JUDGMENT (MFJ) REQUIRED AT&T TO DIVEST THE BELL OPERATING COMPANIES (BOC'S) AND IT SPECIFIED WHAT BUSINESS THE BOC'S WOULD ENGAGE IN. THE BOC'S WERE SPECIFICALLY PROHIBITED FROM ENTERING INTO THE INTEREXCHANGE, EQUIPMENT MANUFACTURING AND INFORMATION SERVICES BUSINESSES. A WAIVER PROCEDURE WAS ESTABLISHED WHICH ALLOWED ENTRY INTO CERTAIN NEW LINES OF BUSINESS IF THE BOC'S COULD SHOW THAT THERE WAS NO SUBSTANTIAL POSSIBILITY THAT IT COULD USE ITS MONOPOLY POWER TO IMPEDE COMPETITION IN THE MARKET IT SOUGHT TO ENTER.

SINCE JANUARY OF 1984, 110 WAIVER REQUESTS HAVE BEEN FILED. EACH WAIVER REQUEST MUST BE CAREFULLY SCRUTINIZED BY THE JUSTICE DEPARTMENT, WHICH HAS COME TO VIEW THE PROCESS AS BURDENSOME, TIME CONSUMING, AND INEFFICIENT. SIMPLY PUT, THIS PROCESS HAS CAUSED THE JUSTICE DEPARTMENT, A LAW ENFORCEMENT AGENCY, TO UTILIZE INORDINATE RESOURCES PERFORMING REGULATORY FUNCTIONS. IT HAS GIVEN JUDGE GREENE THE STATUS AS SUPERREGULATOR OF THE TELECOMMUNICATIONS INDUSTRY, A POST TO WHICH HE WAS NEITHER ELECTED OR APPOINTED. INDEED, CONGRESS NEVER INTENDED FOR THE ANTITRUST ENFORCEMENT MACHINERY BE USED FOR THE LONG TERM, DAY-TO-DAY REGULATION OF INDUSTRIES.

AT PRESENT, OUR SYSTEM OF FEDERAL TELECOMMUNICATIONS REGULATION CAN BEST BE DESCRIBED AS A THREE RING CIRCUS AS COMPANIES OFTEN HAVE TO SATISFY THE JUSTICE DEPARTMENT, THE FCC, AND A FEDERAL COURT. THAT IS HARDLY THE PERFECT ENVIRONMENT IN WHICH TO FOSTER A COMPETITIVE AND TECHNOLOGICALLY INNOVATIVE INDUSTRY.

#### S.2565 - A MORE COHERENT REGULATORY ENVIRONMENT

HAVING RECOGNIZED THAT MUCH OF FEDERAL TELECOMMUNICATIONS POLICY-MAKING HAS FALLEN INTO THE LAP OF JUDGE GREENE, WE MUST ALSO RECOGNIZE THAT ONE OF THESE DAYS JUDGE GREENE WILL RETIRE FROM THE BENCH. AT THAT POINT, DO WE APPOINT ANOTHER FEDERAL JUDGE TO THE BENCH - AND OH, BY THE WAY, HAVE THAT PERSON BECOME RESPONSIBLE FOR REGULATING TELECOMMUNICATIONS POLICY. CLEARLY NOT. THE QUESTION IS NOT WHETHER WE WILL TRANSFER THE RESPONSIBILITY OF FEDERAL TELECOMMUNICATIONS POLICY-MAKING AWAY FROM THE FEDERAL JUDICIARY. THE QUESTION IS WHEN AND TO WHERE.

S.2565 SIMPLY CONSOLIDATES IN THE FCC ALL FEDERAL TELECOMMUNICATIONS POLICY, INCLUDING THE AT&T AND GTE CONSENT DECREES, WHICH HAVE GOVERNED THE TELEPHONE AND TELECOMMUNICATIONS INDUSTRIES SINCE 1982. THE BILL WOULD REQUIRE THE FCC TO ISSUE REGULATIONS INCORPORATING AND ENFORCING THE PROVISIONS OF THE CONSENT DECREES.

I HAVE NOTED THAT CERTAIN WITNESSES HAVE BEEN ASKED TO TALK ABOUT THE MERITS OF ALLOWING THE BOC'S TO PARTICIPATE IN THE FIELD OF EQUIPMENT MANUFACTURING, INTEREXCHANGE SERVICE, AND THE LIKE. THAT WILL UNDOUBTEDLY BE AN INTERESTING AND SPIRITED DISCUSSION, BUT I WOULD REMIND THE COMMITTEE THAT S.2565 IS A SIMPLE PROCEDURAL BILL WHICH DOES NOT ADDRESS THE SUBSTANTIVE PROVISIONS OF THE CONSENT DECREE.

#### WHY THE FCC?

REGULATORY JURISDICTION OVER THE TELECOMMUNICATIONS INDUSTRY SHOULD BE CONSOLIDATED AT THE FCC FOR SEVERAL IMPORTANT REASONS.

FIRST, AS AN INSTITUTIONAL MATTER, CONGRESS SHOULD PLAY A MAJOR ROLE IN DEVELOPING POLICY IN AN INDUSTRY AS SIGNIFICANT AS TELECOMMUNICATIONS. THAT IS NOT TO SAY THAT CONGRESS SHOULD NECESSARILY DECIDE WHETHER OR WHEN EACH OF THE LINES OF BUSINESS RESTRICTION SHOULD BE LIFTED. THAT WOULD BE UNWORKABLE. IT IS

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ALSO UNNECESSARY. IT IS PRECISELY FOR SITUATIONS SUCH AS THIS  
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THAT CONGRESS CREATES EXPERT AGENCIES. THE FCC IS THE REGULATORY AGENCY CREATED IN 1934 FOR THE PURPOSE OF PROVIDING EXPERTISE IN THE COMMUNICATIONS AREA. IN MY VIEW, IT IS HARD TO RESIST THE LOGIC OF LETTING THEM ASSUME THE ROLE THEY WERE CREATED TO FILL, WITH CONGRESS PLAYING AN ACTIVE OVERSIGHT ROLE.

IF THE FCC ANNOUNCES A POLICY CHANGE THAT IS ILL-CONCEIVED, CONGRESS CAN CHANGE THE POLICY. WE CAN ENACT LEGISLATION, WE CAN EFFECT SUBTLE CHANGES THROUGH THE APPOINTMENT PROCESS...THERE ARE A VARIETY OF OPTIONS AVAILABLE TO US TO ENSURE THAT THE FCC STAYS IN LINE. WHEN A FEDERAL COURT MAKES A RULING THAT IS WAY OFF THE MARK, THERE IS NOT MUCH CONGRESS CAN DO. AS THE MAJORITY LEADER, I FEEL IT MY DUTY TO REPRESENT THE INSTITUTIONAL INTERESTS OF THE SENATE. THIS IS A TEXTBOOK CASE.

SECONDLY, REGULATORY PROCEEDINGS OF THE FCC OFFER A FAR GREATER OPPORTUNITY FOR INTERESTED CITIZENS WHO ARE NOT PARTIES TO THE DIRECT PROCEEDINGS TO PARTICIPATE THAN DO THE JUDICIAL REGULATORY PROCEEDINGS ADMINISTERED BY JUDGE GREENE.

PERHAPS MOST IMPORTANTLY, TELECOMMUNICATIONS POLICYMAKERS OUGHT TO BE GUIDED BY THE PUBLIC INTEREST STANDARD, NOT THE NARROWER ANTITRUST STANDARD WHICH IS CURRENTLY EMPLOYED. AT PRESENT THE COURT, UNLIKE THE FCC, SIMPLY CANNOT LEGITIMATELY TAKE INTO ACCOUNT IMPORTANT CONSIDERATIONS SUCH AS OUR TRADE BALANCE, NATIONAL SECURITY, THE NEEDS OF RESIDENTIAL SMALL BUSINESS AND RURAL TELEPHONE USERS, AND UNIVERSAL SERVICE IN ADMINISTERING ITS REGULATIONS.

THIS IS FRANKLY HOW I BECAME INTERESTED IN THIS SUBJECT: LAST AUGUST I HEADED A CONGRESSIONAL DELEGATION TO THE FAR EAST. ONE OF OUR MAJOR OBJECTIVES WAS TO ADDRESS THE GROWING TRADE IMBALANCE WITH JAPAN. I LEARNED THAT OUR WORLD TELECOMMUNICATIONS EQUIPMENT TRADE ACCOUNT HAD SHOWN A SURPLUS OF \$203 MILLION IN 1981, AND THAT IT WAS HEADED TOWARDS A DEFICIT OF \$1.8 BILLION IN 1985. THE U.S.-JAPAN TRADE PICTURE HAD DETERIORATED FROM A \$323 MILLION DEFICIT IN 1981 TO A \$1.2 BILLION DEFICIT IN 1985.

WE'VE BECOME A NET IMPORTER OF TELECOMMUNICATIONS EQUIPMENT OVER THE PAST FEW YEARS FOR A VARIETY OF REASONS - THE DOLLAR, THE QUALITY OF FOREIGN PRODUCTS, THE LACK OF ACCESS TO FOREIGN MARKETS AMONG THEM. BUT WE CAN'T IGNORE THE FACT THAT THE CONSENT DECREES HAVE TAKEN SOME OF OUR MOST EFFICIENT COMPANIES ENTIRELY OUT OF THE WORLD TELECOMMUNICATIONS EQUIPMENT MARKET.

I AM NOT TODAY ADVOCATING THAT THE MANUFACTURING PROVISIONS BE LIFTED. BUT I DO THINK IT IS ABSURD THAT TELECOMMUNICATIONS POLICY IS BEING MADE WITHOUT ANY REGARD GIVEN TO TRADE CONCERNS. BY HAVING POLICY MADE IN THE WRONG ARENA AND BY THE WRONG STANDARD, WE ARE PLACING BLINDERS ON THE POLICYMAKERS. THAT SITUATION WOULD BE CORRECTED BY TRANSFERRING JURISDICTION OVER TELECOMMUNICATIONS POLICY TO THE FCC.

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NOT ONLY DOES THE FCC HAVE THE REQUISITE SUBJECT MATTER EXPERTISE AND A BROAD PUBLIC INTEREST MANDATE, THEY ARE FAR BETTER EQUIPPED IN TERMS OF PERSONNEL AND RESOURCES TO REGULATE THE TELECOMMUNICATIONS INDUSTRY THAN IS JUDGE GREENE, WHO MUST MAKE DO WITH LESS THAN A HANDFUL OF LAW CLERKS.

#### OPPOSITION TO THE BILL

IF THIS IS SO SIMPLE, WHY DOES A LARGE PORTION OF THE INDUSTRY OPPOSE IT? THE COMMITTEE MEMBERS WILL HAVE AN OPPORTUNITY TO EXPLORE THIS QUESTION, BUT I WOULD SUGGEST A FEW OBVIOUS ANSWERS.

IT IS CLEAR TO ME THAT COMPANIES WHO OPPOSE THIS BILL DO SO FOR REASONS UNRELATED TO THE QUESTION OF WHETHER THE FCC IS THE MORE APPROPRIATE FORUM FOR FEDERAL TELECOMMUNICATIONS POLICYMAKING THAN IS A FEDERAL DISTRICT JUDGE. FRANKLY, SOME SEGMENTS OF THE INDUSTRY THINK THEY GOT A PRETTY GOOD DEAL FROM THE JUDGE AND THEY ARE UNWILLING TO RISK LOSING THAT PROTECTION. BUT ALL OF THAT ASSUMES THAT IF THIS BILL PASSES, THE FCC WILL IMMEDIATELY TAKE STEPS TO UNDO THE PROVISIONS OF THE DECREE.

IF I FELT THAT THE FCC HAD PREJUDGED ISSUES IT MAY BE ASKED TO RULE ON IN FUTURE LINE OF BUSINESS WAIVER PROCEEDINGS, I WOULD AGREE THAT IT WOULD BE INAPPROPRIATE FOR JURISDICTION TO BE TRANSFERRED TO THE COMMISSION - AT LEAST AS IT IS CURRENTLY CONSTITUTED. BUT I DON'T BELIEVE THAT TO BE THE CASE.

IN ADDITION, I FEEL THERE ARE IMPORTANT PROCEDURAL SAFEGUARDS WHICH WILL GUARANTEE THOROUGH REVIEW OF THE CONSENT DECREE PROVISIONS BY THE FCC. UNDER MY BILL, THE NOTICE, COMMENT, AND REVIEW PROVISIONS OF THE ADMINISTRATIVE PROCEDURES ACT AND THE COMMUNICATIONS ACT OF 1934 MUST BE FOLLOWED. SO ASSUMING A WORST CASE SCENARIO THAT THE FCC WANTED TO GUT THE CONSENT DECREES - IT CAN'T BE ARGUED THAT THIS BILL GIVES THEM UNFETTERED DISCRETION TO DO SO.

AND MORE IMPORTANTLY, JUDGE GREENE PROVIDED THAT THE JUSTICE DEPARTMENT SUBMIT A REPORT EVERY THREE YEARS WITH RECOMMENDATIONS ON WHICH IF ANY OF THE RESTRICTIONS SHOULD BE LIFTED. THE FIRST OF THESE WILL BE SUBMITTED LATER THIS YEAR BY PETER HUBER, A CONSULTANT APPOINTED BY THE DEPARTMENT. IN MY VIEW, THERE IS NO REASON WHY THAT REPORT CAN'T GUIDE THE FCC JUST AS WE WOULD EXPECT IT TO GUIDE THE COURT IF THE LEGISLATION IS NOT ENACTED.

#### SUMMARY

IN SUMMARY, LET ME JUST SAY THAT THIS IS A SIMPLE BILL - AND THAT IS BY DESIGN. I BELIEVE CONGRESS SHOULD PLAY AN OVERSIGHT ROLE IN THESE MATTERS, WITH THE FCC DOING THE BULK OF THE WORK.

I HAVE IN THE PAST CONSIDERED INTRODUCING LEGISLATION IN THIS AREA WHICH WOULD SUBSTANTIVELY ALTER CERTAIN PROVISIONS IN THE CONSENT DECREE. I CHOSE NOT TO DO SO BECAUSE I WAS PERSUADED THAT REACHING A CONSENSUS ON WHICH CONSENT DECREE RESTRICTIONS SHOULD BE LIFTED AND WHEN WOULD SPARK A BATTLE OF MAJOR PROPORTIONS.

I AM AS CONVINCED NOW AS EVER THAT MY JUDGMENT WAS CORRECT. IT WILL BE FRUITLESS IN THE CURRENT ENVIRONMENT TO ATTEMPT TO NEGOTIATE SUBSTANTIVE DEALS WITH ALL OF THE PLAYERS IN THIS COMPLEX FIELD. THE ONLY WAY CONGRESS CAN PASS LEGISLATION IN THIS AREA IS TO KEEP IT SIMPLE.

I RECOGNIZE THAT THE CHAIRMAN AND OTHERS ARE INCLINED TO PROVIDE SAFEGUARDS AND SPECIFIC GUIDANCE TO THE FCC IN TERMS OF IMPLEMENTING THE BILL. SOME OF THESE MAY SUBSTANTIALLY IMPROVE THE BILL, BUT WE CAN'T GO TOO FAR IN THAT DIRECTION OR WE'LL UNDERMINE THE NEED FOR THE LEGISLATION. THIS MAY BE A PROJECT NOT UNLIKE THE TAX BILL: IT ONLY MAKES SENSE TO PASS IT IF WE AGREE TO NOT TRY TO SATISFY ALL SEGMENTS OF THE INDUSTRY.