

115TH CONGRESS
2D SESSION

S. 2847

To provide that the Federal Trade Commission shall exercise authority with respect to mergers only under the Clayton Act and only in the same procedural manner as the Attorney General exercises such authority, and to require the Federal Communications Commission to approve or deny a license transfer application within 180 days of submission.

IN THE SENATE OF THE UNITED STATES

MAY 15, 2018

Mr. LEE (for himself, Mr. HATCH, Mr. TILLIS, and Mr. GRASSLEY) introduced the following bill; which was read twice and referred to the Committee on the Judiciary

A BILL

To provide that the Federal Trade Commission shall exercise authority with respect to mergers only under the Clayton Act and only in the same procedural manner as the Attorney General exercises such authority, and to require the Federal Communications Commission to approve or deny a license transfer application within 180 days of submission.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

1 **TITLE I—STANDARD MERGER**
 2 **AND ACQUISITION REVIEWS**
 3 **THROUGH EQUAL RULES**

4 **SEC. 101. SHORT TITLE.**

5 This title may be cited as the “Standard Merger and
 6 Acquisition Reviews Through Equal Rules Act of 2018”.

7 **SEC. 102. AMENDMENTS TO THE CLAYTON ACT.**

8 The Clayton Act (15 U.S.C. 12 et seq.) is amended—

9 (1) by striking section 4F (15 U.S.C. 15f) and
 10 inserting the following—

11 “ACTIONS BY ATTORNEY GENERAL OF THE UNITED
 12 STATES OR THE FEDERAL TRADE COMMISSION

13 “SEC. 4F. (a) Whenever the Attorney General of the
 14 United States has brought an action under the antitrust
 15 laws or the Federal Trade Commission has brought an ac-
 16 tion under section 7, and the Attorney General or Federal
 17 Trade Commission, as applicable, has reason to believe
 18 that any State attorney general would be entitled to bring
 19 an action under this Act based substantially on the same
 20 alleged violation of the antitrust laws or section 7, the At-
 21 torney General or Federal Trade Commission, as applica-
 22 ble, shall promptly give written notification thereof to such
 23 State attorney general.

24 “(b) To assist a State attorney general in evaluating
 25 the notice described in subsection (a) or in bringing any

1 action under this Act, the Attorney General of the United
2 States or Federal Trade Commission, as applicable, shall,
3 upon request by such State attorney general, make avail-
4 able to the State attorney general, to the extent permitted
5 by law, any investigative files or other materials which are
6 or may be relevant or material to the actual or potential
7 cause of action under this Act.”;

8 (2) in section 5 (15 U.S.C. 16)—

9 (A) in subsection (a), by inserting “(in-
10 cluding a proceeding brought by the Federal
11 Trade Commission with respect to a violation of
12 section 7)” after “United States under the anti-
13 trust laws”; and

14 (B) in subsection (i) by inserting “(includ-
15 ing a proceeding instituted by the Federal
16 Trade Commission with respect to a violation of
17 section 7)” after “antitrust laws”;

18 (3) in section 11 (15 U.S.C. 21), by adding at
19 the end the following:

20 “(m)(1) Except as provided in paragraph (2), in en-
21 forcing compliance with section 7, the Federal Trade Com-
22 mission shall enforce compliance with that section in the
23 same manner as the Attorney General in accordance with
24 section 15.

1 “(2) If the Federal Trade Commission approves an
 2 agreement with the parties to the transaction that con-
 3 tains a consent order with respect to a violation of section
 4 7, the Commission shall enforce compliance with that sec-
 5 tion in accordance with this section.”;

6 (4) in section 13 (15 U.S.C. 23), by inserting
 7 “(including a suit, action, or proceeding brought by
 8 the Federal Trade Commission with respect to a vio-
 9 lation of section 7)” before “subpoenas”; and

10 (5) in section 15 (15 U.S.C. 25), by inserting
 11 “and the duty of the Federal Trade Commission
 12 with respect to a violation of section 7,” after “Gen-
 13 eral,”.

14 **SEC. 103. AMENDMENTS TO THE FEDERAL TRADE COMMIS-**
 15 **SION ACT.**

16 The Federal Trade Commission Act (15 U.S.C. 41
 17 et seq.) is amended—

18 (1) in section 5(b) (15 U.S.C. 45(b)), by insert-
 19 ing “(excluding the consummation of a proposed
 20 merger, acquisition, joint venture, or similar trans-
 21 action that is subject to section 7 of the Clayton Act
 22 (15 U.S.C. 18), except in cases where the Commis-
 23 sion approves an agreement with the parties to the
 24 transaction that contains a consent order)” after
 25 “unfair method of competition”;

1 (2) in section 9 (15 U.S.C. 49), by inserting
2 after the fourth undesignated paragraph the fol-
3 lowing:

4 “Upon the application of the commission with respect
5 to any activity related to the consummation of a proposed
6 merger, acquisition, joint venture, or similar transaction
7 that is subject to section 7 of the Clayton Act (15 U.S.C.
8 18) that may result in any unfair method of competition,
9 the district courts of the United States shall have jurisdic-
10 tion to issue writs of mandamus commanding any person
11 or corporation to comply with the provisions of this Act
12 or any order of the commission made in pursuance there-
13 of.”;

14 (3) in section 13(b)(1) (15 U.S.C. 53(b)(1)), by
15 inserting “(excluding section 7 of the Clayton Act
16 (15 U.S.C. 18) and section 5(a)(1) with respect to
17 the consummation of a proposed merger, acquisition,
18 joint venture, or similar transaction that is subject
19 to section 7 of the Clayton Act (15 U.S.C. 18))”
20 after “Commission”; and

21 (4) in section 20(c)(1) (15 U.S.C. 57b–1(c)(1)),
22 by inserting “or under section 7 of the Clayton Act
23 (15 U.S.C. 18), where applicable,” after “Act,”.

1 **SEC. 104. EFFECTIVE DATE; APPLICATION OF AMEND-**
 2 **MENTS.**

3 (a) EFFECTIVE DATE.—Except as provided in sub-
 4 section (b), this title and the amendments made by this
 5 title shall take effect on the date of the enactment of this
 6 Act.

7 (b) APPLICATION OF AMENDMENTS.—The amend-
 8 ments made by this title shall not apply to any of the fol-
 9 lowing that occurs before the date of enactment of this
 10 Act:

11 (1) A violation of section 7 of the Clayton Act
 12 (15 U.S.C. 18).

13 (2) A transaction with respect to which there is
 14 compliance with section 7A of the Clayton Act (15
 15 U.S.C. 18a).

16 (3) A case in which a preliminary injunction
 17 has been filed in a district court of the United
 18 States.

19 **TITLE II—FEDERAL COMMUNI-**
 20 **CATIONS COMMISSION MERG-**
 21 **ER PROCESS REFORM**

22 **SEC. 201. TIME LIMITS FOR COMMISSION ACTION ON**
 23 **TRANSFERS AND ASSIGNMENTS.**

24 Title IV of the Communications Act of 1934 (47
 25 U.S.C. 401 et seq.) is amended by adding at the end the
 26 following:

1 **“SEC. 417. TIME LIMITS FOR COMMISSION ACTION ON**
 2 **TRANSFERS AND ASSIGNMENTS.**

3 “(a) DEFINITION.—In this section, the term ‘covered
 4 application’ means an application for the transfer of con-
 5 trol or assignment of any license or authorization subject
 6 to the jurisdiction of the Commission.

7 “(b) REQUIREMENTS.—

8 “(1) IN GENERAL.—Notwithstanding any other
 9 provision of law, including section 309(e), the Com-
 10 mission—

11 “(A) shall approve or deny a covered appli-
 12 cation; and

13 “(B) may not designate a covered applica-
 14 tion for hearing, unless the Commission first
 15 determines by a majority vote that a material
 16 factual question exists about misrepresentation
 17 or lack of candor by the applicant.

18 “(2) DETERMINATION.—Except as provided in
 19 paragraph (3), the Commission shall make a deter-
 20 mination to approve or deny a covered application
 21 not later than 180 days after the date on which the
 22 applicants provide to the Commission the last sub-
 23 mission, relating to the application, before the Com-
 24 mission provides public notice of the application.

25 “(3) EXTENSIONS.—

26 “(A) IN GENERAL.—

1 “(i) REQUEST.—During the 180-day
2 review period under paragraph (2), the
3 Commission may apply to the United
4 States District Court for the District of
5 Columbia for an extension of that period
6 for an additional 30 days by filing a mo-
7 tion to extend that references this section.

8 “(ii) COURT DETERMINATION.—The
9 court may grant an extension of the 180-
10 day review period requested under clause
11 (i) if—

12 “(I) the court finds that the ap-
13 plicants for the transfer of control or
14 assignment have not substantially
15 complied, in a timely manner, with a
16 reasonable request by the Commission
17 for information;

18 “(II) the Commission shows, by
19 clear and convincing evidence, that
20 the Commission is unable to complete
21 review within the 180-day review pe-
22 riod; or

23 “(III) an Executive agency (as
24 defined in section 105 of title 5,
25 United States Code) has requested in

1 writing that the Commission delay a
 2 determination pending the Executive
 3 agency’s national security review of
 4 the transfer of control or assignment.

5 “(B) ADDITIONAL EXTENSIONS.—The
 6 Commission may request, and the court may
 7 grant, additional 30-day extensions in the same
 8 manner as an initial extension under subpara-
 9 graph (A).

10 “(c) APPROVAL ABSENT COMMISSION ACTION.—

11 “(1) IN GENERAL.—A covered application shall
 12 be deemed approved without conditions if the Com-
 13 mission does not approve or deny the application or
 14 apply for an extension during the applicable period
 15 under subsection (b).

16 “(2) PENDING LITIGATION.—

17 “(A) IN GENERAL.—Except as provided in
 18 subparagraph (B), if the 180-day review period
 19 under subsection (b)(2) has expired, the Com-
 20 mission may not deny a covered application, or
 21 approve a covered application with conditions,
 22 during the pendency of any litigation relating to
 23 a request by the Commission for an extension
 24 under subsection (b)(3) with respect to the cov-
 25 ered application, including any time during

1 which a court has entered a stay pending ap-
2 peal or administrative stay of such litigation.

3 “(B) EXTENSION REQUEST DENIED AFTER
4 180-DAY REVIEW PERIOD.—If a request for an
5 extension under subsection (b)(3) is denied
6 after the expiration of the 180-day review pe-
7 riod under subsection (b)(2)—

8 “(i) the Commission shall make a de-
9 termination to approve or deny the covered
10 application not later than 10 days after the
11 date on which the extension request is de-
12 nied; and

13 “(ii) the covered application shall be
14 deemed approved without conditions if the
15 Commission does not approve or deny the
16 application during the 10-day period de-
17 scribed in clause (i).

18 “(d) BURDEN OF PERSUASION SHIFTED.—Notwith-
19 standing any other provision of law, including section 706
20 of title 5, United States Code, in a judicial appeal of a
21 Commission decision to deny a covered application, the
22 Commission shall bear the burden of persuasion to dem-
23 onstrate that the decision is—

24 “(1) permitted under applicable statutes and
25 regulations; and

1 “(2) supported by the required amount of fac-
2 tual evidence.”.

3 **SEC. 202. TECHNICAL AND CONFORMING AMENDMENT.**

4 Section 310(d) of the Communications Act of 1934
5 (47 U.S.C. 310(d)) is amended, in the second sentence,
6 by inserting before the semicolon the following: “, except
7 as otherwise provided in section 417”.

8 **SEC. 203. EFFECTIVE DATE.**

9 The amendment made by section 201 shall apply with
10 respect to any covered application that is submitted to the
11 Federal Communications Commission on or after the date
12 of enactment of this Act.

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