ask unanimous consent that the Senate proceed to its immediate consideration, that all after the enacting clause be stricken and the text of S. 936, as passed, be substituted in lieu thereof; that the bill be advanced to third reading and passed; and the title of S. 936 be substituted for the title of H.R. 1119; that the Senate insist on its amendments to the bill and the title and request a conference with the House on the disagreeing votes of the two Houses and the Chair be authorized to appoint conferees; that the motion to reconsider the above-mentioned votes be laid upon the table; and that the foregoing occur without any intervening action or debate.

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

The bill (H.R. 1119), as amended, was deemed read the third time and passed.

The title was amended so as to read:

A bill to authorize appropriations for fiscal year 1998 for military activities of the Department of Defense, for military construction, and for defense activities of the Department of Energy, to prescribe personnel strengths for such fiscal year for the Armed Forces, and for other purposes.

There being no objection, the Presiding Officer (Mr. HAGEL) appointed Mr. THURMOND, Mr. WARNER, Mr. MCCAIN, Mr. COATS, Mr. SMITH of New Hampshire, Mr. KEMPTHORNE, Mr. INHOFE, Mr. SANTORUM, Ms. SNOWE, Mr. ROBERTS, Mr. LEVIN, Mr. KENNEDY, Mr. BINGAMAN, Mr. GLENN, Mr. BYRD, Mr. ROBB, Mr. LIEBERMAN, and Mr. CLELAND conferees on the part of the Senate.

Mr. THURMOND. Mr. President. I ask unanimous consent with respect to S. 936 as just passed by the Senate that, if the Senate receives a message with respect to this bill from the House of Representatives, the Senate disagree with the House on its amendment or amendments to the Senate-passed bill and agree to or request a conference, as appropriate, with the House on the disagreeing votes of the two Houses and the Chair be authorized to appoint conferees and the foregoing occur without any intervening action or debate.

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

Mr. THURMOND. Mr. President, in closing, I want to take this opportunity to thank the majority leader, Senator LOTT, and the minority leader, Senator DASCHLE, for their fine cooperation throughout the consideration of this bill. And, Mr. President, I want to take this opportunity to thank Mr. Brownlee of the majority staff and Mr. Lyles on the minority staff, and finally the superb work of the fine floor staff that has been so helpful. They have all rendered yeoman service in the consideration and passage of this bill.

I yield the floor.

Mr. LEVIN addressed the Chair.

The PRESIDING OFFICER. The Senator from Michigan.

Mr. LEVIN. Mr. President, first let me again congratulate Senator THURMOND for the tremendous work that he put into this bill and the success of this bill. The strong vote that it got —I believe 94 votes—in the U.S. Senate is a real tribute, I think, to the work that Senator THURMOND, as our chairman, has put in on this bill. I congratulate him for it.

I also want to thank all the members of the committee for their work. Again, our staffs, David Lyles of our staff on this side and Les Brownlee on the Republican side, our Republican and Democratic leaders, the majority leader, and the Democratic leader were extremely helpful, and they again made it possible for us to complete this bill, I think, in very good order and with very great speed. To the members of our floor staff, thanks to all of them for making it possible for us to move with such great dispatch on a very complicated bill.

Mr. THURMOND addressed the Chair.

The PRESIDING OFFICER. The Senator from South Carolina.

Mr. THURMOND. I wish to again thank Senator LEVIN for his fine cooperation and all that he did to promote this bill. He did a magnificent job.

Mr. NICKLES addressed the Chair.

The PRESIDING OFFICER. The Senator from Oklahoma.

Mr. NICKLES. Mr. President, I, too, would like to compliment the Senator from South Carolina, Senator THURMOND, for his leadership, as well as Senator LEVIN, for moving this bill through, and in addition to that, Senator LOTT and Senator DASCHLE.

This bill had great potential for not only taking all this week, but all of next week. I compliment the leaders for making this happen, to get this bill completed, as the majority leader announced at the beginning of the week that we were going to finish this on Friday before we adjourned. And we did. I think that is very important.

I also think that the vote is very positive. To have 94 votes for final passage on a defense bill I think is very positive indeed.

EXECUTIVE SESSION

Mr. NICKLES. Mr. President, I ask unanimous consent that the Senate now proceed to executive session to consider the nomination of Joel Klein to be an Assistant Attorney General.

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

NOMINATION OF JOEL I. KLEIN OF THE DISTRICT OF COLUMBIA TO BE AN ASSISTANT ATTORNEY GENERAL

The assistant legislative clerk read the nomination of Joel I. Klein of the District of Columbia to be an Assistant Attorney General.

CLOTURE MOTION

Mr. NICKLES. Mr. President, I send a cloture motion to the desk.

The PRESIDING OFFICER. The cloture motion having been presented under rule XXII, the Chair directs the clerk to read the motion.

The assistant legislative clerk read as follows:

CLOTURE MOTION

We, the undersigned Senators, in accordance with the provisions of rule XXII of the Standing Rules of the Senate, do hereby move to bring to a close debate on Executive Calendar No. 104, the nomination of Joel I. Klein to be Assistant Attorney General:

Trent Lott, Orrin Hatch, Kay Bailey Hutchison, John McCain, Olympia Snowe, Dan Coats, Pat Roberts, Rod Grams, R.F. Bennett, Thad Cochran, Jim Inhofe, Sam Brownback, W. V. Roth, Chuck Hagel, J. Warner, Larry E. Craig.

Mr. NICKLES. Mr. President, I further ask unanimous consent that the cloture vote occur at 6 p.m., on Monday, July 14, and the mandatory quorum under rule XXII be waived.

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

Mr. NICKLES. Mr. President, I further ask unanimous consent that if cloture is invoked, there be 3 hours remaining for debate, with 2 hours under the control of Senators HOLLINGS, DORGAN, and KERREY of Nebraska, and 1 hour under the control of Senator HATCH.

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

Mr. NICKLES. Mr. President, I yield the floor.

Mr. HATCH addressed the Chair.

The PRESIDING OFFICER. The Senator from Utah.

Mr. HATCH. Mr. President, I rise today on behalf of Mr. Joel Klein, who has been nominated for the position of Assistant Attorney General of the Antitrust Division of the Department of Justice. Mr. Klein was reported out of the Judiciary Committee unanimously on May 5. As his record and testimony reflect, Joel Klein is a fine nominee for this position, and I am pleased that his nomination has finally been brought before the full Senate today. He has my strong support and, I believe, the strong support of every member of the Judiciary Committee.

Now, I believe Mr. Klein is as fine a lawyer as any nominee who has come before this committee. He graduated magna cum laude from Harvard Law School before clerking for Chief Judge David Brazelon of the D.C. Circuit and then Supreme Court Justice Lewis Powell. Mr. Klein went on to practice public interest law and later formed his own law firm, in which he developed an outstanding reputation as an appellate lawyer arguing—and winning—many important cases before the U.S. Supreme Court. For the past 2 years, Mr. Klein has ably served as Principal Deputy in the Justice Department's Antitrust Division, and for the past several months he has been the Acting Assistant Attorney General for the Antitrust Division.

It is clear, both from his speeches and his enforcement decisions, that Mr.

Klein is well within the mainstream of antitrust law and doctrine and will be a stabilizing influence at the Antitrust Division of the Justice Department. While no one doubts his willingness to take vigorous enforcement actions when appropriate, it is a credit to Mr. Klein that the U.S. Chamber of Commerce and the National Association of Manufacturers and other business associations have written in strong support of his nomination to lead the Antitrust Division. They believe he will be good for American business. And I think they are right.

At the same time, Mr. Klein has demonstrated a sense of direction and a vision for the Antitrust Division, which is important in a leader. He is committed to enforcing our Nation's antitrust laws in order to uphold our cherished free enterprise system and protect consumers from cartels and other anticompetitive conduct. So, I am certain that Mr. Klein will also be very good for consumers.

Antitrust doctrine has had its ups and downs over the years—although we may not all agree on which times were which. At this point, however, I am hopeful that antitrust is entering a more mature and more stable period. Although antitrust analysis is fact-intensive and will always contain gray areas, I hope Mr. Klein will work to help make antitrust doctrine as clear and predictable as possible so that companies know what is permitted and what the Antitrust Division will challenge. This will help businesses compete vigorously without the worry and chilling effects that result from uncertainty. I suggest that the Division's goal should be to avoid burdens on lawful business activities while appropriately enforcing the law against those who clearly violate it.

Finally, I would like to add that personally I have been very impressed with Mr. Klein. He strikes me as a person of strong integrity, as a highly competent and talented lawyer who is well-suited to lead the Antitrust Division. While I expect we may not always agree on every issue, I believe that Mr. Klein's skills and expertise and his personal integrity will be a service to the Department of Justice, to antitrust policymakers, and to the health of competition in our economy. I look forward to working with him in the coming years.

In what appears to be a last-ditch effort to scuttle Mr. Klein's nomination, there are some who have now floated an allegation that the nominee's participation in a particular merger decision was somehow improper. Upon examination, let me say that it appears to me that these reports are wholly unfounded and provide no basis whatsoever for questioning Mr. Klein's conduct. I understand that, with respect to the matter at issue, Mr. Klein consulted with the proper ethics officials and was assured that his participation raised no conflict of interest or even the appearance thereof. Based on what we know, this judgment appears sound, and I am confident that the nominee has conducted himself appropriately. I hope that nobody in this body will use this extraneous, ill-founded notion as an eleventh hour basis for opposing Mr. Klein's nomination. I am confident, having worked with him over the years, knowing him personally as well as I do, having watched him in action, having seen him make decisions, and having seen him apply the law, that Mr. Klein is a man of high integrity, and I urge my colleagues to cast their votes in his favor.

I might add that some will suggest that Mr. Klein is misapplying the Telecommunications Act and has taken questionable positions on particular mergers. I will refrain here from passing judgment on any particular decision and from engaging in a detailed debate on telecommunications antitrust policy. I fully recognize that there are some very, very important issues at stake here, especially in light of a number of ambiguities left in the wake of the telecommunications law. I also recognize that there have been some controversial mergers in this area, and yet other potentially landmark mergers which have not yet come to pass.

In short, telecommunications competition and antitrust policy is one of the most important, yet somewhat unsettled, policy areas affecting our emerging, transforming economy. The looming policy decisions to be made in this area cannot be ignored. Indeed, I plan to have the Judiciary Committee and/or our Antitrust Subcommittee fully explore these issues.

But I believe it is neither fair nor wise to hold a nominee hostage because of such concerns, especially one as competent and decent as Joel Klein. In my view, sound public policy is best served by bringing this nominee up for a vote, permitting the Justice Department to proceed with a confirmed chief of the Antitrust Division, and for us in Congress to move forward and work with the Department and other involved agencies in the formulation and implementation of telecommunications policies.

I hope that all Senators, and especially those of the President's own party, will permit the administration's nominee to be voted on.

Finally, let me just say this: I believe that the President deserves a great deal of credit for picking Joel Klein as one of his chief nominations for this year. There are times when I disagree with the President, but I have to say when he does a good job and when he does nominate good people, as he has in these areas in the past in some of the areas of law, in particular, and I cite with particularity some people at Justice, the Director of the FBI and so many other law enforcement aspects of our Government, then I will support the President.

I will do what I can to show support for him and to encourage him to continue to pick the highest quality people for these positions. I am confident that Joel Klein is of the highest quality. I am confident that he is one of the finest lawyers in this country in this field and I feel absolutely confident that he will do one of the best jobs in history at the Antitrust Division. Anything less than that, I would be disappointed in. I believe he will. He is a fine man. I hope this body will support him.

I hope when we have the cloture vote on Monday we will invoke cloture and have the debate, allow anybody to say what they want to, but then hopefully vote Mr. Klein up for this position so he can fully embrace this position and fulfill it and do what needs to be done. That is all I will say today.

I know my colleagues on the other side may have some comments. I yield the floor.

Mr. HOLLINGS. Mr. President, the Telecommunications Act of 1996 was an historic achievement of bipartisan consensus. The act was intended to promote competition in every sector of the communications industry, including the broadcast, cable, wireless, long distance, local telephone, manufacturing, pay telephone, electronic publishing, cable equipment, and direct broadcast satellite industries. At the time of its passage, the law had the support of the Clinton administration and almost every sector of the communications industry.

Mr. President, the Telecommunications Act was the result of many years of debate in the Congress. In 1991, I authored legislation to allow the Regional Bell Operating Companies [RBOC's] into manufacturing. That bill passed the Senate by almost two-thirds of the Senate, but the House could not pass it. In 1993 I introduced S. 1822 which was a comprehensive effort to update the Communications Act of 1934. Again, we tried to pass the legislation, but at each stage, one industry blocked the other. As a result, communications policy was set by the courts, not by Congress and not by the Federal Communications Commission [FCC], the expert agency.

It is now almost 18 months after the historic law was passed and critics are already hailing it as a failure because of recent mergers and the apparent lack of competition. In actuality we will not know the impact of the law for years to come. Yet a critical factor that will determine its success has more to do with how the law is being enforced than what the statutory language says.

First, it is important to note that many of the decisions we made were based on the commitment that the respective industries were going to compete against each other. Telephone companies were going to enter the cable television market. The cable industry was going to enter the local telephone service market. And long distance companies would enter the local telephone service market.

Now, 18 months later, we're seeing more of the opposite. But I am not ready to simply blame the industry for deciding not to compete. Everyone knows that it's more natural for monopolies to defend their market share than to willingly give it up. Furthermore, competition can only occur if the new competitors are provided the legal and economic opportunity to compete for market share. Thus, the success of the law depends upon its implementation and oversight.

One major element of the implementation is the rules adopted by the FCC. The FCC has been working nonstop for the past 18 months to adopt rules to implement the law. I have some concerns about how the FCC has interpreted certain provisions, and I have been working with the FCC on those issues. One problem, though, has been that the rules themselves are not in effect because these same companies that pledged competition have instead sought consolidation and litigation.

An example of why vigorous enforcement of the act is necessary is reflected in the difficulty new entrants are experiencing in trying to enter the local telephone market. Financial reports today detail MCI's problems that it faces in trying to break into the local telephone market. MCI will record approximately $800 million in losses this year—almost double its expected loss. AT&T also wrote to the FCC outlining the need for greater enforcement of the act if new entrants are to be successful in trying to enter the local market.

Three of the FCC's major rulemakings are now tied up in the courts. The interconnection rules have been stayed by the Eighth Circuit Court of Appeals since last fall. The universal service rules and access charge rules also were recently challenged in the courts. The list goes on with a number of other proceedings being tied up in the courts. The most outrageous example thus far is last week's announcement that SBC, the Bell Telephone Co. for the Southwestern United States, is challenging the constitutionality of the statute itself—18 months later!

It is important to note that SBC already has merged with Pacific Bell and almost merged with AT&T. At the same time SBC was trying to merge with AT&T, it was seeking to enter the long distance market to supposedly compete with AT&T. SBC was denied in its initial request to enter the long distance market, so instead of challenging the FCC decision, SBC simply decided to seek continued protection from the courts. The irony, of course, is that for 10 years, the telecommunications industry argued that the courts should not administer communications policy.

With all this litigation going on, it's no wonder the media believes the law was a failure. I think it's time we focused more on why there appears to be more consolidation than competition. Also, I think the Congress needs to be more attentive to whether the administration's nominees support the policies advocated by the administration during consideration of the legislation.

Let there be no doubt that much of the competition provisions were combined with a transition to greater deregulation. In exchange for less regulation, there had to be competition to protect consumers. That is not happening. Competition and deregulation were all we heard on the floor of the Senate, but all we're now seeing is consolidation and deregulation without the competition. It doesn't appear that some in the administration today share the same views about competition as the administration did in 1995 when the law was being debated.

Because the litigation strategy of some incumbents appears to have prevented competitors from entering the various markets, the Antitrust Division at the Department of Justice is now tasked with a far greater role than anyone envisioned. But the nominee before us today has made certain statements and taken certain actions in his acting capacity that concern me greatly. His actions raise further concern with the direction of the administration's policies with respect to its interpretation of the Telecommunications Act of 1996. I believe that these issues need clarification before Mr. Klein's nomination should be brought to a vote in the Senate.

Whether or not robust competition develops in the local telephone service market depends upon the administration's commitment to vigorous enforcement of the act. Unfortunately, while serving as Acting Chief of the Antitrust Division, Mr. Klein has explicitly contradicted specific statutory mandates and conference report directions that the Congress, working with the White House, fought against all odds to have added to the Telecommunications Act of 1996. Several Members have asked Mr. Klein, Attorney General Reno, and the White House about these concerns and have asked them to demonstrate that the Antitrust Division will follow the explicit meaning of the Telecommunications Act. So far, there has not been a satisfactory response to our concerns.

Mr. President, with respect to my colleague in discussing the character of Mr. Klein, there is no question about Mr. Klein being of the highest character and integrity.

But what really occurs, Mr. President, and I have had to respond to a lot of calls from good friends, it was not his character but his ability, even though he is a smart lawyer, to administer the law as written.

There is no question in my mind that, of course, you have those who believe in weak antitrust. We went through that in the Reagan years. I have been the chairman of the State, Justice, Commerce Subcommittee of appropriations for the Antitrust Division, and during those particular years the Reagan administration cared less whether we had antitrust. To the credit of the distinguished wife of our distinguished Senator from New Mexico, Anne Bingaman, came in there and we really beefed up the department, and we even brought to task none other than Bill Gates of the computer world. So when you can do that you know you have a good antitrust head in power.

When I saw this particular gentleman take over it gave me misgivings. Right to the point, as the newspaper said, from the very beginning when I put my hold on this particular nomination, I said I would be glad to discuss it that afternoon, I was not going to politic it around, I have other work to do. But as a matter of conscience, I thought I ought to bring these things to the attention of my colleagues.

There is no better place to look at the nominee than this particular New York Times editorial entitled ''A Weak Antitrust Nominee.'' I ask unanimous consent to have this printed in the RECORD.

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

[From the New York Times, July 11, 1997]

A WEAK ANTITRUST NOMINEE

The next head of the Justice Department's antitrust division will have a lot to say about whether the 1996 Telecommunications Act breaks the monopoly chokehold that Bell companies exert over local phone customers. He will rule on mergers among telecommunications companies and advise the Federal Communications Commission on applications by Bell companies to enter long-distance markets. Thus it is disheartening and disqualifying that President Clinton's nominee, Joel Klein, is scheduled to come up for confirmation today in the Senate with a record that suggests he might knuckle under to the powerful Bell companies and the politicians who do their bidding.

Senators Bob Kerrey, Ernest Hollings and Byron Dorgan have threatened to block the vote today and put off until next week a final determination of Mr. Klein's fate. But the Administration would do its own telecommunications policy a favor by withdrawing the nomination and finding a stronger, more aggressive successor.

Mr. Klein, who has been serving as the Government's acting Assistant Attorney General for Antitrust, demonstrated his inclinations when he overrode objections of some of his staff and approved unconditionally the merger of Bell Atlantic and Nynex. That merger will remove Bell Atlantic as a potential competitor for Nynex's many dissatisfied customers. Mr. Klein refused even to impose conditions that would have made it easier for state and Federal regulators to pry open Nynex's markets to rivals such as AT&T.

Worse, Mr. Klein sent a letter to Chairman Conrad Burns of the Senate communications subcommittee, who runs political interference for the Bell companies, that committed the antitrust division to pro-Bell positions in defiance of the 1996 act.

That act invites the Bell companies to provide long-distance service, but only if the Bells first open their systems to rivals that want to compete for local customers. Yet in the letter to Mr. Burns, Mr. Klein explicitly rejected Congress's interpretation of requirements to be imposed on the Bells in favor of his own, weaker standard.

In a subsequent submission to the Federal Communications Commission, Mr. Klein further weakened a requirement that before the Bells enter long-distance service they face a competitor that is serious enough to build its own switches and wires. Mr. Klein has also upset some senators by seeming to minimize the importance, provided in the 1996 Telecommunications Act, of Justice's advice to the F.C.C. on applications by Bell companies to enter long distance.

True, Mr. Klein has blocked applications by two Bell companies, SBC and Ameritech, to offer long-distance service before they had opened their local markets to competition. But by pandering to Mr. Burns, he has created strong doubts that he can provide aggressive antitrust leadership.

Mr. HOLLINGS. And there is no better way to bring this right to the focus of concern.

Let me refer, without having to put the entire article of the Wall Street Journal from this morning into the RECORD, a headline, Mr. President, that ''MCI Widens Local Market Loss Estimate.'' The very first sentence,

MCI communications corporation is calling for tougher regulatory action to break the competitive advantages enjoyed by the regional Bell telephone companies and the local phone markets,

and they said its losses from entering that business could total $800 million this year, more than double its original estimate. And then the article continues.

The point is, it is very difficult to break into a monopoly and it is very difficult to get a monopoly to give up marketshare. That has been quite obvious, working in telecommunications since I have been here, 30 years, that this is the keenest, most competitive, most take-advantage crowd you have ever seen. We are bogged down right now into the courts. All the promises about going into each other's businesses to compete have been forestalled, and mergers on course and everything else of that kind, so in writing this legislation we had a back and forth with the best of Washington lawyers on all sides, on every word, coaching us, more or less, for the last 4 years, until February of this last year, when we passed the bill.

For that 4-year period, we got into the requirements—we call it a checklist—that the regional Bell operating companies had to comply with to open up their markets before they could get into long distance, ipso facto, allow them into long distance, with the monopoly control of whoever is going to receive the call locally, and you have a monopolistic situation and they will run a touchdown and the long distance companies and all competition will be extinguished. So we had a debate over every particular facet.

One particular requirement is labeled here in section 271 of the particular act and it is referred to in the actual conference report on page 33 in the report language, section 271. Let me read it so it is intelligently understood here:

. . . the Bell operating company is providing access and interconnection to its network facilities for the network facilities of one or more unaffiliated competing providers of telephone exchange services . . . [as defined in section 347(A)] to residential and business subscribers.

For the unattuned, the emphasis should be to ''residential and business subscribers.''

We wanted to have a facilities-based competitor operating there before that particular Bell company could take off into the long distance competition. There is no question in my mind that the distinguished gentleman under consideration, Mr. Joel Klein, understood this.

He made a talk on March 11 at the Willard Inter-Continental Hotel here in Washington to the Glasser Legalworks Seminar, and the seminar was entitled ''Competitive Policy In Communications Industries: New Antitrust Approaches.''

On page 9 of that particular talk, I quote Mr. Klein himself.

Now, let me add a few words about how we will apply this standard to RBOC applications under Section 271 of the Act. Our preference, though we recognize that it may not always occur, is to see actual, broad-based—i.e., business and residential—entry into a local market.

And it goes on and on explaining.

When my friend from Montana, the chairman of the Subcommittee on Communications on the Committee of Commerce here in the U.S. Senate, Senator CONRAD BURNS saw that, he wrote a letter to Mr. Klein. I am sorry I do not have my hand immediately on that letter itself, but he listed a series of questions in his letter to the Acting Assistant Attorney General, and the Acting Assistant Attorney General, Joel Klein on May 20, answered the letter.

I ask unanimous consent, so it will be understood, in fairness to everybody, the entire letter and the enclosure be printed in the RECORD at this point.

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

DEPARTMENT OF JUSTICE,
ANTITRUST DIVISION,
Washington, DC, May 20, 1997.

Hon. CONRAD BURNS,
U.S. Senate, Washington, DC.

DEAR SENATOR BURNS: Thank you for your letter of May 15, 1997. I welcome the opportunity to respond to your questions and look forward to working with you and the Subcommittee on Communications in implementing the Telecommunications Act of 1996.

Before responding to each of your specific questions. I thought it might be helpful if I made a few general observations. To begin with, I wholeheartedly agree with your statement that ''the basic point of the Telecommunications Act is that regulators should stand aside and let market forces work once fair competition is possible.'' I want to assure you that the Department of Justice shares that view. The sooner market forces can fully displace regulatory efforts, the better the Nation's consumers will be.

Second, we welcome the prospect of letting the Bell Operating Companies (BOCs) into long distance service. Additional entry into that business, under appropriate circumstances, will enhance competition and will thereby further longstanding goals of the Department of Justice.

Third, the standard that we are applying under the Act is, I believe, a competition standard, designed to ensure that the local market is open to competitive entry; it is not a metric test, and it does not require that a BOC lose any particular portion of market share before the Justice Department will support its entry into in-region long-distance. On the contrary, I agree with your point that ''local telephone competition may be slow in coming to rural states for reasons having nothing to do with BOCs' steps to satisfy the checklist.'' If competition is slow in coming to a rural state because of the independent business decisions by potential competitors, and not because of any BOC actions or non-actions that unreasonably impair competition, the Department would support in-region long-distance entry. If my speech conveyed any other impression—i.e., that we were seeking to use the metric or market-share test that Congress rejected during the legislative process culminating in the 1996 Act—I regret the confusion.

Let me amplify this point by setting forth my understanding of the statutory requirements under section 271. The three basic requirements are that a petitioning BOC must: (1) satisfy either Track A or Track B's entry requirements; (2) satisfy the 14-point checklist; and (3) satisfy the ''separate subsidiary'' requirements of section 272. Beyond that, and in addition to these requirements, the FCC must find that ''the requested authorization is consistent with the public interest, convenience, and necessity.'' 47 U.S.C. §271(d)(3)(C). In making its decision, the FCC must give ''substantial weight to the Attorney General's evaluation.'' §271(d)(2)(A). The Attorney General, in turn, is required to evaluate the application ''using any standard the Attorney General considers appropriate.'' §271(d)(2)(A) (emphasis supplied). It was in the context of this specific statutory language—i.e., ''any standard''—that I said in my speech that Congress had given the Department a ''broad swath'' in terms of its ability to evaluate section 271 applications. At the same time, I clearly share your view that any standard we use should be a competition standard. I have also made clear my view that we should explain our standard before any BOC filed a 271 application so that we would not be seen as playing a game of ''gotcha,'' whereby we would ''change the rules of the game'' after an applicant had filed with the FCC.

In order to accomplish these goals, almost immediately after I became Acting Assistant Attorney General last October, I asked all BOCs as well as any other interested party, to give me their views of an appropriate competition standard under Section 271 and to answer several questions that would help the Department to formulate its position in that regard. Based on the comments the Department received, we developed the standard that I announced in my March 11 speech.

In formulating this standard, I specifically rejected using the suggestion in the Conference Report that the Department analyze BOC applications employing the standard used in the AT&T consent decree—objecting to BOC in-region long-distance entry unless ''there is no substantial possibility that the BOC or its affiliates could use its monopoly power to impede competition in the market such company seeks to enter.'' H.R. Conf. Rep. 104–458, at 148 (1996). That standard, which had barred BOC entry into long distance since their divestiture from AT&T, struck me as insufficiently sensitive to the market conditions, and I was concerned that it would bar BOC entry even where it would be competitively warranted.

On the other hand, the Department's standard examines whether a BOC's systems are sufficiently developed so that a new entrant into its market can have confidence that, when it signs up a new customer, that customer will be switched effectively and will get service from the new carrier. Our general preference is to see these systems operate in practice. Once we are confident that this transitioning will work effectively, we will be able to conclude that the local market is open to competition. By the same token, we also realize, as I indicated earlier, that in some areas—particularly rural States—it is certainly possible that due to the business decisions of particular companies, there may be no new entrants for local service, A BOC should not be excluded from in-region long-distance entry in such cases.

I believe that the standard we adopted is fair, balanced, and reasonable. Most important, I believe it is consistent with Congress's intent in the 1996 Act and that, if it is implemented fairly, it will maximize the benefits to the American public across the board—in local markets, long-distance markets, and with respect to one-stop shopping. As you so well put it in your letter, ''once fair competition is possible''—and that's what our standard is designed to test—then ''regulators should stand aside and let market forces work.'' That is a pro-market, antitrust view, and I can assure you that the Division will work to implement it.

I have responded to your specific questions in the Attachment to this letter. I look forward to talking with you regarding these and other telecommunications issues.

Sincerely,

JOEL I. KLEIN,
Acting Assistant Attorney General.

Enclosure.

QUESTIONS AND ANSWERS

1. In your speech you used the following terms—''real'' and ''broad-based competition,'' ''actual, broad-based entry,'' ''true broad-based entry,'' ''tangible entry,'' ''large-scale entry,'' and entry on a ''large-scale basis.'' What do those terms mean to the Department?

By referring to ''real,'' ''actual, broad-based'' entry and similar terms, I intended to express the Department of Justice's general preference (though not mandatory requirement) to see actual entry by competing carriers that are selling both business and residential telephone service on more than a non-trivial basis (though not in any specific numbers). Such entry provides both (1) meaningful evidence that the Bell Operating Company (BOC) has taken the necessary steps to open its local market and (2) an opportunity to measure the performance of the BOC in making available the statutorily required services and facilities. The Department, however, does not view such entry as a necessary precondition to BOC long distance entry. Rather, we intend to look for such entry where we would expect it to occur and, if it is not occurring, to investigate why that is the case. Thus, in my March 11 speech to which you refer, I stated that ''[o]ur preference, though we recognize that it may not always occur, is to see actual, broad-based i.e., business and residential—entry into a local market.''

2. How many residential customers have to be served by a competitor to meet the Department's entry test?

The Department's approach to whether the FCC should grant a particular application by a BOC to enter into in-region long-distance service does not turn on any numerical threshold for the amount of residential customers that must be served by a competitor before a BOCC meets the threshold for entry into in-region long-distance service. If a significant number (though not necessarily a large percentage) of residential customers are being served in a particular state, it is likely that the BOC has taken appropriate steps to open that state to local competition. At the same time, it is not necessarily the case that, if no residential customers are being served by a competitor of the BOC, the BOC has not taken the appropriate steps to open up a state to local competition. As the Department stated in its FCC filing in the SBC Oklahoma matter, ''if the absence or limited nature of local entry appears to result from potential competitors' choices not to enter—either for strategic reasons relating to the Section 271 process, or simply because of decisions to invest elsewhere that do not arise from the BOC's compliance failures or barriers to entry in the state—this should not defeat long distance entry by a BOC which has done its part to open the market.''

3. How many business customers have to be served by a competitor to meet the Department's entry test?

The Department's approach to whether the FCC should grant a particular application by a BOC to enter into in-region long-distance service does not turn on any numerical threshold for the amount of business customers that must be served by a competitor for a BOC to receive a recommendation from the Department in favor of its entry into in-region long-distance service. If a significant number (though not necessarily a large percentage) of business customers are being served in a particular state, it is likely that the BOC has taken appropriate steps to open that state to local competition. At the same time, it is not necessarily the case that, if no business customers are being served by a competitor of the BOC, the BOC has not taken the appropriate steps to open up a state to local competition. As the Department stated in its FCC filing in the SBC Oklahoma matter, ''if the absence or limited nature of local entry appears to result from potential competitors' choices not to enter—either for strategic reasons relating to the Section 271 process, or simply because of decisions to invest elsewhere that do not arise from the BOC's compliance failures or barriers to entry in the state—this should not defeat long distance entry by a BOC which has done its part to open the market.''

4. Does there have to be more than one competitor in the local exchange market to meet the Department's entry test?

No. Although it is likely that there will be more than one competitor in many local exchange markets, in certain (most likely rural) markets, it is possible that such entry will not be forthcoming in the foreseeable future. If, in such circumstances, the absence of entry does not reflect a BOC's failure to help open the market to competition, the Department would support long distance entry by the BOC.

5. Does a BOC have to face competition from AT&T, MCI or Sprint to meet the department's entry test?

No. There is no single competitor, or combination of competitors, that is required to compete with any particular BOC in order for the Department to support its entry into in-region long-distance. For example, our analysis of SBC's application in Oklahoma focused on the efforts of Brooks Fiber to enter the local market in Oklahoma. At no point did we suggest that the application was deficient because none of the three major interexchange carriers had entered Oklahoma.

6. How do you reconcile Congress' rejection of a metric test for BOC entry into the long distance market with your statement that ''successful full-scale entry'' is necessary in order for the Department to ''believe the local market is open to competition?''

In my judgment, the Department's entry standard is consistent with Congress's decision to reject a metric test. We do not require any shift in the level of market share as a condition of entry. Rather, we think that the openness of a local market can be best assessed by the discretionary judgment of the FCC, relying in part on the Department of Justice's competitive assessment, and based on the evaluation of the particular circumstances in an individual state. While this inquiry may involve an assessment of actual competition, it does not focus on any metric or market share.

7. You have used the metaphor that the Department ''want(s) to make sure that gas actually can flow through the pipeline'' before allowing interLATA entry. How many orders for resold services must be processed by a BOC in order to satisfy this standard?

The Department does not require any particular number of orders to be processed as a precondition to receiving our support for a Section 271 application. Our inquiry seeks to determine, whether the systems offered by the BOC to its competitors will hold up, as a practical matter. This is very important to new entrants trying to compete for customers, but it is also not always easy to effectuate because of real-world technical impediments which, in our experience, have cropped up often. For example, in California, the orders for resold services by competitors, when placed on a non-trivial scale, led to a serious backlog in PacBell's wholesale operations. This problem, in turn, created a real impediment to entry by new competitors, whose customers and potential customers became very concerned.

8. How many orders for unbundled network elements must be processed by a BOC to satisfy this standard?

The Department does not require any particular use of unbundled loops as a precondition to receiving our support for a Section 271 application. Unbundled loops should be available, as both a practical and legal matter, for use by competitors without running into problems that will retard competitive entry.

9. How much market share must a BOC lose to its competitors to demonstrate that ''gas can flow through the pipeline?''

The ''gas in the pipeline'' metaphor does not reflect any intention to measure the market share of competitors or any shift in share to entrants, or to require any minimum shift in share. In fact, our SBC evaluation notes that we are willing to use alternate measures other than actual commercial usage as proof that the ''pipeline can carry gas.'' For example, if the same systems are in place in different states, the use of those systems in other states can be a useful indicator of whether or not competitors will be able to receive what they need from the BOC. Similarly, in some cases, we expect that comprehensive testing—carrier to carrier, internal and/or independent auditing—may be able to demonstrate that a BOC's support systems will enable entrants to compete effectively.

10. FCC Chairman Reed Hundt testified on March 12, 1997, before the Senate Commerce Committee that a BOC that satisfied the checklist but did not have an actual competitor in its market would meet the entry standard. Do you agree with Chairman Hundt?

My answer would depend on the specific circumstances presented by a given application. Under the Department's approach, it is possible that a BOC satisfying the checklist, but not facing an actual competitor, could merit entry into in-region long-distance service under Section 271. The most critical factor, as I have indicated, is whether the BOC has taken the necessary steps to allow

competition in its market. If there are no competitors in a particular state because of market conditions—rather than because of artificial impediments to entry—we would support BOC entry into long distance in that state.

11. If the Department opposes a BOC interLATA application, do you believe the FCC should reject the application? If so, wouldn't that give the Department's recommendation ''preclusive effect'', something that the Act specifically prohibited?

We believe the FCC should give our analysis substantial weight, which is the specific statutory requirement adopted by Congress in the Telecommunications Act of 1996. The FCC, however, is not required to follow our recommendation blindly or reflexively and should certainly consider the statutory framework and the comments of others in making its ultimate decision.

12. You have also stated that the checklist, the facilities-based requirement, the separate subsidiary requirement and the option of ''Track B'' (the statement of terms and conditions) are all ''necessary, through not sufficient, to support entry''. What more must a BOC demonstrate to obtain the Department's support?

The Department views the FCC's public interest determination, which is expressly included in Section 271(d)(3)(C), as a fourth requirement. We view this determination as reflecting Congress' decision to condition BOC entry into long distance on a discretionary judgment by the FCC, based in part on the Department of Justice's competitive assessment, that a particular applicant will best serve the interests of affected consumers in maximizing telecommunication competition in all markets.

13. Do you believe that Track B can be used only if no one has requested interconnection under Track A?

No. For Track A to apply, a potential facilities-based carrier (be it predmoninantly or exclusively facilities based) must request access to a checklist item. If no such carrier requests such access, the BOC is free to proceed to apply for long distance entry under Track B. Moreover, even if a potential facilities-based carrier does request access to a checklist item, the BOC still may utilize Track B if ''the only provider or providers making such a request have (i) failed to negotiate in good faith as required by Section 252, or (ii) violated the terms of an agreement approved under Section 252 by a provider's failure to comply, within a reasonable period of time, with the implementation schedule contained in an agreement.'' 47 U.S.C. §271(c)(1)(B).

14. Can a BOC rely on Track B if it has received interconnection requests from potential competitors, but faces no ''competing provider'' which is actually providing telephone exchange service to residential and business customers predominantly over its own facilities?

As our evaluation of SBC's Section 271 application explains in greater detail, a ''competing provider'' need not be operational as of the date of its request to initially qualify as a ''competing provider'' for purposes of determining the application of Track A. See SBC Evaluation at 13–17. We believe this view comports with the language and purpose of the statute and is expressly supported by the Conference Report, which states that Track B serves only to ensure that a BOC is not ''effectively prevented from seeking entry into the interLATA services market simply because no facilities-based competitor that meets the criteria set out in [Track A] has sought to enter the market.'' H.R. Conf. Rep. 104–458, at 148 (1996) (emphasis supplied). Even so, a BOC's application may still be considered under Track B if ''the only provider or providers making an interconnection request have (i) failed to negotiate in good faith as required by Section 252, or (ii) violated the terms of an agreement approved under Section 252 by a provider's failure to comply, within a reasonable period of time, with the implementation schedule contained in an agreement.'' 47 U.S.C. §271(c)(1)(B).

15. What if the requesting interconnectors under Track A do not ask for, or wish to pay for, all of the items in the checklist? Can the BOC satisfy the entry test by supplementing their interconnection agreements with a filing under Track B to cover at least all remaining items in the checklist?

As explained in greater detail in our SBC filing, the basic view of the Department is that ''[a] BOC is providing an item, for purposes of checklist compliance, if the item is available both as a legal and practical matter, whether or not competitors have chosen to use it.'' SBC Evaluation at 23 (emphasis supplied). Accordingly, under certain circumstances—i.e., where there are checklist items that have not been requested by any Track A qualifying provider—a firm offer to provide an item through a sufficiently clear provision in a statement of generally available terms, coupled with the requisite showing of practical availability, would suffice to constitute ''providing'' that item for purposes of checklist compliance.

Mr. HOLLINGS. I refer by emphasis that he says on question one: ''In your speech''—Senator BURNS is referring to the speech made by Mr. Klein—''In your speech you used the following terms—'real' and 'broad-based competition', 'actual, broad-based entry', 'true broad-based entry', 'tangible entry', 'large-scale entry', and entry on a 'large-scale basis'. What do those terms mean to the Department?''

The rest is right there, but by way of emphasis, let me quote Mr. Klein in response: ''Thus, in my March 11 speech to which you refer, I stated that '[o]ur preference, though we recognize it may not always occur, is to see actual, broad-based * * * business and residential—entry into a local market.'''

Now, Mr. President, it is very interesting because these communications lawyers, and I ought to know, because if you work with them over the years you begin to learn. What should interest anybody looking at qualifications of this particular nominee, he puts in italics ''[o]ur preference, though we recognize it may not always occur''—and thereupon, you could not believe it, Mr. President, you could not believe it, our Mr. Klein had the unmitigated gall, in response to his italic to file an opinion here, an addendum to the evaluation of the Department, the U.S. Department of Justice in the matter of the application of SBC Communications, Inc., docket 97–121. When? The day after that letter was sent, and here is what he says—because you get the hint in the letter but you get the fact in this addendum.

Let me quote:

The statute requires that both business and residential subscribers be served by a competing provider, and that such provider must be exclusively or predominantly facilities-based. It does not, however, require that each class of customers (i.e., business and residential) must be served over a facilities-based competitor's own facilities. To the contrary, Congress expressly provided that the competitor may be providing services ''predominantly'' over its own facilities ''in combination with the resale of'' BOC services. . . . Thus, it does not matter whether the competitor reaches one class of customers—e.g., residential—only through resale, provided that the competitor's local exchange services as a whole are provided ''predominantly'' over its own facilities.

Now, Mr. President, you have section 271, that particular provision turned right on its head. I have no better authority, Mr. President, not if this particular Senator's opinion is of any value, and I might say that no one Senator wrote the Telecommunication Act of 1996, but immodestly, if there is one that had more involvement than anybody else, it was me. I had put out a bill S. 1822; Senator Pressler put out his bill, S. 652. We changed it around back to S. 1822. Everyone knows that. Look at the finished documents. I worked around the clock, and I worked with Chairman BLILEY, the Republican chairman on the House side. Here in a letter of June 20, 1997, to the Honorable Reed Hundt by Chairman BLILEY, Chairman of the FCC.

Mr. President, I ask unanimous consent that that letter be printed in the RECORD.

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

U.S. HOUSE OF REPRESENTATIVES,
COMMITTEE ON COMMERCE,
Washington, DC, June 20, 1997.

Hon. REED HUNDT,
Chairman, Federal Communications Commission, Washington, DC.

DEAR CHAIRMAN HUNDT: I recently read with interest and dismay the Department of Justice's additional comments regarding SBC Communications Inc.'s (SBC's) application to provide in-region, interLATA services in the State of Oklahoma. The Department therein clarified its views on section 271(c)(1)(A) of the Communications Act, as amended. As the primary author of this provision, I feel compelled to inform you that the Department misread the statute's plain language. As you rule on SBC's application and future BOC applications, you should not overlook the clear meaning of section 271 or its legislative history.

The Department argued that a BOC should be allowed to enter the in-region, interLATA market under ''Track A'' (i.e., section 271(c)(1)(A)) if a competing service provider offers facilities-based services to business customers and resale services to residential customers, so long as the combined provision of both services is predominantly over the competing service provider's facilities. In other words, the Department wrongly takes the view that section 271(c)(1)(A) is satisfied if a competitor is serving either residential or business customers over its own facilities.

Section 271(c)(1)(A), however, clearly requires a different interpretation. To quote the statute, a competing service provider must offer telephone exchange service to ''residential and business subscribers . . . either exclusively over their own telephone exchange service facilities or predominantly over their own telephone exchange service facilities.'' Track A is thus satisfied if—and only if—a BOC faces facilities-based competition in both residential and business markets. Neither the statute nor its legislative history permits any other interpretation; I know this because I drafted both texts.

In the end, the Department's recent misinterpretation of section 271 reinforces a point I frequently made during Congressional debate over the Telecommunications Act of 1996: the Department of Justice does not have the expertise to make important telecommunications policy decisions. The FCC, by contrast, does have the necessary expertise, which explains why Congress gave you and your colleagues—and no one else—the ultimate authority to make important decisions, such as the decision to interpret section 271. I remind you that the Department's role in this matter is a consultative one, and should be treated as such.

Let me conclude by noting that, while this letter focuses exclusively on Department's interpretation of section 271(c)(1)(A), it should not be construed to mean that the balance of the Department's comments were either consistent or inconsistent with Congressional intent.

Sincerely,

TOM BLILEY,
Chairman.

(Mr. HUTCHINSON assumed the chair.)

Mr. HOLLINGS. Mr. President, I see another Senator wishing to talk. But, Mr. President, there it is. Here we have a Deputy Attorney General nominee that is not going to carry out President Clinton's policy, nor the language of the statute.

I ask unanimous consent to have printed in the RECORD a letter from President Clinton to me on October 26, 1995.

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

THE WHITE HOUSE,
Washington, DC, October 26, 1995.

Hon. ERNEST F. HOLLINGS,
Ranking Member, Committee on Commerce, Science, and Transportation, U.S. Senate, Washington, DC.

DEAR FRITZ: I enjoyed our telephone conversation today regarding the upcoming conference on the telecommunications reform bill and would like to follow-up on your request regarding the specific issues of concern to me in the proposed legislation.

As I said in our discussion, I am committed to promoting competition in every aspect of the telecommunications and information industries. I believe that the legislation should protect and promote diversity of ownership and opinions in the mass media, should protect consumers from unjustified rate increases for cable and telephone services, and, in particular, should include a test specifically designed to ensure that the Bell companies entering into long distance markets will not impede competition.

Earlier this year, my Administration provided comments on S. 652 and H.R. 1555 as passed. I remain concerned that neither bill provides a meaningful role for the Department of Justice in safeguarding competition before local telephone companies enter new markets. I continue to be concerned that the bills allow too much concentration within the mass media and in individual markets, which could reduce the diversity of news and information available to the public. I also believe that the provisions allowing mergers of cable and telephone companies are overly broad. In addition, I oppose deregulating cable programming services and equipment rates before cable operators face real competition. I remain committed, as well, to the other concerns contained in those earlier statements on the two bills.

I applaud the Senate and the House for including provisions requiring all new televisions to contain technology that will allow parents to block out programs with violent or objectionable content. I strongly support retention in the final bill of the Snowe-Rockefeller provision that will ensure that schools, libraries and hospitals have access to advanced telecommunications services.

I look forward to working with you and your colleagues during the conference to produce legislation that effectively addresses these concerns.

Sincerely,

BILL CLINTON.

Mr. HOLLINGS. He writes:

Dear Fritz: I enjoyed our telephone conversation today regarding the upcoming conference on the telecommunications reform bill and would like to follow up on your request regarding the specific issues of concern to me as proposed legislation.

I am reading just part of it now.

As I said in our discussion, I am committed to promoting competition in every aspect of the telecommunications and information industries. I believe that the legislation should protect and promote diversity of ownership and opinions in the mass media, should protect consumers from unjustified rate increases for cable and telephone services, and in particular, should include a test specifically designed to ensure that the Bell companies entering into long distance markets will not impede competition.

Now, Mr. President, that is why we wrote 271 the way we wrote it. That is why we wrote it that way. There isn't any question, as the chairman has said, this is bipartisan. This isn't because some Senator is enraged or upset or something else like that. I have been here long enough to get enraged or upset. I have seen a lot of good ones go through and several bad ones.

I thought having participated on the ground and worked for 4 years in getting this formative act that was voted on by 95 U.S. Senators—they voted on this particular language when it passed this particular body. They understand not only that this isn't just a singular mistake, we have the proposition of the gentleman, Mr. Klein, also coming forward and disregarding entirely, gratuitously, and summarily throwing out the VIII(c) test, which I will have time to refer to on here later on.

My point here is that we really worked hard to get participation. There were those who didn't want the antitrust provision. They wanted one-stop shopping at the Federal Communications Commission. We worked hard to make sure that this was done right. We realized many times that they don't have antitrust lawyers like Reed Hundt, who is now the Chairman and understands the law, and you necessarily don't have antitrust lawyers coming in as members and commissioners at the Federal Communications Commission. So to give emphasis to opening up the market for free and open competition, we put in the antitrust provisions in there for its opinion to be provided to the Federal Communications Commission. We worked hard to provide it. We worked diligently on the VIII(c) test, which was Judge Greene's test for over 12 years now in the breakup of AT&T, and every one of the Bell Operating Companies attested to that particular language. And here comes the particular nominee casting aside, in a gratuitous fashion, that requirement, on the one hand, and changing over the statute just on a letter from a Senator, on the other hand.

When you have that kind of weak nominee, you have thwarted the intent of the Congress and the President of the United States and the Telecommunications Act of 1996.

I yield the floor.

Mr. DEWINE addressed the Chair.

The PRESIDING OFFICER (Mr. ROBERTS). The Senator from Ohio is recognized.

Mr. DEWINE. Mr. President, as the chairman of the Antitrust, Business Rights and Competition Subcommittee of the Senate Judiciary Committee, I rise today to urge my colleagues to support the nomination of Joel Klein as Assistant Attorney General for the Antitrust Division.

Mr. President, the head of the Antitrust Division, obviously, plays a critical role in assuring that our antitrust laws are enforced wisely and vigorously. The importance of that role really cannot be overstated. Strong enforcement of antitrust laws is necessary to foster and to protect competition. As we all know, competition is good business, it gives businesses increased incentives to innovate, either by creating new products and services, finding ways to improve existing products, or by lowering costs. That type of innovation is good for both business and for consumers.

Maintaining the competitive foundation of the American economy has always been a difficult task. And as our economy grows and changes, it's only getting more difficult. We often discuss globalization of the economy as allowing more and more American companies the opportunity to compete in the international marketplace and, because of that, they have flourished in this international environment. In order to build on this success, it is essential that we apply the antitrust laws in order to protect our companies from unfair, anticompetitive actions on the part of foreign businesses and foreign governments.

In my view, Mr. President, Joel Klein is qualified to lead our efforts toward that stronger, more efficient antitrust enforcement. Mr. Klein is a superbly qualified attorney, with a great deal of substantive knowledge regarding both the jurisprudence and the enforcement of the antitrust laws. He has shown his abilities over the last few months in his capacity as the Acting Assistant Attorney General. He has shown this by leading the Antitrust Division through a series of very complex, difficult analyses, particularly in the area of telecommunications.

As we all know, telecommunications issues have become very important and, many times, quite controversial. Now, some have expressed concerns regarding Mr. Klein's interpretation of

section 271 of the Telecommunications Act in a way that some believe will make it too easy for the Regional Bell Operating Companies, or the RBOC's, to enter the long distance market. However, Mr. President, in both instances where the Antitrust Division has been called upon to evaluate an RBOC application to enter the long distance market, the Antitrust Division has recommended against the RBOC. In other words, Mr. President, some people believe that Mr. Klein has been too hard on The RBOC's. The ironic thing about this debate is that when you really analyze it, you will see that Mr. Klein has received criticism from both sides of these issues.

Now, Mr. President, these decisions involve complex factual, complex legal, and complex economic analyses. Yes, each decision has angered some of the parties involved, but I believe Mr. Klein has done his job in a responsible and principled way. I may not agree with every decision made by the Antitrust Division, but what is important, I believe, is whether or not the nominee has interpreted the law responsibly and fairly. Interpreting a complex matter, such as the Telecommunications Act, is certainly not easy. I expect Mr. Klein's decisions will not please everyone. They certainly will not please everyone, given that it seems everyone has their own interpretation of this law. In fact, I think he should be praised for his willingness to take on these important and controversial issues. Rather than skirt controversy, Mr. Klein has done his job as best he can. I believe it is time that the U.S. Senate does its job. I believe that we need to discuss Mr. Klein's qualifications and the merits of this particular matter, and then I believe we need to vote on this confirmation.

Mr. President, we cannot continue to move forward in this area of antitrust enforcement without the sort of calm, principled leadership that Joel Klein will provide. America will need an Assistant Attorney General with a strong understanding of antitrust doctrine and the willingness and ability to enforce the laws in an aggressive but evenhanded manner. I believe, Mr. President, that it is vitally important that the competitive foundation of our economy be maintained, and that the antitrust laws must be enforced and must be enforced fairly. Joel Klein, I believe, shares these goals, and I believe that he has proven he has the expertise and the ability to put those goals into practice. I believe, therefore, Mr. President, we should confirm his nomination without further delay.

Mr. President, as we have already heard on this floor, there is going to be a vigorous debate about this nominee. Each Senator has to exercise his or her constitutional obligations. Each one of us has to decide whether we will vote ''yes'' or vote ''no.'' I merely ask, however, that we do vote, that after a good, thorough, and vigorous debate, we bring this matter to a close. Quite frankly, this administration has had some problems, for whatever reason, in filling some of the key positions at Justice. They are slowly beginning to take care of that matter. I believe that in the Senate we have an obligation—now that we have the nomination in front of us—to proceed, and to proceed without unnecessary and undue delay.

Frankly, it is not helpful to have a vacancy in one of the key positions. Mr. Klein has, for some months, been the acting head of the Antitrust Division. I believe that he has carried out his duties well, as I have already said, in that particular job. But it is not helpful and it is not good for this nomination to continue to be pending, and it is not good for him to continue to be in the position of the acting head of the Antitrust Division.

So, as we have this debate—and it will be a good debate; I am sure it will go on for some time—I merely urge my colleagues to bring this matter at some point to a vote in the near future so that we can move on with the business of antitrust in this country.

I thank the Chair.

I yield the floor.

Mr. DORGAN addressed the Chair.

The PRESIDING OFFICER. The Senator from North Dakota is recognized.

Mr. DORGAN. Mr. President, no one in this country at any time should ever have a problem sleeping as long as there is an opportunity to talk about antitrust issues. It is for many some of the most boring, lifeless set of issues available to discuss anywhere in public politics. Antitrust enforcement—what on Earth is it?

When I came to Washington, DC, I threatened to put the picture of the 1,000 lawyers who are hired in our Government for antitrust enforcement purposes on the cartons of milk in grocery stores because I felt that these 1,000 lawyers hired by our Government for antitrust enforcement had surely vanished. I knew that we were paying 1,000 of them. But it was clear to me there was no antitrust enforcement, so they must have vanished.

So it is a decade and half later and we are now talking about antitrust issues again. And the discussion today is with confirming a nomination to head the Antitrust Division at the Department of Justice.

This is, while boring for many people, an important question because we have what is called a free market system in our country. A free market system only works to the extent that you have referees who are willing to intervene in circumstances where people try to rig the market and where there is not open competition and where there is monopoly pricing in circumstances where the market is not free. In many cases, that is the same as stealing.

You go back to the beginning of the century and you will find examples in a range of industries—petroleum, natural gas, a whole range of industries, railroads—in which there were monopolies and trusts. They were stealing from the American public. We put in place a number of things to deal with that.

One, we prosecuted some people and threw some people in jail.

Second, we put in place certain legislation which said that if the free market is going to be free, then let's make sure there are some referees to keep it free. That is the whole issue of antitrust enforcement.

Today the issue is, shall a Mr. Joel Klein from the Justice Department, who is now acting in this role as Assistant Attorney General for Antitrust Enforcement, be confirmed by the Senate? President Clinton sent his name down here and asked for confirmation. And I am standing here to say that Mr. Klein, by all accounts, has a distinguished career.

I met with Mr. Klein yesterday. He is a very likable fellow who has much to commend him. But I believe it is not the time to proceed to this nomination because a number of very important questions remain unanswered. The Senator from South Carolina mentioned some of them.

We had an enormous fight on the floor of the Senate about the Telecommunications Act. For the first time in 60 years, we reformed the telecommunications laws in this country. One of the fights we had on that legislation was about what the role of the Justice Department with respect to whether or not there is competition with local phone service providers so that the Bell system can be freed then to go to compete against long distance companies. When is there effective competition locally that would free the Bells to compete in the long distance system? We said let's have an important role for the Justice Department in that area. We specifically talked about the test for that role, what is called the 8(c) test.

Now we have a person who is down at the Justice Department and writes a letter to a colleague of ours when questioned about all of these issues, and he says, ''Well, I specifically reject the so-called 8(c) test,'' in terms of how the Justice Department will evaluate the kinds of activities that are involved in whether or sufficient competitive market place conditions exist before a Bell company can enter the long distance market.

There are a range of issues that we want to have answered. I have written to the President and Senator KERREY has written to the Attorney General. We have received no responses at this point. We would like responses to a series of questions about positions taken by this nominee.

I am not standing here suggesting that Mr. Klein is unworthy. I am saying at this point that the questions, which are very serious questions, have not yet been answered. We have asked them, but they have not yet been answered.

In light of that, I don't think any name should proceed until we receive answers to very important questions.

The Bell Atlantic-NYNEX merger was approved by Mr. Klein. Why was that approved without conditions? We had some abbreviated discussion of that yesterday. But I think we need more information about that. Why was that not approved with some conditions? We had the opportunity to establish conditions. How does this decision relate to the stated objective that the Department of Justice is really concerned about promoting competition?

I would like more information about the Justice Department's interpretation of facilities-based competition, which is a standard that we discussed at some length in the Telecommunications Act. Why? I would like to ask and like to get some additional answers.

Does the nominee before us specifically reject the so-called 8(c) standard outright when Congress specifically recommended that standard for evaluating the issues of competition? And where does the nominee stand on the issue of media concentration?

It is very hard to see that a telecommunications bill, which by its nature was to promote more competition, is moving in the direction of being successful when we have, instead of more competition, more concentration. We have behemoth organizations marrying up and two becoming one or four becoming two and two becoming one. So, by definition, you have less competition. We have more and more galloping concentration in the telecommunications industry—television, radio, and all the rest of it. And, yet, I would like to know, where does the Justice Department and where does this nominee stand on the issue of concentration?

Is that alarming, or do we have people who want to shake the pom-poms to become cheerleaders for it, as Mr. Baxter did when he was at the Department of Justice? There wasn't any merger that wasn't big enough for him. It didn't matter. The bigger, the better. That is not the role of the Department of Justice and antitrust enforcement, in my judgment.

I am here to say that this is premature. This nomination should not be considered until we have received sufficient answers to some of these questions.

Again, let me reemphasize. I am not standing here today to say that Mr. Klein is not someone without distinguished credentials. I have met him. I kind of like him. But there are a number of questions unresolved, and those questions should be resolved. The Senate should insist that they be resolved before we move this nomination forward.

So I will speak at some length on Monday. The Senator from Nebraska, Senator KERREY, Senator HOLLINGS, and I believe, will also speak and explain the kinds of answers we are awaiting from the administration, from both the President and the Attorney General, before we proceed on this nomination.

We have every right in this nomination process to say that before this nomination proceeds, there are certain questions we think the American people deserve an answer to. I intend to ask them not only today but on Monday, and we hope perhaps before this process is complete, that the Attorney General might respond or the White House might respond to the questions that have been put to them about some of the things that have been written, some of the things that have been spoken and said, and some of the decisions that have been made by the Acting Assistant Attorney General in the Antitrust Division.

Mr. President, I will speak at greater length on this subject on Monday. I yield the floor.

I make a point of order that a quorum is not present.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. KERREY. 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. KERREY. Mr. President, I have come to the floor to talk about the nomination of Joel Klein to be the head of the Antitrust Division of the Department of Justice.

I have had the opportunity on a couple of occasions to meet and to talk with Mr. Klein, and I like him personally and I admire his career and what he has done as an individual.

However, I have serious reservations about his capacity to serve in this position. He has been nominated. I appreciate and respect the President's confidence in him. But it is with deepest sincerity that I say, although I would like to support his nomination for high office and hope that by the time the Senate votes on this nomination I can support him, at this time I believe that his nomination requires much more deliberation. I am especially troubled by many of the administration's telecommunications policies and especially in this case Mr. Klein's interpretation of the 1996 Telecommunications Act.

I have asked Attorney General Reno by letter to clarify the policy Mr. Klein will be required to implement should Mr. Klein be confirmed. In 1995, when this bill was being debated, I led, unfortunately, at times a filibuster in the Chamber when this bill was being discussed because I wanted the Department of Justice to have a role in determining whether or not there was competition before other entities were going to be allowed to expand their services. The Telecommunications Act should work, but it will only work if we have an unrelenting dedication on the part of all Government agencies, the FCC and the Antitrust Division of the Department of Justice, their unrelenting attention and dedication to making certain we have competition.

Mr. President, just recently, I met with Joel Klein. I like him and admire him. It is the second time I have had a chance to visit with him since he was nominated by the President to serve as the Assistant Attorney General for Antitrust. It is with the deepest sincerity, that I say that I would like to support his nomination for this high office. I hope that by the time the Senate votes on this nomination that I can support him.

At this time, however, I believe that this nomination requires considered deliberation. I am deeply troubled by the administration's telecommunications policies and Mr. Klein's interpretation of the Telecommunications Act of 1996. I have asked the Attorney General to clarify the policy Mr. Klein will be required to implement should he be confirmed.

My colleagues know that in 1995, I led a filibuster against the Senate Commerce Committee version of the Telecommunications Act to assure that the American people were fully aware of the monumental decisions being made by the Senate. I believed then, as I do now, that only an unrelenting dedication to competition and universal service by the Congress and the executive branch could make that legislation beneficial to consumers.

For days, with the support of the Clinton administration, my colleagues and I fought to assure that the law would embrace real competition and universal service. If it did not, it would simply be one more piece of legislation for the big, the powerful, and moneyed interests.

On the Senate floor we were successful in making the commitment to vigorously pursue competition central to the decision to end the court supervised Modified Final Judgement [MFJ] which controlled the activities of the seven Baby Bells and AT&T following the breakup of the Bell System.

The bottom line, Mr. President, was that the American people did not ask for the Telecommunications Act. I do not recall one Nebraskan complain to me that telephone service was too expensive or that their service was poor. For most Americans, when asked about their phone service, they might quote Andy Griffth from the old AT&T commercial, and say ''rings true, and not a lick of trouble * * *.''

While there was satisfaction for most residential consumers, there were a host of new technologies and opportunities to bring the benefits of the information revolution to all Americans which the monopoly organization of the telecommunications marketplace was stifling. Every day of the status quo represented a lost opportunity for American homes, schools, and economic development.

There were proposals to invest Government funds in building the utopian information superhighway, there were regulatory initiatives to prod monopolies to invest in the future.

The pathway chosen to bring advanced services, lower prices, and more

choices to consumers was to fundamentally change the economics of telecommunications services from a regulated monopoly to a competitive market. The price for opening all markets to competition, however, was an obligation by all telecommunications carriers to contribute to the support of universal service.

The vision of telecommunications reform was that competition would spur investment, innovation, and choice and universal service support would assure that no American would be left behind.

It was and is a grand vision. One which if properly implemented can energize the economy, enhance productivity, build wealth, enhance freedom, and revolutionize the way Americans work, learn, and relax.

A significant part of the battle on the Telecommunications Act centered on the appropriate role for the Department of Justice in telecommunications policy. The first draft of the Telecommunications Act, written by Senator PRESSLER on behalf of the Republicans on the Senate Commerce Committee had no role for the Department of Justice and did not even explicitly reserve the Department's preexisting antitrust powers.

As passed by the Senate Commerce Committee and the full Senate, the Department's antitrust authority had been preserved and the Department was given an advisory role in the FCC's decision to allow the Regional Bell Operating Companies, RBOCs, to enter the long-distance market within their own regions.

To strengthen the bill Senators DORGAN, LEAHY, THURMOND, and I proposed amendments to strengthen the role of the Department of Justice.

I believed and continue to believe that the Department of Justice using its powers under the antitrust laws and the new law would and should be the bulwark against the abuse of monopoly power. I was confident that the Department of Justice would steadfastly be on the side of the consumer and fight for a vision of telecommunications competition which served the interests of all Americans.

I opposed the Senate passed bill, because it did not have a strong enough role for the Department of Justice.

I voted for the conference agreement in large part, because the role of the Department had been strengthened. Specifically, the bill as enacted, gave the Department's opinion on Bell entry into long distance ''substantial weight,'' and eliminated the ability of the Federal Communications Commission to approve a merger of telephone companies which bypassed antitrust review.

Mr. President, the effort to protect and enhance the role of the Department of Justice was a hard fought fight. President Clinton, even threatened a veto of the bill if it had a weak role for the Department.

Having fought and won the legislative battle, I am particularly concerned about recent comments made by Acting Assistant Attorney General Klein regarding the Department of Justice's role in facilitating competition under the Telecommunications Act of 1996.

In response to questions by the chairman of the Senate Communications Subcommittee, Mr. Klein said that he ''specifically rejected using the suggestion in the Conference Report that the Department analyze Bell Operating Company (BOC) applications employing the standard used in the AT&T consent decree''. This standard, known as the 8(c) test would reject BOC entry into in-region long distance unless ''there is no substantial possibility that the BOC or its affiliates could use its monopoly power to impede competition in the market such company seeks to enter.''

While the Telecommunications Act gave the Attorney General the authority to choose any standard she sees fit to evaluate Bell entry into in-region service, I have asked the Attorney General to clarify the Department's policy on this matter. I am hopeful that a clarification from the Attorney General can put Mr. Klein's comments into a fuller and more appropriate context.

I certainly hope that Mr. Klein's statement does not mean that a Bell Operating Co. should be allowed to enter the in-region long distance market even if there is a ''substantial possibility that the BOC or its affiliates could use monopoly power to impede competition.''

In fairness to Mr. Klein, he put forward an alternate test known as the ''irretrievably open to competition test.'' Unfortunately, it is placed in a context, which at least implies that the 8(c) test is too tough on Bell Operating Companies.

During the consideration of the Telecommunications Act, President Clinton wrote in a letter to Members of Congress that the Telecommunications Act should ''include a test specifically designed to ensure that the Bell companies entering into long distance markets will not impede competition * * *'' I hope that Mr. Klein and the Attorney General can set this record straight as to the administration's policy.

Mr. Klein also wrote to Chairman Burns that ''we think that the openness of a local market can be best assessed by the discretionary authority of the FCC, relying in part on the department of Justice's competitive assessment, and based on the evaluation of the particular circumstances in an individual state.''

Mr. President, I fought hard to include DOJ in the process of determining when Bell Operating Companies enter in region long distance markets because of the legal and economic expertise of the Antitrust Division. It would be tragic if the Department abdicate its role in this area.

The Federal Communications Commission [FCC] is not the only agency equipped to make decisions about the openness of markets. A market cannot be competitive if it is not open. The Department's responsibility under the act and the Nation's antitrust laws is most serious and should be aggressively pursued by the Antitrust Division.

Although the ultimate decision lies with the FCC, the Department must accept its important role as the expert in competition and market power and adopt a meaningful entry standard based on procompetitive principles. I am not yet convinced that the Department has done that.

To me, what is most important is that the Attorney General put forward a test which Mr. Klein will implement which is unrelenting in its commitment to competition.

The Kerrey test of competition would be as simple as do customers have a choice? If the answer is no, you do not have competition.

The ideal open telecommunications market would allow an entrepreneur, new to the market to offer bundled services to the home. To do that there must be full access to the local exchange carrier at fair prices. If it takes a legion of lawyers, lobbyists, and investment bankers to even offer a new service to a customer of a monopolist, you do not have an open market.

On a separate but equally important competition issue, I remain very concerned about recent mergers between large telecommunications providers. The decision by the Department of Justice to approve the Bell Atlantic/NYNEX merger without any conditions is troubling.

Reports of AT&T's efforts to bring two BOC's back into it's fold should give everyone pause. A year ago, such action would have been laughable. I feel strongly that the Bell Atlantic merger approval, personally supervised by Mr. Klein sent exactly the wrong message to the market. I fear that this merger will lead to a new round of large telecommunications mergers which could greatly reduce any chance for the swift adoption of a vibrant, competitive telecommunications market.

Competitive entry could be frozen while real and potential competitors court, woo, and marry each other. As to unions between the progeny of the former Bell System, I believe that it is generally not a good idea for family members to wed!

One thing is certain, Congress did not intend to replace the urge to compete with the urge to merge.

While the FCC and the States struggle with implementation of the new telecommunications law, it is important to remember that a key part of that legislation did not rely on regulation, it relied on the marketplace. The idea was to unleash pent up competitive forces among and between telecommunications companies. Mega mergers between telecommunications

titans quell these market forces for increased investment, lower rates, and improved service.

I can accept an honest disagreement on competitive impact of the Bell Atlantic/NYNEX merger. I want the head of the Antitrust Division to follow the law, even if it provokes my ire. It is in honest disagreement that we can examine the effectiveness of the law. If the law needs to be changed, let's change it.

Beyond that, there are elements of the Bell Atlantic/NYNEX decision which are deeply troubling to me. Those concerns could be relieved if I were convinced that the competitive concerns received full, open, and deliberate consideration and that efforts were made to mitigate the loss of actual and potential competition. Most importantly, this merger should not be a precedent for a no holds barred approach to telecommunications combinations.

The history of telecommunications service in America is at a critical point. At risk is a lifeline service important to every citizen of this Nation. The Department's commitment to using its full authority to promote competition is important to achieving an environment where consumers come first and entrepreneurs are encouraged to challenge the status quo.

The bold vision of the Telecommunications Act is a promise yet unfilled. The man or woman who executes the responsibilities of this office will have a profound effect on every American, and not only in telephone service.

Our antitrust laws form the keystone of our market economy. They stand between every American and the tyranny of raw, unbridled economic power. The person entrusted with the enforcement of those laws must have an unwavering commitment to a marketplace built on full, fair, and open competition.

As the Senate fully considers this nomination, I am willing to be convinced that Joel Klein is that person.

Mr. President, the need for competition is the overriding imperative of this Telecommunications Act. I am not in business as a monopoly. My business is such that customers come in. If they do not like what I am serving them, do not like the price, they go elsewhere, and as a consequence of that we pay very close attention to the customer. And those customers right now who are buying local services, especially residential service at the local level, they still have two choices: Take it or leave it.

That is not competition. I do not come to the floor here criticizing the regional Bell operating companies or AT&T or any other long distance providers. I am just very much aware, if I am a monopoly, I do very much business if I have to compete, if I have to satisfy my customers' desires, demands for high quality and a reasonable and fair price.

There is a businessman in Nebraska who owns many things, and one of the things he owns is newspapers. I once asked him how he managed to make money in the newspaper business, and he said to me, well, it's real simple; he takes advantage of two of America's most endearing and enduring institutions, monopoly and nepotism.

Mr. President, with the Telecommunications Act need to ensure that the monopolies face competition, they come to us, the RBOC's and AT&T and the other carriers are all coming to us saying they want to compete. What they need to make sure happens is that there is competition, that you get rigorous and vigorous competition at the local level.

In addition to that, though it is not the role of Antitrust at Justice, it is the role of the FCC to make certain that on the table we have before us those things that the market will not get done.

There are some things that competition will not get done for us. There is a need to make certain we have real service. There is a need to make certain that areas that are remote are getting good service. There is a need to make certain people with lower incomes are going to get universal service. There are all sorts of things the market will not get done, and we have to put them on the table. I think we have an easier time surfacing those things and debating those things than we do in making certain that at the local level we have competition.

As I said, Mr. President, it is not an easy thing to accept that competition if you are in business right now and you are a monopoly. It is easy to talk about it, but it is not easy to do it. There is a lot of pressure on Justice and FCC to make decisions and determinations that are anticompetitive under the veil and cloak of competitive language.

I am very much concerned, not by his actions, but by some statements and a particular letter he wrote in response to a concern of a Member of this body about a speech that Mr. Klein had given. The letter, in my judgment, gives away the authority that this Senate and the House of Representatives, when we finally passed the Telecommunications Act of 1996, gave the Department of Justice.

Mr. Klein appeared to me, in this letter, to give away the authority that this law gives the Department of Justice. I, for one, need to hear from the Attorney General saying that she believes that the Department of Justice has this authority and she intends to make certain that Antitrust exercises that authority before I am going to be willing to vote for Mr. Klein.

It is a difficult job being head of Antitrust. As far as I am concerned, the Antitrust Division of the Department of Justice creates a lot of jobs because they insist on competition. I believe you get more jobs in a competitive environment, not less. I believe competition determines in a much better way who is being successful in giving the customer what they want and, as a consequence, much more likely in the long term to create jobs than if we allow entities to perform vertically monopoly, or near monopoly, control over the marketplace, and, in that kind of environment, to be able to basically say, as I indicated earlier, to the customer, ''Take it or leave it; I don't care whether you like the price, whether you like the service; I am saying to you, you have to take it or leave it.''

This is one of the most difficult things we have ever gone through, going from a monopoly to a competitive environment. It is going to be wrenching and difficult for rural areas and for private sector companies that have to adjust their hiring policies, have to adjust their personnel policies, have to adjust their marketing policies. I know that this kind of change is going to force the private sector, the monopoly private sector, to go through substantial change. But it is the intent of this legislation that they go through that change. It is only if we have a competitive environment, again, acknowledging there are some things the market will not do for rural areas, and we have to make sure, in order to achieve universal service, that we identify those things upfront or it will not happen.

But acknowledging and setting aside those things, it is terribly important for the consumers to take advantage of the benefits of what the Telecommunications Act of 1996 allows. It is vitally important that both the FCC and Antitrust at Justice insist on a competitive environment in order for that to happen.

I regret at this stage in the game having to say I do not support Mr. Klein. As I indicated, my view can be changed, depending upon what the Attorney General says in response to a letter I have sent to her. My hope is she will indicate she intends to make certain that Antitrust, whoever is confirmed, will carry out the intent of the law as debated fully on this floor and as enacted both by the Senate and the House of Representatives.

It would be my hope to be able to vote for Mr. Klein. At this stage in the game, I will not. At this stage in the game, I hope this body deliberates a good deal of time upon not just Mr. Klein, but what is going to happen if Antitrust and Justice doesn't enforce the law, what is going to happen to consumers of this country if we don't get a competitive environment.

The only reason we had benefit in the long distance environment with reduced price and increased quality was the presence of competition. In the absence of that, the consumers of this country are going to come back to us and say that that law wasn't very darn good.

All of us who voted for that act have a lot at stake. All of us who voted for the Telecommunications Act of 1996 have a lot at stake, and the job that Mr. Klein does, or whoever it is at

Antitrust and all the Commissioners who are going to be nominated over at FCC, as well, all need to take a lot of time in deliberating over what those individuals are going to do before we vote to confirm them as a consequence of the impact that they are going to have, not just upon us, but especially upon the consumers, upon whom all of us, at the end of the day, depend.

Mr. President, I look forward to having an opportunity later to come down, and I most especially look forward to not only yielding the floor, but listening to the majority leader. I yield the floor.

Mr. LOTT addressed the Chair.

The PRESIDING OFFICER (Mr. STEVENS). The majority leader.

LEGISLATIVE SESSION

Mr. LOTT. Mr. President, I ask unanimous consent that the Senate return to legislative session.

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

MORNING BUSINESS

Mr. LOTT. Mr. President, I ask unanimous consent that there now be a period for the transaction of morning business, with Senators permitted to speak therein for up to 10 minutes each.

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

HONORING LARRY DOBY

Mr. DEWINE. Mr. President, this past Tuesday night, the eyes of the Nation and a good part of the world were focused on Cleveland and the playing of the All Star Game. This was an All Star Game that had, I think, particular significance. This, of course, is the 50th anniversary of Jackie Robinson's entrance into major league baseball, when the so-called color line was actually finally broken.

It was appropriate that the honorary captain of the American League was Larry Doby. It was also appropriate that the other honorary captain was Frank Robinson. Frank Robinson, of course, who played when I was a young boy for the Cincinnati Reds, played very well, and then went on later to be the first African American manager in the American League for Cleveland.

Mr. President, on July 5, 1947—50 years ago—Larry Doby became the first African-American to play in the American League. Earlier that year, of course, Jackie Robinson was the first person to be signed and to play for the Brooklyn Dodgers—the first African American to play in the major leagues—and Larry Doby was the first African American to play in the American League.

Earlier this year, we as a nation paid tribute to Jackie Robinson for the courage and for the integrity showed in breaking baseball's color barrier.

I think it is only right, Mr. President, to hail today on the Senate floor the quiet courage of a man who did the same thing just 3 months later in the American League. Bill Veeck of the Cleveland Indians saw that Larry Doby was leading the Negro National League with a .458 batting average and 13 home runs. Veeck and Doby then made a historic decision, a decision that amounted to an act of faith in America's future. They decided that the opposition to Jackie Robinson's entry into the Major Leagues was a throwback, a vestige of the past, and that racial tolerance was the wave of the future. It was a brave choice and a tough choice, but, of course, it was the right choice. Larry Doby said later that Bill Veeck ''didn't see color. To me, he was in every sense colorblind, and I always knew he was there for me.''

Mr. President, that was a very characteristically generous and gracious statement by Larry Doby because it was Larry Doby himself, after all, who had to be brave out on the playing field. Larry Doby had to be brave in a time of segregation and other terrible indignities inflicted on African-Americans. He showed the courage that was needed 50 years ago, and all Americans today ought to be grateful for his example.

Again, here is another quote from Larry Doby. ''Kids are our future, and we hope baseball has given them some idea of what it is to live together and how we can get along, whether you be black or white.''

Mr. President, the accomplishments of Larry Doby on the baseball diamond are well known. In 1948, his first full season in the Major Leagues, he led the Indians to victory in the World Series, batting .318 and hitting a game-winning home run. He was named to the All Star team every single year from 1949 to 1955. In 1952, Larry Doby led the American League in home runs and in runs scored. Two years later, in 1954, he led the league in home runs and in RBI's. He left the Indians in 1956 to play for the Chicago White Sox and later for the Detroit Tigers. Larry Doby retired in 1959 but returned to baseball in 1978 to manage the White Sox, becoming only the second African-American manager in the history of the major leagues. The first, as I stated, of course, as we know, was the great Frank Robinson, who managed the Cleveland Indians from 1975 to 1977.

Mr. President, as I have said, Larry Doby's contribution to baseball is well known. That is why he was chosen to serve as honorary captain of this year's American League team at the All Star Game this past Tuesday night. But when everyone at Jacobs Field rose Tuesday night at the All Star Game to honor this great American, we thanked him even more for his message of reconciliation and racial brotherhood.

I have a copy of the Cleveland Plain Dealer article from July 6, 1947. This article described Larry Doby's first game as a Cleveland Indian. The headline reads, ''Doby Shows Strong Arm as He Works at Second Base.''

I submit, Mr. President, that Larry Doby showed a lot more than that on that now distant July day. Larry Doby showed what America could and what America should be. So on behalf of people of the State of Ohio and on behalf of all Americans, I rise today in the Senate to say thank you to Larry Doby and to pay tribute to this very fine gentleman.

Mr. President, I yield the floor.

Mr. GORTON addressed the Chair.

The PRESIDING OFFICER. The distinguished Senator from Washington is recognized.

Mr. GORTON. Mr. President, I ask unanimous consent to speak for 5 minutes as if in morning business.

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

TAX PLAN DIFFERENCES

Mr. GORTON. Mr. President, the House of Representatives and the Senate recently passed tax relief plans that will help every American at every stage of life. They are obviously not the solution to all of our problems, but they are a first step in the right direction.

These carefully crafted tax relief packages will not only make an immediate difference in the monthly budgets of middle-class families but will also encourage the risk taking that will raise the future standard of living for us, for our children, and for our grandchildren. They will accomplish both goals by giving tax credits to people who pay taxes and who bear the cost of raising the next generation and by reducing taxes on saving and investing.

Why do we need tax relief now? Consider the following: total taxes, Federal, State, and local combined, take up almost one-third of the U.S. economy. That means that for every 8 hours of work the average taxpayer spends almost 3 hours of work to pay the tax collector rather than bringing it home to meet family needs.

Following our lead, President Clinton has offered a tax relief plan of his own. We congratulate him on continuing to move in our direction, agreeing to tax credits not just for young kids but for teenagers, too, and also for giving families some relief from the death tax. But our plan and the President's still have some big differences. Most importantly, we strongly believe that his plan sells the middle class short. We think he has a much too narrow definition of middle class, one that includes as rich too many families that most people would see as solidly middle class.

In particular, we think the President's plan has a strange bias against families with working moms. He is much too quick to put families with working mothers in the rich category just because they need two incomes to make ends meet, to pay their taxes, and to stay on top of their bills.