

Technical Studies, Ms. Nightingale received a \$1,750 award in Arts and Humanities, and Ms. Nordquist received a \$1,750 award in Trade and Technical Studies. I commend these students for their phenomenal work.

TRIBUTE TO WILLIE MAE RIVERS

HON. MARION BERRY

OF ARKANSAS

IN THE HOUSE OF REPRESENTATIVES

Thursday, July 15, 1999

Mr. BERRY. Mr. Speaker, I rise today to recognize a woman whose leadership and caring nature have influenced so many, Ms. Willie Mae Rivers.

Willie Mae Rivers was born in Charleston, SC. She aligned herself with Calvary Church of God in Christ in 1946, where she has served over the past 50 years. Ms. Rivers has also served as district missionary and assistant state supervisor for the state of South Carolina. Ms. Rivers has also held various positions on Screening and Program committees, District Missionaries, and instructor of the State Supervisor's class.

Ms. Rivers is the mother of 12 children. She currently maintains a satellite office in addition to the Church of God in Christ headquarters in Memphis, TN.

Ms. Willie Mae Rivers is a leader and giving individual who deserves the respect and admiration of everyone.

THE INTRODUCTION OF THE FAIRNESS IN TELECOMMUNICATIONS LICENSE TRANSFERS ACT

HON. HENRY J. HYDE

OF ILLINOIS

IN THE HOUSE OF REPRESENTATIVES

Thursday, July 15, 1999

Mr. HYDE. Mr. Speaker, today I am pleased to join with Chairman GEKAS of the Subcommittee on Commercial and Administrative Law and Congressman GOODLATTE to introduce the "Fairness in Telecommunications License Transfers Act."

As chairman of the Judiciary Committee, the committee with jurisdiction over antitrust and administrative procedure matters, I have long been concerned about the treatment of mergers in the telecommunications industry. During the consideration of the Telecommunications Act of 1996, Ranking Member JOHN CONYERS and I were instrumental in updating the law to make sure that telecommunications mergers received a full antitrust review under the normal Hart-Scott-Rodino process in addition to the broader public interest review of license transfers by the Federal Communications Commission.

Since that time, the Committee on the Judiciary has continued to study this matter. On June 24, 1998, we held an oversight hearing on "The Effects of Consolidation on the State of Competition in the Telecommunications Industry." Chairman William Kennard of the FCC was invited to appear at that hearing, but he had a scheduling conflict. At that time, I remained hopeful that the dual review would en-

hance the process rather than detracting from it.

I have been pleased with the Department of Justice's role in these mergers. Although I may not agree with their substantive decisions in every respect, they have reviewed these mergers in a reasonable procedural manner under tight time deadlines. I think that their work has shown that Mr. CONYERS and I did the right thing in 1996 when we succeeded in getting these mergers into the Hart-Scott-Rodino process.

The FCC's record on the other hand has been disappointing to say the least. On May 25, 1999, Chairman GEKAS's Subcommittee on Commercial and Administrative Law held an oversight hearing on that record entitled "Novel Procedures in FCC License Transfer Proceedings." Again, Chairman Kennard was invited to appear, but had a scheduling conflict. At that hearing, the Subcommittee heard disturbing testimony from Commissioner Harold Furchtgott-Rott about the utterly standardless decisionmaking process that the Commission employs in these matters. His testimony proved that the title of that hearing was instructive in at least two regards. First, as Commissioner Furchtgott-Roth testified, under current law, the FCC has authority to review license transfers—not mergers. Second, he told us that the FCC's procedures are novel indeed—they are not written down anywhere.

Let me address both these areas. On the substance of the review, I have not in the past opposed the FCC's consideration of competitive factors as part of its public interest review of license transfers. I thought that some additional competitive analysis might be helpful. Based on the experience of the last year, and particularly the experience of the SBC and Ameritech merger, however, I am now much more skeptical. Having reviewed the governing law and Commissioner Furchtgott-Roth's testimony. I have substantial doubts as to whether the FCC should be redoing the competitive analysis done under the Hart-Scott-Rodino process. It appears to me that the license transfer authority was primarily intended to allow the Commission to determine whether the transferee is a responsible and qualified party—not to launch a full scale competitive analysis. At the least, the kind of far-flung proceeding that SBC and Ameritech have faced strikes me as beyond the intent of the statute.

For that reason, Section 2 of the bill would clarify that the FCC is not an antitrust enforcement agency. It removes language in the Clayton Act that currently appears to give the FCC concurrent authority to enforce the antitrust laws against telecommunications carriers. That authority has rarely been invoked in any formal manner, but I think that this change will help to clarify the appropriate role of the FCC in license transfer review and in other areas.

Second, we must address procedural fairness in license transfer proceedings. I do not think I can say it any better than Commissioner Furchtgott-Roth put it to the Subcommittee: "debates about process are not trivial debates. To the contrary, regularity and fairness of process are central to a governmental system based on the rule of law. As the law recognizes in many different areas, the denial of a procedural right can result in the abridgment of a substantive right."

What is wrong with the FCC's procedures? Let's consider SBC and Ameritech as a case study. First, the FCC simply does not have any rules for dealing with license transfer—none. As Commissioner Furchtgott-Roth testified, there simply is no place to go to look up the rules. Rather, in the case of SBC and Ameritech, the Commission has adopted a "make it up as you go" approach. Whenever the deal has neared the goalposts, the goalposts have been moved. That is confusing and costly for all concerned.

Second, because there are no clear rules, some license transfers are treated in one fashion and some in another. Thousands are dealt with in a perfunctory fashion, and a few are dealt with extensively. There is nothing inherently wrong with that, but it ought to be done according to some neutral principle. For example, without commenting on their substance, it is hard to see why the AT&T-TCI transaction was approved in less than six months and the SBC-Ameritech transaction still is not completed after more than a year. That necessarily affects competition between these companies. A fundamental principle of fairness is that similarly situated parties ought to be treated similarly. Moreover, government bureaucracies ought not to be dictating market outcomes.

Third, as I just pointed out, the SBC-Ameritech transaction has been pending for over a year. I have usually been circumspect in commenting on pending matters, but because of the extraordinary delay here, I wrote to Chairman Kennard on March 22, 1999 asking him to act expeditiously. A month later, he wrote back to me stating that the Commission had instituted a new round of procedures and that a decision was possible by the end of June. The end of June has come and gone. The Commission and the parties have reached a tentative agreement on 26 conditions for the merger, but the Commission has not voted on it. Again, without commenting on the substance of the merger, this level of delay is simply unacceptable. These companies are involved in fiercely competitive markets, and time is of the essence. Billions of dollars of commerce have been held hostage to bureaucratic delay.

Fourth, I am concerned about the conditional nature of this tentative approval as a procedural matter. The statutory basis for such conditional approvals in FCC license transfer proceedings is unclear at best. When the number of conditions rises to 26 and they are as extensive as those we see here, I have to question whether this is a public interest review or something else. These conditions may well be helpful as a policy matter, and I am at least pleased that this lengthy process is coming to an end. However, the legal and procedural basis for them is less than clear to me.

All of these examples show what is wrong procedurally with the consideration of license transfers at the FCC. Section 3 of our bill would amend the Administrative Procedure Act to require the FCC to write rules governing their license transfer proceedings. We do not try to dictate what those rules should be. We simply require that there must be neutral rules accessible to all in advance. That seems to me simple fairness. With such rules in place, all parties will have an equal chance in these