

localities, which have run into the billions of dollars, and without having provided any funds.

This practice must stop. With all levels of government facing limited fiscal resources, we should know the total costs of a bill and the full effects of it on all levels of government before its adoption. We cannot expect a program to be fully and successfully implemented if the costs of the program exceed available fiscal resources.

Just last week 11 Governors met with the Democratic leadership of the other body and reiterated their support for attaching fiscal notes or estimates of these additional non-Federal Government costs to bills.

As chairman of the Budget Committee's task force on the budget process in the 95th Congress, which recommended that the Congressional Budget Office estimate the cost impact on State and local governments of reported bills, I believe this bill will move us closer to acquiring all the information we need to make a fully informed judgment on a legislative proposal. The bill makes sound budgetary sense. I urge my colleagues to adopt H.R. 1465.

The SPEAKER, pro tempore. The question is on the motion offered by the gentleman from New York (Mr. ZEFERETTI) that the House suspend the rules and pass the bill, H.R. 1465, as amended.

The question was taken; and (two-thirds having voted in favor thereof) the rules were suspended, and the bill, as amended, was passed.

A motion to reconsider was laid on the table.

RECORD CARRIER COMPETITION ACT OF 1981

Mr. WIRTH. Mr. Speaker, I move to suspend the rules and pass the bill (H.R. 4927) to amend the Communications Act of 1934 to eliminate certain provisions relating to consolidations or mergers of telegraph and record carriers and to create a fully competitive marketplace in record carriage, and for other purposes, as amended.

The Clerk read as follows:

H.R. 4927

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

SHORT TITLE

SECTION 1. This Act may be referred to as the "Record Carrier Competition Act of 1981".

COMPETITION AMONG RECORD CARRIERS

Sec. 2 Section 222 of the Communications Act of 1934 is amended to read as follows:

"COMPETITION AMONG RECORD CARRIERS

"SEC. 222. (a) For purposes of this section:

"(1) The term 'existing international record carrier' means any international record carrier which is eligible, on the date of the enactment of the Record Carrier Competition Act of 1981, to obtain record traffic from a record carrier in the United States for delivery outside the United States.

"(2) The term 'international record carrier' means any United States record carrier which derives a majority of its revenues during any calendar year from the provision of international record communications services between points of entry into or exit from the United States and points outside the United States.

"(3) The term 'primary existing international record carrier' means any existing international record carrier which is engaged in the direct provision of record communications services between the United States and 4 or more continents.

"(4) The term 'record carrier' means a common carrier engaged in the offering for hire of any record communications service, including service on interstate network facilities between 2 points located in the same State. Such term does not include any common carrier which derives a majority of its revenues during any calendar year from the provision of services other than record communications service.

"(5) The terms 'record communications facility' and 'facility' mean any telecommunications facility or equipment designed or used primarily to provide any record communications service.

"(6) The term 'record communications service' means any telecommunications service which is designed or used primarily to transfer information which originates or terminates in written or graphic form.

"(b)(1) The Commission shall, to the maximum extent feasible, promote the development of fully competitive domestic and international markets in the provision of record communications service, so that the public may obtain record communications service and facilities (including terminal equipment) the variety and price of which are governed by a fully competitive marketplace. The Commission shall reduce the extent to which it regulates record carriers as the development of competition among record carriers replaces the need for regulation to protect the public.

"(2) In furtherance of the purposes of this section, the Commission shall assure that none of the costs of regulated or unregulated record communications services and facilities (including terminal equipment) are borne by the users of any other record communications services.

"(c)(1)(A) Each record carrier shall make available to any other record carrier, upon reasonable request, full interconnection with any record communications service or record communications facility operated by such record carrier. Such record communications service or facility shall be made available, through written agreement, upon terms and conditions which are just, fair, and reasonable, and which are otherwise consistent with the purposes of this section.

"(B)(i) If any record carrier engages both in the offering for hire of domestic record communications services and in the offering for hire of international record communications services, then such record carrier shall be treated as a separate domestic record carrier and a separate international record carrier for purposes of administering the interconnection requirements established in subparagraph (A).

"(ii) In any case in which such separate domestic record carrier furnishes interconnection to such separate international record carrier, any interconnection which such separate domestic record carrier furnishes to other international record carriers shall be (I) equal in type and quality; and (II) made available at the same rates and upon the same terms and conditions.

"(iii) In any case in which such separate international record carrier furnishes interconnection to such separate domestic record

carrier, any interconnection which such separate international record carrier furnishes to other domestic record carriers shall be (I) equal in type and quality; and (II) made available at the same rates and upon the same terms and conditions.

"(iv)(1) Subject to the provisions of subclause (II), if a request for interconnection under subparagraph (A) is for the purpose of providing international record communications service, then the agreement entered into under subparagraph (A) shall require that the allocation of record communications service between points outside the United States and points of entry in the United States shall be based upon a pro rata share of record communications service between points of exit out of the United States and points outside the United States provided by the carrier making such request for interconnection.

"(II) The requirement established in subclause (I) shall not apply in any case in which the customer requesting any record communications service between a point outside the United States and a point of entry in the United States has the option to specify the international record carrier which will provide such record communications service.

"(2) If any request made by a record carrier under paragraph (1) will require an agreement under which any record communications service or record communications facility operated by one of the parties to such agreement will be used by any other party to such agreement, then such agreement shall establish a nondiscriminatory formula for the equitable allocation of revenues derived from such use between the parties to such agreement, except that each party to such agreement shall have the right to establish the total price charged by such party to the public for any such service which is originated by such party, consistent with the provisions of section 203. To the extent possible, and consistent with the provisions of paragraph (3)(B)(ii), the Commission shall require that such equitable allocation of revenues be based upon the relative costs of the record communications service or facility employed as a result of such agreement.

"(3)(A) The Commission, as soon as practicable (but not later than 15 days) after the date of the enactment of the Record Carrier Competition Act of 1981, shall convene a meeting between (i) all existing international record carriers; and (ii) any record carriers which the Commission determines would be parties to any agreement under paragraph (1). Such meeting shall be held for the purpose of negotiating the agreement required in paragraph (1). Representatives of the Commission shall attend such meeting for purposes of monitoring such negotiations.

"(B)(i) If—

"(I) any record carriers specified in subparagraph (A)(ii); and

"(II) a majority of the primary existing international record carriers involved in the meeting convened by the Commission under subparagraph (A);

fail to enter into an agreement before the end of the 45-day period following the beginning of such meeting, then the Commission shall issue an interim or final order which establishes a just, fair, reasonable, and nondiscriminatory agreement which is consistent with the purposes of this section. Subject to the provisions of paragraph (4)(B), any such agreement established by the Commission shall be binding upon such parties.

"(ii) Such interim or final order shall be issued not later than 90 days after the date

which the Commission convenes the meeting under subparagraph (A). If—

(1) any record carriers specified in subparagraph (A)(ii); and

(ii) a majority of the primary existing international record carriers involved in the meeting convened by the Commission under subparagraph (A);

reach an agreement which complies with the requirements of this section, and such agreement is entered into before the issuance of such order by the Commission under this subparagraph, then such agreement of the parties shall take effect and the Commission shall not be required to issue any such order.

(C) Any record carrier which is not subject to the agreement entered into, or established by the Commission, under this paragraph may elect to be subject to the terms of such agreement upon furnishing written notice to the Commission and to all existing parties to such agreement.

(D)(i) The agreement entered into, or established by the Commission, under this paragraph shall terminate at the end of the 3-year period following the effective date of such agreement, except that the Commission shall have authority to provide that such agreement shall continue in effect if the Commission determines that such continuation is necessary to carry out the purposes of this section.

(ii) After the expiration of such agreement, in any case in which a record carrier seeking interconnection in accordance with paragraph (1) is unable to enter into an agreement for the provision of such interconnection, the Commission shall have authority to establish an agreement for such interconnection in accordance with the provisions of this section.

(E) No United States record carrier shall have any authority to enforce any provision contained in an agreement for the provision of record communications service or facilities which is entered into or renewed after the date of the enactment of the Record Carrier Competition Act of 1981, if the Commission determines that such provision impedes the development or operation of competitive record communications service markets.

(4)(A) The Commission shall have authority to vacate or modify any agreement entered into by any record carriers under this section if the Commission determines that such agreement is not consistent with the purposes of this section. During the 3-year period specified in paragraph (3)(D)(i), the Commission shall vacate or modify any such agreement under this subparagraph if the Commission determines that such agreement discriminates against any carrier.

(B) In any case in which the Commission issues an interim or final order under paragraph (3)(B), the parties which are specified in subclauses (I) and (II) of paragraph (3)(B)(ii) and which are subject to such order shall have authority to supersede the application of such order by entering into an agreement which is consistent with the purposes of this section, except that any such agreement shall be subject to the authority of the Commission under subparagraph (A).

(5) In any case in which a United States record carrier (other than an international record carrier) submits an application to the Commission for authority to provide international record communications service, the Commission shall not have any authority to take any final action with respect to such application until the end of the 120-day period following the date a written agreement is entered into between such record carrier and existing international

record carriers under paragraph (3) (or following the effective date of any interim or final order issued by the Commission under paragraph (5)(B) with respect to such carriers). The limitation upon Commission authority established in this paragraph shall expire at the end of the 210-day period following the date of the enactment of the Record Carrier Competition Act of 1981.

(d) Each record carrier shall be authorized to provide record communications service in the United States domestic market and in the international market. Any such carrier seeking to provide such service, directly or indirectly, shall submit an application to the Commission under section 214. The Commission shall act expeditiously upon any such application."

COMMISSION OVERSIGHT OF DISTRIBUTION FORMULAS

SEC. 3. (a) Subject to the provisions of subsection (b), the Federal Communications Commission shall exercise its authority under the Communications Act of 1934 to continue its oversight of the establishment of just and reasonable distribution formulas for unrouted outbound telegraph traffic and the allocation of revenues with respect to such traffic, consistent with the purposes of section 222 of the Communications Act of 1934, as amended in section 2.

(b) The provisions of subsection (a) shall cease to have any force or effect at the end of the 1-year period beginning on the date of the enactment of this Act.

EFFECT OF AMENDMENT UPON CERTAIN CONTRACTS

SEC. 4. The amendment made in section 2 shall not affect the validity of the terms of any otherwise lawful contract relating to the distribution of outbound international record traffic between any domestic record carrier and any international record carrier if such contract was entered into before June 23, 1981.

The SPEAKER pro tempore. Pursuant to the rule, a second is not required on this motion.

The gentleman from Colorado (Mr. WIRTH) will be recognized for 20 minutes, and the gentleman from Texas (Mr. COLLINS) will be recognized for 20 minutes.

The Chair recognizes the gentleman from Colorado (Mr. WIRTH).

Mr. WIRTH. Mr. Speaker, I yield myself such time as I may consume.

(Mr. WIRTH asked and was given permission to revise and extend his remarks, and to include extraneous matter.)

Mr. WIRTH. Mr. Speaker, today the House is considering H.R. 4927, the Record Carrier Competition Act of 1981. Before I speak to the provisions of the legislation, let me take a moment to outline what I believe is truly a consensus bill.

For the past 5 or 6 years, there have been calls for the elimination of section 222. Several FCC Commissioners and Chairmen have endorsed eliminating 222; many in the industry have made similar recommendations. Yet there has never before been a vehicle for removing this section that was capable of moving through the Congress, because there was never a consensus on how a repeal should be implemented.

H.R. 4927 is that consensus vehicle. It was drafted by both the majority

and minority, working together. It is supported by nearly every member of the Subcommittee on Telecommunications, Consumer Protection, and Finance. It was reported unanimously by both the subcommittee and full committee, and I hope it will be approved unanimously by the full House.

I would like to commend several members of the committee for their cooperation and assistance in drafting this bill and moving it through the legislative process. While all of the members of the Telecommunications Subcommittee were of enormous help and assistance, the ranking minority member of the full committee, Mr. BROYHILL of North Carolina, took a particular interest in putting together a legislative package that is fair and equitable to all concerned. In addition, the ranking member on the subcommittee, Mr. COLLINS of Texas, was enormously helpful as well. I would like to commend them and their colleagues on the other side for their efforts, and to thank them for helping to move this legislation along.

Mr. Speaker, this bill affects the so-called record communications market. Record communications are nonvoice communications, such as telegrams, telex service, and TWX service. In no way are the provisions of the legislation designed to affect high speed data transfers, which are competitive offerings.

Back during World War II, the Congress sanctioned a merger of two telegraph companies—the failing Postal Telegraph Service and the relatively healthy Western Union Co. This was done because of the Nation's dependence on telegraph services during wartime.

In order to protect against anticompetitive practices by the merged, monopoly carrier, Congress restricted the operations of that carrier to the offering of domestic services.

The international record market, which consists of companies offering record services between the United States and foreign countries, has historically been characterized by high prices. Some observers refer to it as a cartel. While it is clear that there is some competition between and among the various international record carriers (IRC's), it is equally clear that this competition is not particularly vigorous. And, while the FCC has attempted to regulate the rates these carriers charge the public, I think we all agree that competition does a far better job than does Government regulation. Thus, we have two industries—one domestic and one international. One is a monopoly; the other is characterized by an extremely low level of competition.

Ideally, this market should be restructured in such a way so as to end Western Union's monopoly in the domestic market, and provide for Western Union's entry into the international

al market in order to increase the level of competition among the IRC's.

The problem is, how do you get from here to there? Western Union would like to preserve its dominance domestically, and like to offer international services as well. The IRC's would like to keep Western Union out of their markets, at least until they are able to compete in the domestic marketplace. Interconnection arrangements, which are crucial in order to provide joint and through service, would be impossible to negotiate or impose, given these disincentives to ever solving the problems.

H.R. 4927, the bill we are considering today, attempts to deal with these disincentives in a constructive fashion. It provides for the interconnection between and among the various carriers, both in the domestic market and in the international market. It holds off the entry of Western Union into the international marketplace until these interconnection agreements are reached and are being implemented. It prevents Western Union from extending its domestic dominance into the international marketplace, while allowing it to compete.

Mr. Speaker, at this point in the Record I submit the section-by-section analysis of H.R. 4927, as follows:

SECTION-BY-SECTION ANALYSIS OF H.R. 4927
SHORT TITLE

Section 1 states that this bill is titled the "Record Carrier Competition Act of 1981."

COMPETITION AMONG RECORD CARRIERS

Section 2 repeals the existing Section 222 of the Communications Act of 1934 and substitutes a new Section 222. The new Section 222 articulates the goals established by the Congress by its enactment of H.R. 4927. In particular, the committee has instructed the Federal Communications Commission to promote the development of fully competitive domestic and international markets in the provision of record communication services. Further, the Commission is instructed to reduce regulation or forbear from regulating to the extent that market forces are sufficient to protect the public interest in obtaining record communication services.

In addition, the bill places a statutory prohibition on cross-subsidies between and among the various segments of record communication service. For example, cross-subsidies between transmission charges and terminal equipment charges are prohibited.

The definitions are drafted to restrict the applicability of the legislation to what is commonly referred to as record communications services. These services are commonly provided by telegraph companies, and include telegraph, telex, and TWX service. The Committee does not intend that the provision of high speed data communications service be in any way affected by the passage of this legislation. Neither does the Committee intend to include services offered by such companies as the American Telephone and Telegraph Company (or any of its affiliates) or the Communications Satellite Corporation.

This section also confers an affirmative obligation upon every record communications carrier to interconnect with any other record communications carrier upon reasonable demand.

One of the Committee's concerns in removing the current dividing line between

domestic and international record carriage was that such an measure would increase the ability of foreign Postal and Telephone, Telegraph authorities (PTT's) to influence the development of a competitive marketplace in the domestic United States. In order to reduce this leverage, the Committee has required that all carriers providing both international and domestic service treat each operation as separate corporations for the purposes of interconnection under the Act. This will ensure that any other carrier desiring to provide either domestic service or international service may assert its interconnection rights under the Act, and receive treatment that is identical to that which the carrier provides its own affiliated international or domestic operations, as the case may be. The Committee felt that a full separation requirement for international and domestic service was not required in this case, and that an unbundling of domestic and international tariffs would be sufficient to assure that other carriers were interconnected at fair rates, terms, and upon the same conditions.

This provision also helps to guarantee fair standards for interconnection.

Among other matters, the Committee intends that the agreement should provide for the preservation of the IRC's existing direct access codes. These access codes enable customers using the Western Union telex/TWX system to direct-dial the overseas services of each IRC. Each IRC has invested substantial sums to promote customer use of these access codes. The Commission has recently found that access codes effectively constitute the IRC's "business addresses," and the competitive relations among the IRCs are intimately linked with the existing codes.

The Committee is concerned with the apparent unwillingness of foreign PTT administrations to interconnect with new U.S. international record carriers. These arrangements are, however, outside the scope of the jurisdiction of the Congress.

Nevertheless, the Committee has constructed a method by which a U.S. carrier without an operating agreement can interconnect with another U.S. carrier with such an agreement, consistent with international law, treaties, and regulations, and thereby provide outbound international service.

However, international traffic originating in a foreign country destined for a customer in the United States presents different problems. For example, many countries assign U.S. bound traffic among U.S. carriers according to the amount of traffic each U.S. carrier brings into that particular country. To the extent that such an arrangement benefits the carrier with an interconnection agreement (because of an increase in traffic resulting from the use of its facilities by the interconnecting carrier lacking such an agreement) the Committee believes that this benefit should accrue to the responsible carrier, i.e., the carrier generating the outbound traffic. In other words, if a carrier's level of return traffic is increased due to an increased level of outbound traffic generated by another U.S. international record carrier, then this benefit should be passed along to the carrier that generated the increased level of traffic.

The Committee believes that in these situations, no free market exists, since traffic is assigned by the monopoly PTT. In order to correct this deficiency in a free market, the Committee has included a requirement that where countries assign U.S. bound traffic in this manner, a proportionate share be allocated by the U.S. carrier with the foreign agreement to the carrier responsible for the increased allocation.

The Committee intends that the provision will only affect the distribution of traffic between the point of interconnection with a foreign correspondent and the point of entry into the United States, that is, the purely international segment of these circuits.

Given the divisive history of the industry and the many prior confrontations between the domestic record carrier and the international record carriers, the Committee felt it was necessary to establish a mechanism to provide for joint and through service between and among connecting carriers. Accordingly, the Committee includes a mandate that the carriers connecting in order to provide joint and through service negotiate an arrangement by which the revenues derived from the provision of such service are allocated between and among the carriers. It is not the intention of the Committee that a carrier which is able to set its own rate for that joint and through service deny a connecting carrier its cost of interconnection, and carriage. However, the Committee does recognize that there are certain cost savings which are inherent in carrier-to-carrier interconnections (as opposed to customer-to-customer interconnections), and that some suitable discount for carrier-to-carrier interconnection will become part of the arrangement. This paragraph insures that the terminating carrier will recoup its costs through the allocation of revenues and permits the originating carrier to recover its costs by setting a rate to the public that is sufficient to cover its own costs plus its payment of the terminating carrier's revenue share. Paragraph (c)(2) of the new Section 222 also requires that the rates to the public must be filed in tariffs with the FCC and thus are subject to the full powers of the Commission to reject, suspend and investigate.

In the event that the carriers are unable to negotiate an agreement for the division of revenues within the timetable established by the bill, the FCC is empowered to prescribe a division rate that, to the extent possible, is cost based. The Committee's overriding concern, however, is that such prescription takes place within the timeframe established by the bill.

The timetable established by the bill for arriving at interconnection arrangement is short. The bill provides for a 45 day negotiating session under the aegis of the Commission, followed by a 45 day period during which the Commission may make its own determination of an appropriate division rate. In the event that the carriers are able to negotiate an agreement sometime between the 46th and 90th day, they will be able to submit such an agreement to the Commission and the Commission will be relieved of its responsibilities to proscribe a division rate.

In addition, the Committee has provided that new carriers who were not parties to the agreement will be able to receive the benefits of the agreement by notifying the Commission and all existing parties to the agreement.

The Committee believes that agreements meeting the requirements of subparagraphs (c) (2) and (3) are necessary only for a transitional period. Accordingly, this paragraph provides a sunset provision, intended to limit the effectiveness of such agreements, whether arrived at through negotiations or pursuant to Commission orders, to a 3-year period. While paragraph 3(D) does give the Commission the power to extend such agreement if it finds, after full, trial-type hearings on the record, that such action is essential for the effectuation of a competitive marketplace. In any such proceeding,

... of proof will be on the party who proposes a continuation of such arrangements.

In the event that a new entrant is interested in engaging in record communications competition following that 3-year period, the Commission retains its prescriptive powers and can order an interconnection and division rate upon request of the interconnecting carrier.

Subsection (e) of Section 2 prohibits any U.S. record carrier from enforcing any provision contained in an agreement for the provision of record communication service if the Commission determines that such provision impedes the development or operation of competitive record communications service markets. The intention of the Committee is that this prohibition extend only to interconnection agreements with foreign PTTs. As explained elsewhere, the Committee has created a mechanism whereby a new entrant may invoke its interconnection rights under this bill and establish a circuit (bearer or otherwise) to a foreign country by means of another carrier's facilities. The Committee is particularly concerned that the carrier providing the facilities or capacity under such an arrangement not be impeded from doing so by means of a term in an agreement with a PTT. The Committee's concern in this regard would be particularly great if these agreements were to prohibit the use of bearer circuits or other technological devices which enable competing carriers to enter the market without affecting the operational practices of the interconnecting PTT. The intention of the committee is not that U.S. carriers deceive foreign PTTs, but rather that the PTTs not be used as an excuse for constraining competition in the international record communications market.

Thus, the FCC could bar the enforcement of an agreement between a United States record carrier and a foreign administration if that agreement restricted the ability of other United States record carriers to send or receive traffic with that administration on a non-discriminatory basis, or limited the ability of other United States record carriers to receive return traffic to the United States from that foreign administration in proportion to the United States originated traffic which those other United States carriers may transmit to that country. This is designed to reduce the ability of monopoly foreign administrations to impede competition among United States record carriers and to "whipsaw" them. Nothing in this section shall affect any contract described in section 4 of the bill.

The Commission retains its overall authority under the Communications Act of 1934 as amended. In addition, however, the bill provides explicit authority for the Commission to vacate or modify any agreement entered into by any record carriers pursuant to this legislation if the Commission determines that the agreement is not a pro-competitive agreement that would foster the development of a fully competitive marketplace in the provision of record communications services.

In addition, there is a requirement that during the three-year period the negotiated agreement, the Commission must vacate or modify any agreement if the Commission determines that such an agreement discriminates against any carrier. This provision is designed to prevent physical discrimination. For example, if the points of interconnection specified in the agreement are located in cities where certain carriers do not have facilities, then the Commission would be required to modify that portion of the agreement. If the points of interconnection specified in the agreement were San

Francisco and New York, when one of the major carriers currently interconnects in New York and Miami, then such discrimination is contrary to the intention of the Committee and such agreement should be vacated by the Commission accordingly.

This section also includes a 120 day moratorium on the entry of Western Union (the domestic carrier) into the international marketplace. This 120 day moratorium period is triggered by the agreement which is either entered into voluntarily by the various carriers or imposed by the Commission at the end of the 90 day timeframe. It is the Committee's intention that Western Union be permitted to go overseas at the end of this 120 day moratorium period, provided that the interconnection arrangements are being implemented as rapidly as possible. However, in the event that the Commission finds that the interconnection arrangements negotiated or entered into pursuant to the legislation are not, in fact, being implemented, it retains its normal authority to condition facilities construction permits (under Section 214 of the Act) in order to bring all carriers into compliance with the agreement.

Every record carrier is granted overall authority to provide record communications services in U.S. inter- and intrastate markets, and in all international markets. This is clearly a statement of Congressional intent that open entry into all markets be encouraged by the Commission. However, the Commission retains its normal facilities construction authorization authority, in order that the ability of the Commission to regulate these carriers not be undermined. It is clearly the intention of the Committee that all permits requested be promptly granted unless, as noted above, a carrier is not living up to its obligations under the Act.

OVERSIGHT OF DISTRIBUTION FORMULAS

Section 3 retains the current requirement of the Act that the Commission establish outbound distribution formulas for a one year period in order to accomplish an orderly transition.

EFFECT OF AMENDMENT ON CERTAIN CONTRACTS

Section 4 recognizes that in contemplation of the repeal of section 222, Western Union has entered into certain contracts with international record carriers with respect to the distribution of international record traffic originated on the Western Union domestic system. The Committee has no intention to affect the validity of the terms of those otherwise lawful contracts entered into prior to June 23, 1981, or otherwise extinguish the parties' contractual obligations concerning the distribution of outbound international record traffic. Nothing in Section 2 of this bill shall affect their validity. In the event that the agreements are challenged, their legality shall be determined by the courts on well-established issues of contract law, such as the intent of the parties and the nature of the consideration.

CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with clause 3 of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in brackets, new matter is printed in *italics*):

SECTION 222 OF THE COMMUNICATIONS ACT OF 1934

[CONSOLIDATIONS AND MERGERS OF TELEGRAPH CARRIERS

[Sec. 222. (a) As used in this section—

(1) The term "consolidation or merger" includes the legal consolidation or merger of

two or more corporations, and the acquisition by a corporation through purchase, lease, or in any other manner, of the whole or any part of the property, securities, facilities, services, or business of any other corporation or corporations, or of the control thereof, in exchange for its own securities, or otherwise.

(2) The term "domestic telegraph carrier" means any common carrier by wire or radio, the major portion of whose traffic and revenues is derived from domestic telegraph operations; and such term includes a corporation owning or controlling any such common carrier.

(3) The term "international telegraph carrier" means any common carrier by wire or radio the major portion of whose traffic and revenues is derived from international telegraph operations; and such term includes a corporation owning or controlling any such common carrier.

(4) The term "consolidated or merged carrier" means any carrier by wire or radio which acquires or operates the properties and facilities unified and integrated by consolidation or merger.

(5) The term "domestic telegraph operations" includes acceptance, transmission, reception, and delivery of record communication by wire or radio which either originate or terminate at points within the continental United States, Alaska, Canada, Saint Pierre-Miquelon, Mexico, or Newfoundland, and includes acceptance, transmission, reception, or delivery performed within the continental United States between points of origin within and points of exit from, and between points of entry into and points of destination within, the continental United States with respect to record communications by wire or radio which either originate or terminate outside the continental United States, Alaska, Canada, Saint Pierre-Miquelon, Mexico, and Newfoundland, and also includes the transmission within the continental United States of messages which both originate and terminate outside but transit through the continental United States: *Provided*, That nothing in this section shall prevent international telegraph carriers from accepting and delivering international telegraph messages in the cities which constitute gateways approved by the Commission as points of entrance into or exit from the continental United States, under regulations prescribed by the Commission, and the incidental transmission or reception of the same over its own or leased lines or circuits within the continental United States.

(6) The term "international telegraph operations" includes acceptance, transmission, reception, and delivery of record communications by wire or radio which either originate or terminate at points outside the continental United States, Alaska, Canada, Saint Pierre-Miquelon, Mexico, and Newfoundland, but does not include acceptance, transmission, reception, and delivery performed within the continental United States between points of origin within and points of exit from, and between points of entry into, and points of destination within, the continental United States with respect to such communications, or the transmission within the continental United States of messages which both originate and terminate outside but transmit through the continental United States.

(7) The terms "domestic telegraph properties" and "domestic telegraph facilities" means properties and facilities, respectively, used or to be used in domestic telegraph operations.

(8) The term "employee" or "employees" (i) shall include any individual who is absent from active service because of fur-

ough, illness, or leave of absence except that there shall be no obligation upon the consolidated or merged carrier to reemploy any employee who is absent of furlough, except in accordance with the terms of his furlough, and (ii) shall not include any employee of any carrier which is a party to a consolidation or merger pursuant to this section to the extent that he is employed in any business which carrier continues to operate independently of the consolidation or merger.

(9) The term "representative" includes any individual or labor organization.

(10) The term "Continental United States" means the District of Columbia and the States of the Union.

(b)(1) It shall be lawful, upon application to any approval by the Commission as hereinafter provided, for any two or more domestic telegraph carriers to effect a consolidation or merger; and for any domestic telegraph carrier, as a part of any such consolidation or merger or thereafter, to acquire all or any part of the domestic telegraph properties, domestic telegraph facilities, or domestic telegraph operations of any carrier which is not primarily a telegraph carrier. *Provided*, That, except as provided in paragraph (2) of this subsection, no domestic telegraph carrier shall effect a consolidation or merger with any international telegraph carrier, and no international telegraph carrier shall effect a consolidation or merger with any domestic telegraph carrier.

(2) As a part of any such consolidation or merger, or thereafter upon application to and approval by the Commission as hereinafter provided, the consolidated or merged carrier may acquire all or any part of the domestic telegraph properties, domestic telegraph facilities, or domestic telegraph operations of any international telegraph carrier.

(c)(1) Whenever any consolidation or merger is proposed under subsection (b) of this section, the telegraph carrier or telegraph carriers seeking authority therefor shall submit an application to the Commission, and thereupon the Commission shall order a public hearing to be held with respect to such application and shall give reasonable notice thereof, in writing, and an opportunity to be heard, to the Governor of each of the States in which any of the physical property involved in such proposed consolidation or merger is situated, to the Secretary of State, the Secretary of Defense, the Attorney General of the United States, representatives of employees where represented by bargaining representatives known to the Commission, and to such other persons as the Commission may deem advisable. If, after such public hearing, the Commission finds that the proposed consolidation or merger, or an amended proposal for consolidation or merger, (1) is authorized by subsection (a) of this section, (2) conforms to all other applicable provisions of this section, (3) is in the public interest, the Commission shall enter an order approving and authorizing such consolidation or merger, and thereupon any law or laws making consolidations and mergers unlawful shall not apply to the proposed consolidation or merger. In finding whether any proposed consolidation or merger is in the public interest, the Commission shall give due consideration, among other things, to the financial soundness of the carrier resulting from such consolidation or merger.

(2) Any proposed consolidation or merger of domestic telegraph carriers shall provide for the divestment of the international telegraph operations theretofore carried on by any party to the consolidation or merger, within a reasonable time to be fixed by the Commission, after the consideration for the

property to be divested is taken by the Commission to be commensurate with its value, and as soon as the legal obligations, if any, of the carrier to be so divested will permit. The Commission shall require at the time of the approval of such consolidation or merger that any such party exercise due diligence in bringing about such divestment as promptly as it reasonably can.

(d) No proposed consolidation or merger of telegraph carriers pursuant to this section shall be approved by the Commission if, as a result of such consolidation or merger, more than one-fifth of the capital stock of any carrier which is subject to the jurisdiction of the Commission will be owned or controlled, or voted, directly or indirectly, (1) by any alien or the representative of any alien, (2) by any foreign government or the representative thereof, (3) by any corporation organized under the laws of any foreign government, or (4) by any corporation of which any officer or director is an alien, or of which more than one-fifth of the capital stock is owned or controlled, or voted, directly or indirectly, by any alien or the representative of any alien, by any foreign government or the representative thereof, or by any corporation organized under the laws of a foreign government.

(e)(1) In the case of any consolidation or merger of telegraph carriers pursuant to this section, the consolidated or merged carrier shall, except as provided in paragraph (2) of this subsection, distribute among the international telegraph carriers, telegraph traffic by wire or radio destined to points without the continental United States, and divide the charges for such traffic, in accordance with such just, reasonable, and equitable formula in the public interest as the interested carriers shall agree upon and the Commission shall approve; *Provided, however*, That in case the interested carriers shall fail to agree upon a formula which the Commission approves as above provided, the Commission, after due notice and hearing, shall prescribe in its order approving and authorizing the proposed consolidation or merger a formula which it finds will be just, reasonable, equitable, and in the public interest, will be, so far as is consistent with the public interest, in accordance with the existing contractual rights of the carriers, and will effectuate the purposes of this subsection.

(2) In the case of any consolidation or merger pursuant to this section of telegraph carriers which, immediately prior to such consolidation or merger, interchanged traffic with telegraph carriers in a contiguous foreign country, the consolidated or merged carrier shall distribute among such foreign telegraph carriers, telegraph traffic by wire or radio destined to points in such contiguous foreign country and shall divide the charges therefor, in accordance with such just, reasonable, and equitable formula in the public interest as the interested carriers shall agree upon and the Commission shall approve; *Provided, however*, That in case the interested carriers should fail to agree upon a formula which the Commission approves as above provided, the Commission, after due notice and hearing, shall prescribe in its order approving and authorizing the proposed consolidation or merger a formula which it finds will be just, reasonable, equitable, and in the public interest, will be, so far as is consistent with the public interest, in accordance with the existing contractual rights of the carriers, and will effectuate the purposes of this subsection. As used in this paragraph, the term "contiguous foreign country" means Canada, Mexico, or Newfoundland.

(3) Whenever, upon a complaint or upon its own initiative, and after a full hearing,

the Commission finds that any such distribution of telegraph traffic among telegraph carriers, or any such division of charges for such traffic, which is being made or which is proposed to be made, is or will be unjust, unreasonable, or inequitable, or not in the public interest, the Commission shall by order prescribe the distribution of such telegraph traffic, or the division of charges therefor, which will be just, reasonable, equitable, and in the public interest, and will be, so far as is consistent with the public interest, in accordance with the existing contractual rights of the carriers.

(4) For the purposes of this subsection, the international telegraph operations of any domestic telegraph carrier shall be considered to be the operations of an independent international telegraph carrier, and the domestic telegraph operations of any international telegraph carrier shall be considered to be the operations of an independent domestic telegraph carrier.

(f)(1) Each employee of any carrier which is a party to a consolidation or merger pursuant to this section who was employed by such carrier immediately preceding the approval of such consolidation or merger, and whose period of employment began on or before March 1, 1941, shall be employed by the carrier resulting from such consolidation or merger for a period of not less than four years from the date of the approval of such consolidation or merger, and during such period no such employee shall, without his consent, have his compensation reduced or be assigned to work which is inconsistent with his past training and experience in the telegraph industry.

(2) If any employee of any carrier which is a party to any such consolidation or merger, who was employed by such carrier immediately preceding the approval of such consolidation or merger, and whose periods of employment began after March 1, 1941, is discharged as a consequence of such consolidation or merger by the carrier resulting therefrom, within four years from the date of approval of the consolidation or merger, such carrier shall pay such employee at the time he is discharged severance pay in cash equal to the amount of salary or compensation he would have received during the full four-week period immediately preceding such discharge at the rate of compensation or salary payable to him during such period, multiplied by the number of years he has been continuously employed immediately preceding such discharge by one or another of such carriers who were parties to such consolidation or merger, but in no case shall any such employee receive less severance pay than the amount of salary or compensation he would have received at such rate if he were employed during such full four-week period; *Provided, however*, That such severance pay shall not be required to be paid to any employee who is discharged after the expiration of a period, following the date of approval of the consolidation or merger, equal to the aggregate period during which such employee was in the employ, prior to such date of approval, of one or more of the carriers which are parties to the consolidation or merger.

(3) For a period of four years after the date of approval of any such consolidation or merger, any employee of any carrier which is a party to such consolidation or merger who was such an employee on such date of approval, and who is discharged as a result of such consolidation or merger, shall have a preferential hiring and employment status for any position for which he is qualified by training and experience over any person who has not therefore been an employee of any such carrier.

If any employee transferred from community to another as a result of any consolidation or merger, the carrier receiving therefrom shall pay, in addition to employee's regular compensation as an employee of such carrier, the actual travel expenses of such employee and his pay, including the cost of packing, crating, and transportation of household goods and personal effects.

In the case of any consolidation or merger pursuant to this section, the consolidated or merger carrier shall accord to any employee or former employee, or relative or beneficiary of any employee or former employee, of any carrier which is party to such consolidation or merger, the pension, health, disability or death insurance benefits, as were provided for prior to the date of approval of the consolidation or merger, under any agreement or plan of a carrier which is a party to the consolidation or merger which covered the greatest number of the employees affected by the consolidation or merger; except that in any case in which, prior to the date of approval of the consolidation or merger, an individual exercised his right of retirement, or right to health, disability, or death insurance benefits has accrued, under any agreement or plan of any carrier which is a party to the consolidation or merger, health, disability, or death insurance benefits, as the case may be, shall be accorded to such individual in conformity with the agreement or plan under which such individual exercised his right of retirement or under which right to benefits accrued. For purposes of terminating and according the rights and benefits specified in this paragraph, any time spent in the employ of the carrier of which such individual was an employee at the time of the consolidation or merger shall be considered to have been spent in the employ of the consolidated or merged carrier. The application for approval of any consolidation or merger under this section shall contain a guaranty by the proposed consolidated carrier that there will be no abridgment of any of the rights or benefits specified in this paragraph.

Any employee who, since August 27, 1981, has left a position other than a temporary position, in the employ of any carrier which is a party to any such consolidation or merger, for the purpose of entering the Army or naval forces of the United States, shall be considered to have been in the employ of such carrier during the time he was a member of such forces, and, upon making an application for employment with the consolidated or merged carrier within forty days from the time he is released from service in any of such forces on honorable conditions, such former employee shall be employed by the consolidated or merged carrier and entitled to the benefits to which he would have been entitled if he had been employed by one of such carriers during all of such period of service in such forces; except that this paragraph shall not require the consolidated or merged carrier, in the case of any such individual, to provide compensation, or to accord health, disability, or death insurance benefits, for the period during which he was a member of the Army or naval forces. If any such former employee is disabled and because of such disability is not qualified to perform the duties of his former position but otherwise meets the requirements for employment, he shall be accorded such available employment at an appropriate rate of compensation as he is able to perform and to which his service credit shall entitle him.

No employee of any carrier which is a party to any such consolidation or merger, without his consent, have his compen-

sation reduced, or (except as provided in paragraph (2) and paragraph (8) of this subsection) be discharged or furloughed during the four-year period after the date of approval of such consolidation or merger. No such employee shall, without his consent, have his compensation reduced, or be discharged or furloughed, in contemplation of such consolidation and merger, during the six-month period immediately preceding such approval.

(8) Nothing contained in this subsection shall be construed to prevent the discharge of any employee for insubordination, incompetency, or any other similar cause.

(9) All employees of any carrier resulting from any such consolidation or merger, with respect to their hours of employment, shall retain the rights provided by any collective bargaining agreement in force and effect upon the date of approval of such consolidation or merger until such agreement is terminated, executed, or superseded. Notwithstanding any other provision of this Act, any agreement not prohibited by law pertaining to the protection of employees may hereafter be entered into by such consolidated or merged carrier and the duly authorized representative or representatives of its employees selected according to existing law.

(10) For purposes of enforcing or protection of rights, privileges, and immunities granted or guaranteed under this subsection, the employees of any such consolidated or merged carrier shall be entitled to the same remedies as are provided by the National Labor Relations Act in the case of employees covered by that Act; and the National Labor Relations Board and the courts of the United States (including the courts of the District of Columbia) shall have jurisdiction and power to enforce and protect such rights, privileges, and immunities in the same manner as in the case of enforcement of the provisions of the National Labor Relations Act.

(11) Nothing contained in this subsection shall apply to any employee of any carrier which is a party to any such consolidation or merger whose compensation is at the rate of more than \$5,000 per annum.

(12) Notwithstanding the provisions of paragraphs (1) and (7), the protection afforded therein for the period of four years from the date of approval of the consolidation or merger shall not, in the case of any particular employee, continue for a longer period, following such date of approval, than the aggregate period during which such employee was in the employ, prior to such date of approval, of one or more of the carriers which are parties to the consolidation or merger. As used in paragraphs (1), (2), and (7), the term "compensation" shall not include compensation attributable to overtime not guaranteed by collective bargaining agreements.

(g)(1) The authority of any carrier to provide any service or operate any facilities which it is authorized to provide or operate on the date of enactment of this subsection shall not be altered solely by the inclusion of Hawaii within the definition of "Continental United States", nor shall such inclusion restrict or impair any carrier's eligibility after the date of enactment of this subsection for new or additional authority.

(2) Whenever, upon a complaint or upon its own initiative, and after opportunity for a hearing, the Commission finds that any charge, classification, regulation, or practice relating to intercarrier arrangements of any carrier serving Hawaii is or will be unjust, unreasonable, discriminatory, or not in the public interest, the Commission shall determine and prescribe what charge, classification, regulation, or practice, or such other

remedy as is or will be just, reasonable, non-discriminatory and in the public interest to be thereafter followed.]

Competition Among Record Carriers

Sec. 222. (a) For purposes of this section:

(1) The term "existing international record carrier" means any international record carrier which is eligible, on the date of the enactment of the Record Carrier Competition Act of 1981, to obtain record traffic from a record carrier in the United States for delivery outside the United States.

(2) The term "international record carrier" means any United States record carrier which derives a majority of its revenues during any calendar year from the provision of international record communications services between points of entry into or exit from the United States and points outside the United States.

(3) The term "primary existing international record carrier" means any existing international record carrier which is engaged in the direct provision of record communications services between the United States and 4 or more continents.

(4) The term "record carrier" means a common carrier engaged in the offering for hire of any record communications service, including service on interstate network facilities between 2 points located in the same State. Such term does not include any common carrier which derives a majority of its revenues during any calendar year from the provision of services other than record communications service.

(5) The terms "record communications facility" and "facility" means any telecommunications facility or equipment designed or used primarily to provide any record communications service.

(6) The term "record communications service" means any telecommunications service which is designed or used primarily to transfer information which originates or terminates in written or graphic form.

(b)(1) The Commission shall, to the maximum extent feasible, promote the development of fully competitive domestic and international markets in the provision of record communications service, so that the public may obtain record communications service and facilities (including terminal equipment) the variety and price of which are governed by a fully competitive marketplace. The Commission shall reduce the extent to which it regulates record carriers as the development of competition among record carriers replaces the need for regulation to protect the public.

(2) In furtherance of the purposes of this section, the Commission shall assure that none of the costs of regulated or unregulated record communications services and facilities (including terminal equipment) are borne by the users of any other record communications services.

(c)(1)(A) Each record carrier shall make available to any other record carrier, upon reasonable request, full interconnection with any record communications service or record communications facility operated by such record carrier. Such record communications service or facility shall be made available, through written agreement, upon terms and conditions which are just, fair, and reasonable, and which are otherwise consistent with the purposes of this section.

(B)(i) If any record carrier engages both in the offering for hire of domestic record communications services and in the offering for hire of international record communications services, then such record carrier shall be treated as a separate domestic record carrier and a separate international record carrier for purposes of administering the intercon-

section 203. The requirements established in subparagraph (1).

(ii) In any case in which such separate domestic record carrier furnishes interconnection to such separate international record carrier, any interconnection which such separate domestic record carrier furnishes to other international record carriers shall be (I) equal in type and quality; and (II) made available at the same rates and upon the same terms and conditions.

(iii) In any case in which such separate international record carrier furnishes interconnection to such separate domestic record carrier, any interconnection which such separate international record carrier furnishes to other domestic record carriers shall be (I) equal in type and quality; and (II) made available at the same rates and upon the same terms and conditions.

(iv)(I) Subject to the provisions of subclause (II), if a request for interconnection under subparagraph (A) is for the purpose of providing international record communications service, then the agreement entered into under subparagraph (A) shall require that the allocation of record communications service between points outside the United States and points of entry in the United States shall be based upon a pro rata share of record communications service between points of exit out of the United States and points outside the United States provided by the carrier making such request for interconnection.

(II) The requirement established in subclause (I) shall not apply in any case in which the customer requesting any record communications service between a point outside the United States and a point of entry in the United States has the option to specify the international record carrier which will provide such record communications service.

(2) If any request made by a record carrier under paragraph (1) will require an agreement under which any record communications service or record communications facility operated by one of the parties to such agreement will be used by any other party to such agreement, then such agreement shall establish a nondiscriminatory formula for the equitable allocation of revenues derived from such use between the parties to such agreement, except that each party to such agreement shall have the right to establish the total price charged by such party to the public for any such service which is originated by such party, consistent with the provisions of section 203. To the extent possible, and consistent with the provisions of paragraph (3)(B)(ii), the Commission shall require that such equitable allocation of revenues be based upon the relative costs of the record communications service or facility employed as a result of such agreement.

(3)(A) The Commission, as soon as practicable (but not later than 15 days) after the date of the enactment of the Record Carrier Competition Act of 1981, shall convene a meeting between (i) all existing international record carriers; and (ii) any record carriers which the Commission determines would be parties to any agreement under paragraph (1). Such meeting shall be held for the purpose of negotiating the agreement required in paragraph (1). Representatives of the Commission shall attend such meeting for purposes of monitoring such negotiations.

(B)(i) If—

(I) any record carriers specified in subparagraph (A)(ii); and (II) a majority of the primary existing international record carriers involved in the meeting convened by the Commission under subparagraph (A);

fail to enter into an agreement before the end of the 45-day period following the begin-

ning of such meeting, then the Commission shall issue an interim or final order which establishes a just, fair, reasonable, and nondiscriminatory agreement which is consistent with the purposes of this section. Subject to the provisions of paragraph (4)(B), any such agreement established by the Commission shall be binding upon such parties.

(ii) Such interim or final order shall be issued not later than 90 days after the date on which the Commission convenes the meeting under subparagraph (A). If—

(I) any record carriers specified in subparagraph (A)(i); and

(II) a majority of the primary existing international record carriers involved in the meeting convened by the Commission under subparagraph (A);

reach an agreement which complies with the requirements of this section, and such agreement is entered into before the issuance of such order by the Commission under this subparagraph, then such agreement of the parties shall take effect and the Commission shall not be required to issue any such order.

(C) Any record carrier which is not subject to the agreement entered into, or established by the Commission, under this paragraph may elect to be subject to the terms of such agreement upon furnishing written notice to the Commission, and to all existing parties to such agreement.

(D)(i) The agreement entered into, or established by the Commission, under this paragraph shall terminate at the end of the 3-year period following the effective date of such agreement, except that the Commission shall have authority to provide that such agreement shall continue in effect if the Commission determines that such continuation is necessary to carry out the purposes of this section.

(ii) After the expiration of such agreement, in any case in which a record carrier seeking interconnection in accordance with paragraph (1) is unable to enter into an agreement for the provision of such interconnection, the Commission shall have authority to establish an agreement for such interconnection in accordance with the provisions of this section.

(E) No United States record carrier shall have any authority to enforce any provision contained in an agreement for the provision of record communications service or facilities which is entered into or renewed after the date of the enactment of the Record Carrier Competition Act of 1981, if the Commission determines that such provision impedes the development or operation of competitive record communications service markets.

(4)(A) The Commission shall have authority to vacate or modify any agreement entered into by any record carriers under this section if the Commission determines that such agreement is not consistent with the purposes of this section. During the 3-year period specified in paragraph (3)(D)(i), the Commission shall vacate or modify any such agreement under this subparagraph if the Commission determines that such agreement discriminates against any carrier.

(B) In any case in which the Commission issues an interim or final order under paragraph (3)(B), the parties which are specified in subclauses (I) and (II) of paragraph (3)(B)(ii) and which are subject to such order shall have authority to supersede the application of such order by entering into an agreement which is consistent with the purposes of this section, except that any such agreement shall be subject to the authority of the Commission under subparagraph (A.)

(5) In any case in which a United States record carrier (other than an international record carrier) submits an application to the Commission for authority to provide in-

ternational record communications service, the Commission shall not have any authority to take any final action with respect to such application until the end of the 120-day period following the date a written agreement is entered into between such record carrier and existing international record carriers under paragraph (3) (or following the effective date of any interim or final order issued by the Commission under paragraph (3)(B) with respect to such carriers). The limitation upon Commission authority established in this paragraph shall expire at the end of the 210-day period following the date of the enactment of the Record Carrier Competition Act of 1981.

(d) Each record carrier shall be authorized to provide record communications service in the United States domestic market and in the international market. Any such carrier seeking to provide such service, directly or indirectly, shall submit an application to the Commission under section 214. The Commission shall act expeditiously upon any such application.

Mr. Speaker, there are a number of procompetitive provisions of the legislation that I would like to outline for the Members of the House:

The bill contains a statutory prohibition against cross-subsidies. As was pointed out during the subcommittee's hearing, there is currently a problem of cross-subsidizing the provision of telex equipment—which is a competitive market—with revenues from transmission services. In other words, certain carriers are giving away equipment, and making up the difference by overcharging for transmission services. Such conduct would be outlawed by the bill.

The bill places an affirmative obligation upon the Federal Communications Commission to foster the development of a competitive marketplace. Currently, the Commission's only direction from the Congress is to act "in the public convenience and necessity." The language of H.R. 4927 helps to make that general guidance more specific, by requiring procompetitive regulation.

The bill mandates interconnections between and among carriers. These interconnection standards are the toughest considered by the Congress, and will help to assure that discrimination by carriers will not take place.

The bill contains provisions which will prevent foreign carriers—often owned or controlled by foreign governments—from affecting the development of competition in the United States. This is necessary because a foreign carrier could enter into a preferential agreement with one U.S.-based IRC, and give that carrier an unfair advantage in the domestic marketplace. H.R. 4927 includes provisions which will guarantee that this manipulation will not take place.

Finally, the bill provides for an unrepresented constituency: new entrants. One of the greatest bars to monopoly pricing is the threat of a new entrant undercutting prices. The committee's bill sets up a mechanism to insure that new entrants are able to get into the marketplace, and ends the

ability to such entry to be artificially restricted.

Mr. Speaker, H.R. 4927 is a procompetitive bill—in fact, I think it is one of the most procompetitive bills ever passed by the Congress.

It is user-oriented legislation. By providing a procompetitive marketplace in the provision of record communications services, the legislation assures that consumers will get the products and services they want, at the lowest possible price.

This legislation is a consensus bill. It was reported unanimously both by the subcommittee and the full committee. I urge the passage of H.R. 4927, the Record Carrier Competition Act of 1981. I reserve the balance of my time.

Mr. COLLINS of Texas. Mr. Speaker, I yield myself such time as I may consume.

(Mr. COLLINS of Texas asked and was given permission to revise and extend his remarks.)

Mr. COLLINS of Texas. Mr. Speaker, section 222 of the Communications Act is in drastic need of reform. It artificially divides the record carrier market into international and domestic segments, and it prohibits the primary domestic service provider from offering international service.

Government-established market allocations is bad public policy. In the record industry, this bad policy has created a domestic monopoly and an international oligopoly.

H.R. 4927 is a procompetitive bill. It will permit entry by the domestic carriers into the international market, and the international carriers will be allowed to seek domestic business. The increased competition will benefit the users of the record services that are provided by these companies.

Just as important, H.R. 4927 will encourage new competitive entry into both the domestic and international arenas. The innovations that are sure to be provided by these new entrants will offer further benefits to the consumer.

The bill implements this procompetitive policy in a variety of ways. Most importantly, it mandates that all carriers permit their competitors to interconnect their transmission facilities. And it establishes a mechanism to insure that equal interconnection arrangements are in place within 210 days of enactment. Universal interconnection will benefit the customers of record services by promoting efficient investment decisions by carriers.

H.R. 4927 substantially amends section 222 of the Communications Act in order to foster the development of competition in the international and domestic record; that is, telex, telegraph, telegraph markets.

Under section 222, Western Union Telegraph Co. (WU) is confined to the domestic record communications market. Because WU is prohibited by section 222 from expanding its domestic services into international markets, the FCC has been hesitant to author-

ize existing international record carriers (IRC's) to compete with WU domestically. As a result, the record carrier market is geographically cartelized. WU provides nearly 100 percent of the domestic services, and a handful of IRC's (RCA, WUI, ITT, TRT) provide the same kinds of services internationally.

In order to promote competition in both the domestic and international markets, H.R. 4927 provides as follows:

Instructs the FCC to authorize IRC's to offer domestic record service.

Establishes the principle that universal interconnection of record carrier networks is desirable in order to minimize duplicative network construction and unreasonably high charges for record services to the public.

Instructs the FCC to authorize WU to provide international record service within 120 days of the date that WU and the IRC's agree on interim interconnection arrangements. In no case, however, can the moratorium extend beyond 210 days.

Provides that interim interconnection arrangements will terminate after 3 years unless the FCC finds that a continuation is necessary to carry out the purposes of this section.

Guarantees that carriers which interconnect with another carrier in order to provide international service from the United States to an international point shall receive the same proportion of traffic coming from that international point into the United States that the interconnecting carrier generates on an outbound basis.

Prohibits enforcement of any agreement that impedes competition.

Instructs the FCC to reduce regulation as competition develops.

There are no authorizations contained in the bill.

Mr. Speaker, I urge passage of H.R. 4927.

Mr. WIRTH. Mr. Speaker, I thank the gentleman from Texas (Mr. COLLINS) for his comments and for his very able assistance on this consensus legislation, and I yield 4 minutes to the distinguished gentleman from Washington (Mr. SWIFT), who has also been one of the Members who really carried forward this very complicated and distinguished piece of legislation.

(Mr. SWIFT asked and was given permission to revise and extend his remarks.)

Mr. SWIFT. Mr. Speaker, I would like to compliment the chairman and the ranking minority member of the Subcommittee on Telecommunications.

This is an institution in which only things that do not work very well get the attention of either the press or the public and sometimes the membership itself. So when something works very well, when it goes through scrutiny and when a problem is solved in a bipartisan fashion, it is little noticed and never remembered very much at all.

The fact is that what we are discussing today is the solution of a problem that has been plaguing the Congress for a number of years, and no one has been able to quite find the key to unlock the conundrums that have existed in trying to draft this legislation.

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The chairman, with the active cooperation of the ranking minority member, arrived at a solution.

Often I am asked by my colleagues that do not follow closely communications legislation as to "Why are you fooling around in this area? Why are you trying to deal with a bill over there? Why are you trying to fix something that ain't broken?"

The fact is that a great deal of the communications policy of this country that has worked very well for 30, 40, 50 years, no longer works because of radical changes that are being forced by new technology. It is nothing that we as policymakers have caused. But we as policymakers have to respond.

This is happening in virtually every field of communication. As a result, we are dealing with tremendously complex issues and trying to devise solutions that will neither stand in the way of new technology moving along nor, on the other hand, leave regulations in the way so that as we try to make those new technologies find a position in the marketplace, so that we can pursue their manifest destiny, if you will, that they will not be stopped in that pursuit either by regulatory agencies or statutes that are out of date. That is precisely the situation we find here with H.R. 4927. It is a situation in which it has been broke for a number of years now. There was a need to move into more competitive kinds of fields, both internationally and domestically.

Trying to determine how to do that was a problem that no one until now had been able to solve. We had here, aside from the ranking minority members' predilection toward large words like oligopoly, we have had tremendous cooperation. That cooperation has permitted the House of Representatives and the Communications Subcommittee thereof to come up with the solution to the problem that has otherwise resisted solution. It is perhaps wise that the membership, the press, and the public take note that this institution does function well sometimes, even though when it does so it is normally anonymously.

I return the balance of my time.

Mr. WIRTH. Mr. Speaker, I thank the gentleman from Washington and would say that this piece of legislation, as the gentleman from Washington described it, is a very, very complicated small piece of legislation but it pales by comparison with the larger endeavor the subcommittee is currently up to, which is the rewriting of the communications legislation, the Communications Act of 1934.

We hope that we have set the kind of standard here for open and clear process by which we build in incentives for competition and in which all members of the subcommittee were involved and that this will mark the character of the much larger endeavor of rewriting the Communications Act of 1934.

● **Mr. MOFFETT.** Mr. Speaker, the Energy and Commerce Committee has produced an important deregulatory proposal which deserves the unanimous support of all our colleagues. The Record Carrier Competition Act of 1981 modernizes the rules under which international and domestic record carriers operate in a manner which will stimulate competition in this important telecommunications market.

Prior to the maturation of the intercity telephone network, telegrams were the dominant form of long-distance communications. By the 1930's, however, long-distance phone service and air mail began to account for an ever-increasing share of the market. Phone and airplane service were not cheap, nor were they adequate substitutes for written (record) communications.

Let me describe the telegraph market, briefly: In the 1930's the domestic telegraph market was dominated by two carriers: Western Union, with a 66-percent share and Postal Telegraph with a 15-percent share. With the onset of the Great Depression, the American telegraph industry was particularly hard hit. Postal was on the ropes financially. It borrowed heavily from the Reconstruction Finance Corporation; it reorganized into bankruptcy in the 1940's; and, it was in extremis until Congress passed an amendment to the Federal Communications Act—section 222—which consolidated the domestic industry, presenting Western Union with an American monopoly.

In 1939, the Senate passed Senate Resolution 45, a bill requiring a study of the telegraph market. This study initiated legislation permitting Western Union to merge with Postal. One consequence of the merger involved a congressional policy decision with respect to Western Union's international operations. Fearing that the international operations, connected with WU's domestic monopoly, would place Western Union's competition at a competitive disadvantage. Thus, section 222 contained a prohibition against Western Union continuing international operations. Further, provisions were made to protect the pension rights of Postal's workers, and an anti-trust waiver was granted clearing the way for the merger.

This left Western Union in sole control of the U.S. market and with four principal carriers—ITT, RCA, TRT, and, ultimately, Western Union International—now controlled by Xerox—as the dominant international record carriers (IRC's).

Since 1971, the FCC has attempted to foster competition in the domestic market. These rulemakings resulted in a January 25, 1979, decision in which the FCC determined that the Western Union domestic monopoly no longer served the public interest. Firms like Graphnet, ITT, and ATT now compete with Western Union. The FCC attempted to open things up in the international market for Western Union—but this move was struck down by the courts. They found that the prohibition contained against Western Union's participation was literal and absolute. Only an act of Congress could free Western Union; the Telecommunications Subcommittee bill does just that.

Unless this amendment is adopted, Western Union will continue to operate in an unfair posture with domestic carriers chipping away at its revenues; with Western Union locked out of lucrative foreign markets.

True deregulation will permit wide open competition in domestic and foreign traffic. Western Union's vice president Richard Hostetler, in pleading for this important revision, said the status quo is like "going down Niagara Falls in a barrel; down at the bottom somewhere there may be a placid pool, but meanwhile it's a rough ride."

Let us pass this bill and make meaningful competition a reality.●

● **Mr. MARKEY.** Mr. Speaker, as a cosponsor of this bill, I rise to voice my strong support and to commend the chairman of the subcommittee for very artfully negotiating this legislation.

I have a record on the Telecommunications Subcommittee of advocating competition in the telecommunications industry. I am proud to say that this is the first bill to emerge from this subcommittee that truly will foster a competitive environment.

I am proud that this subcommittee and the full Energy and Commerce Committee has shown its commitment to fair competition in the marketplace. We have before us today legislation that for the first time draws the link between deregulation and a compensating level of competition in the marketplace.

Let me point out what I consider to be a few of the bill's strongest points:

We have crafted legislation which provides for a group for which there is no powerful or well-financed lobby—new entrants into the record carrier industry. In this regard, this bill takes a tremendous step beyond just squaring off the vested interests of a cartel against a monopoly.

We have applied the spurs of competition to a technology which, until now, has fallen victim to monopoly complacency. My hope is that providers of record carrier service and new entrants into this industry will seek to advance this technology and will aggressively and creatively foster the development of new markets.

The interconnection provisions in this bill are solid. We have isolated bottlenecks and written the strongest interconnection standards ever seen at those bottlenecks. At the same time, however, we have avoided imposing burdensome costs and requirements at those bottlenecks.

Mr. Speaker, this is excellent legislation. I urge my colleagues to join me and the membership of the Telecommunications Subcommittee in strongly supporting this bill.●

● **Mr. MARKS.** Mr. Speaker, I speak today in support of H.R. 4927, which amends the Communications Act of 1934 to eliminate certain provisions relating to consolidations or mergers of telegraph and record carriers. In addition, passage of this legislation will help to create a more fully competitive marketplace in record carriage, which will prove of benefit to both suppliers of this service and to users. I am proud to be an original cosponsor of this legislation and want to take this moment to compliment the distinguished chairman of the Subcommittee on Telecommunications, Consumer Protection, and Finance, **TIM WIRTH**, together with the equally distinguished ranking Republican member on the subcommittee, **JAMES COLLINS**, who worked together to answer the conflicting concerns that so separated the affected industries in the past in order to bring this legislation to the floor.

This is clearly a consensus bill which responds to the complex issues in the international record carrier business. It wisely takes into account industry concerns and suggestions while helping to create a more competitive environment.

Lastly, I wish to emphasize that my cosponsorship of this legislation is based in large part on the recognition that the users of record carrier services will be the ultimate beneficiaries of a more competitive and dynamic international telecommunications industry.

Mr. COLLINS of Texas. Mr. Speaker, I have no further requests for time.

Mr. WIRTH. Mr. Speaker, I have no further requests for time.

The **SPEAKER** pro tempore (**Mr. PATMAN**). The question is on the motion offered by the gentleman from Colorado (**Mr. WIRTH**) that the House suspend the rules and pass the bill, H.R. 4927, as amended.

The question was taken; and (two-thirds having voted in favor thereof) the rules were suspended and the bill, as amended, was passed.

A motion to reconsider was laid on the table.

Mr. WIRTH. Mr. Speaker, I ask unanimous consent that the Committee on Energy and Commerce be discharged from further consideration of the Senate bill (S. 271), to repeal section 222 of the Communications Act of 1934, and ask for its immediate consideration.

The Clerk read the title of the Senate bill.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Colorado? There was no objection. The Clerk read the Senate bill, as follows:

S. 271

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this may be cited as the "International Record Carrier Competition Act of 1981".

SEC. 2. Section 222 of the Communications Act of 1934 is repealed.

SEC. 3. In addition to its responsibilities pursuant to the Communications Act of 1934, the Federal Communications Commission shall require domestic telegraph carriers to provide communications facilities to international telegraph carriers which make a reasonable request for such services facilities upon terms and conditions which are just, reasonable, equitable, non-discriminatory, and in the public interest.

SEC. 4. Nothing in the Communications Act of 1934 shall be construed to prohibit entry of international record carriers in the domestic market, and the Federal Communications Commission is directed to expeditiously upon all applications filed by international record carriers to provide domestic telex service pursuant to the Communications Act of 1934.

SEC. 5. The Federal Communications Commission shall exercise its authority under the Communications Act of 1934 to continue oversight over the establishment of just, equitable, and nondiscriminatory distribution formulas for unrouted out-of-land telegraph or record traffic and the collection of revenues. This provision shall have any force or effect at the end of a three-year period beginning on the date of enactment of this Act.

SEC. 6. Notwithstanding any other provision of law, the Federal Communications Commission shall not be authorized to act on any application to provide international telegraph or record service which is filed by a domestic telegraph carrier pursuant to the Communications Act of 1934 until one hundred twenty days after the date of enactment of this Act.

MOTION OFFERED BY MR. WIRTH

MR. WIRTH. Mr. Speaker, I offer an amendment.

The Clerk read as follows:

MR. WIRTH moves to strike out all after the enacting clause of the Senate bill S. 271 and insert in lieu thereof the provisions of bill H.R. 4927, as passed by the House.

The motion was agreed to.

The Senate bill was ordered to be read a third time, was read the third time, and passed.

The title of the Senate bill was amended so as to read: "A bill to amend the Communications Act of 1934 to eliminate certain provisions relating to consolidations or mergers of telegraph and record carriers and to provide for a fully competitive marketplace for record carriage, and for other purposes."

The motion to reconsider was laid on the table.

A similar House bill (H.R. 4927) was placed on the table.

REVITALIZATION OF THE PLEASURE CRUISE INDUSTRY

Mr. JONES of North Carolina. Mr. Speaker, I ask unanimous consent for the immediate consideration of the bill (H.R. 3782) to revitalize the pleasure cruise industry by clarifying and waiving certain restrictions in the Merchant Marine Act, 1936, and the Merchant Marine Act, 1920, to permit the entry of the steamship vessel *Oceanic Constitution* into the trade.

The Clerk read the title of the bill. The SPEAKER pro tempore. Is there objection to the request of the gentleman from North Carolina?

There was no objection.

The Clerk read the bill, as follows:

H.R. 3782

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That, notwithstanding the provisions of section 506 of the Merchant Marine Act, 1936 (46 U.S.C. 1156), section 27 of the Merchant Marine Act, 1920 (46 U.S.C. 883), and any other provision of law, the Secretary of the department in which the United States Coast Guard is operating shall cause the vessel *Oceanic Constitution* (official Coast Guard number 262027) to be documented as a vessel of the United States entitled to engage in the coastwise trade, so long as—

(1) the vessel is in compliance with all other requirements for vessels engaging in the coastwise trade,

(2) any rebuilding of the vessel or repair work constituting a rebuilding, accomplished after enactment of this Act, shall be effected within the United States, its territories (not including trust territories), or its possessions, except that the vessel shall not lose its coastwise privileges by reason of having work necessary to install bow thrusters in the vessel and to equip it with a marine sewer sanitation system performed outside the United States, its territories (not including the trust territories) or its possessions before the vessel engages in the coastwise trade following enactment of this Act,

(3) the vessel is owned by a citizen or citizens of the United States as defined in the applicable laws prescribing the qualifications for vessels to engage in the coastwise trade, and

(4) for hire carriage in such trade is limited to passengers, their accompanying baggage, and one thousand measurement tons of cargo, of forty cubic feet each, per annum in any coastwise trade: *Provided*, That for hire carriage of cargo in excess of the aforesaid one thousand tons shall be unlawful.

With the following committee amendment:

On page 2, strike lines 17 through 23 and insert "sessions."

The committee amendment was agreed to.

The SPEAKER pro tempore. The gentleman from North Carolina (Mr. JONES) is recognized for 1 hour.

Mr. JONES of North Carolina. Mr. Speaker, I yield myself such time as I may consume.

(Mr. JONES of North Carolina asked and was given permission to revise and extend his remarks.)

Mr. JONES of North Carolina. Mr. Speaker, I rise in support of this legislation which would provide that the

passenger vessel *Oceanic Constitution* be allowed to return to U.S. registry as a cruise ship eligible to engage in our Nation's coastwise trade.

Two years ago, this body sponsored legislation which granted to five vessels the privilege of entering the coastwise cruise trades of the United States. These five vessels had various legal disabilities to their entry into an activity dominated by foreign vessels. Among those five was a sister ship to the *Oceanic Constitution*. That ship is the *Oceanic Independence*, a vessel as the one before us today, built in the United States, but which for a short period of time was transferred to foreign registry and which had some conversion work performed in a foreign shipyard. The *Independence* has been a great success and has added both to the employment of U.S. seamen and to the economy of the Hawaiian Islands in which she operates. The owners of that vessel, by adding the *Oceanic Constitution* to the Hawaiian interisland service trades, would add between 300 and 400 jobs, further enhancing the economy of Hawaii, improve our balance of trade, provide a valuable vessel for potential defense needs and create an economically efficient passenger fleet operation. I cannot stress the importance of adding efficiency to our merchant marine, and this legislation would go a long way toward improving efficiency, adding to our productivity and to the economy and defense of our Nation.

I urge my colleagues to support this legislation.

AMENDMENT OFFERED BY MR. JONES OF NORTH CAROLINA

Mr. JONES of North Carolina. Mr. Speaker, I offer an amendment.

The Clerk read as follows:

Amendment offered by Mr. JONES of North Carolina: After section 1, add the following new section:

SEC. 2. The vessel shall lose the right conferred by section 1 of this Act to engage in the coastwise trade if, during the first twelve months of operation as a vessel of the United States, it operates on a route in the coastwise trade other than the intra-Hawaiian Islands trade."

Mr. JONES of North Carolina. Mr. Speaker, I yield to the gentleman from New York for an explanation of the amendment.

(Mr. BIAGGI asked and was given permission to revise and extend his remarks.)

Mr. BIAGGI. Mr. Speaker, H.R. 3782 will continue the efforts of the Congress to revitalize the American passenger vessel industry. It follows the example of Public Law 96-111 and grants coastwise trading privileges to the vessel *Oceanic Constitution* by clarifying and waiving two statutory restrictions.

Under section 27 of the Merchant Marine Act of 1920, any vessel sold to foreign interests loses its coastwise trading privileges. Under section 506 of the Merchant Marine Act of 1936, a vessel for which a construction differ-