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INTERNATIONAL RECORD CARRIER COMPETITION ACT OF 1981

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Mr. PACKWOOD, from the Committee on Commerce, Science, and Transportation, submitted the following

REPORT

[To accompany S. 271]

The Committee on Commerce, Science, and Transportation, to which was referred the bill (S. 271) to repeal section 222 of the Communications Act of 1934, having considered the same, reports favorably thereon without amendment and recommends that the bill do pass.

PURPOSE

S. 271, as reported by the Committee, would permit the FCC to allow Western Union to enter the international record market.

BACKGROUND AND NEED

S. 271 was introduced in the Senate on January 27, 1981. It repeals section 222 of the Communications Act of 1934.

Prior to World War II, the two major companies providing domestic telegraph services in the United States were the Western Union Telegraph Company and the Postal Telegraph and Cable Corporation. By 1943, both domestic telegraph companies were in serious financial trouble. Telephone services were making significant inroads into the telegraph market, leaving both telegraph companies with excessive and duplicative facilities.

Section 222 was enacted to create a statutory antitrust exemption—allowing Western Union and Postal to merge. Congress was concerned, however, that the merged entity might utilize its new-found monopoly position in domestic telegraph service to favor its own international operation at the expense of its international record service competitors.

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To remove this danger, the merger legislation contained four additional provisions:

(*a*) Western Union was required to divest itself of its international operations;

(*b*) Domestic and international areas of service were defined and international record carriers (IRCs) could receive messages destined for international delivery, and hand over incoming messages destined for the hinterlands for delivery by Western Union;

(*c*) Western Union was required to distribute unrouted international telegraph messages among the overseas carriers according to "a just, reasonable and equitable formula"; and

(*d*) To compensate Western Union for the use of its facilities for the delivery of international messages, section 222 provides that the parties negotiate a proper division of revenues.

While important in 1943, when it was adopted, section 222 is now outmoded. The Committee finds that section 222 binds Western Union to conditions that make little sense in the modern, competitive telecommunications environment. Western Union no longer possesses the significant market power it had in 1943, and should no longer be barred from entering international markets.

Both the Commission and the Courts have urged repeal of section 222. In 1977, former Chairman Wiley testified before the Communications Subcommittee that:

> * * * section 222 of the Communications Act which governs international record carriers has impeded, rather than enhanced, the availability of international communications services.

And on May 9, 1979, former Chairman Ferris testified that he strongly favored deletion of section 222. Then, on February 18, 1981, at hearings on S. 271, Commissioner Anne Jones, appearing on behalf of the FCC testified that:

> I believe that while there might have been some reluctance in the past about such a measure, changing technology, the dynamism of the firms in both domestic and international markets, and the need for further new entry have eliminated any reason for further delay. S. 271 is a good bill that would enhance the process of making both domestic and international telecommunications markets more innovative, more productive, and more responsive to users.

In 1979, Judge Friendly in *ITT World Communications, Inc.* v. *FCC*[1] observed that:

> * * * Although obscurity in Federal statutes is not a new phenomenon to the Court, we have rarely seen opacity as dense as here (section 222). The best solution would be for Congress to clear away the debris it created 35 years ago and clearly advise what it wants.[2]

The rationale underlying section 222—that Western Union had a monopoly of telegraph and record services—has been further eroded

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[1] 595 F. 2d 897 (1979).

[2] *See also, ITT World Communications, Inc.* v. *FCC* (No. 79–4220, *et al.*, 2nd Cir., decided August 25, 1980), Slip Op., at 15.

since 1977. In 1979, the Commission ended Western Union's historic monopoly in record services. Additional telecommunications companies are ready, willing, and able to compete vigorously with Western Union. Furthermore, recent Commission actions have allowed new entry into the international market,[3] expanded the domestic operations of current International Record Carriers, and allowed the formula governing the distribution of unrouted traffic to be negotiated between Western Union and the IRCs.

The Committee is convinced that repeal of section 222 would:

(*a*) Leave the Commission with ample authority elsewhere in the act (e.g., sections 201, 202, 204) to deal with Western Union's distribution of outbound traffic among international carriers;

(*b*) Leave intact the agency's authority to require Western Union to interconnect fairly with the international carriers; and

(*c*) Leave intact the Commission's authority to promote effective competition in the domestic and international record markets.

Traffic Distribution Formula

Western Union distributes unrouted outbound international messages among the IRCs pursuant to a formula required by section 222 (e). See *RCA Global Communications, Inc.* v. *FCC*, 599 F.2d 881, *on reh.*, 563 F.2d 1 (1977), *after remand*, 574 F.2d 727 (2d Cir. 1978). The formula may be the product of negotiations approved by the FCC or of a prescription by the agency after appropriate procedures. The current formula for telegraph service, which the FCC is in the process of replacing,[4] requires Western Union to distribute unrouted traffic to each IRC in proportion to the routed traffic that each IRC generates.[5]

Repeal of section 222 would not preclude the FCC from using its powers under other sections of the Act if it found a need to continue oversight of the distribution of outbound traffic and the division of revenues. Section 214 permits the agency to place conditions on facilities certificates, as the public interest may require. For example, the agency might condition any future certification of Western Union facilities on Western Union's compliance with a fair method of distribution. Western Union has applications before the FCC virtually all the time that might serve as a vehicle for such a condition.[6] The FCC also might exercise its authority under section 202 to require Western Union not to discriminate among the international carriers in its dealing with them, including its decision with respect to traffic distribution and division of revenues. Section 201 authorizes the FCC to require interconnection between Western Union and the IRCs for through service and to establish the division of charges and regulations appli-

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[3] The Committee is concerned that new carriers, with international operating authority, have been barred fom entering this market by the general reluctance of foreign telecommunications administrations to deal directly with them. The Committee will address this issue later this session of Congress when it undertakes a broader and more extensive analysis of the international common carrier industry.

[4] See *Regulation of Domestic Public Message Services (cc Docket No. 78–96)*, 75 FCC 2d 345 (1980), *review pending sub nom. Western Union Tele Co.* v. *FCC*, D.C. Cir. No. 79–2495, and consolidated cases (filed December 14, 1979).

[5] There is no current distribution formula for Telex, because the overwhelming majority of Telex messages are routed by the customers via specific international carriers.

[6] Western Union presumably would apply immediately for authority to re-enter international operation. The order acting on its application would be an appropriate vehicle for conditions governing traffic distribution and divisions of revenues.

cable to interconnection. This power is similar to the power under section 222 to prescribe a formula and might be used to effect the same purpose if that were found to be in the public interest.

If the formula were no longer applicable pursuant to section 222, the IRCs and Western Union would govern their relationships by means of contracts, which would be filed with the FCC pursuant to section 211 of the act. The FCC could use its scrutiny of those contracts as the vehicle for regulating the distribution of traffic and the division of rates. Finally, the Commission could require Western Union to file tariffs setting forth its rates and practices with respect to the "service" it furnishes to the IRCs in the form of the domestic haul of international messages. These tariffs could include distribution plans as well as rates and would be subject to investigation for reasonableness and the absence of discrimination.

While current formula arrangements would be affected by the repeal of section 222, the FCC could move quickly under these other provisions to insure an orderly transition period.

INTERCONNECTION BETWEEN WESTERN UNION AND THE IRC'S

The record of the hearings held before the Communications Subcommittee is replete with assertions by the IRCs that the Commission has not adequately required, nor has Western Union acted, to provide adequate interconnection with the IRCs on reasonable request and on reasonable and non-discriminatory terms. For this reason, they assert, S. 271 should not be adopted without stronger interconnection provisions. The Committee recognizes the problem, and strongly admonishes the Commission to ensure fair interconnection by Western Union with the IRCs, in accordance with section 3 of the bill and section 201(a) of the Communications Act. Section 3 of S. 271 is not intended to affect the Commission's existing authority to require fair interconnection under section 201(a) of the act. Section 3 of S. 271 merely reflects the intent of the Committee that the Commission exercise its existing responsibilities under section 201(a). Effective competition among record carriers cannot be achieved in the absence of adequate access to requisite facilities. The Commission may want to assure such interconnection in acting upon Western Union's request, under section 214 of the act, to enter international markets.

WESTERN UNION ENTRY INTO INTERNATIONAL MARKETS

Repeal of section 222 would not mandate Western Union's entry into international markets.[7] It would merely permit the Commission, under section 214 to determine whether, and on what basis, Western Union should be authorized to provide overseas market services. This would satisfy many of the concerns raised by the IRCs who fear that Western Union would extend a "domestic monopoly" into the international arena.

The record before the Committee, however, undermines the assertion of Western Union dominance in the domestic market. Commissioner Jones, testifying before the subcommittee for the FCC, said that:

[7] It is clear that Western Union would have to seek authority under Section 214 of the act prior to engaging in international services, even if its traffic were routed via Canada or Mexico.

> In the domestic market, the demand for traditional telegraph service has declined substantially, largely because of the wealth of attractive, substitute services. Switched data services, directly competitive with Western Union's services, are also being provided by the telephone companies. SBS and American Satellite offer technologically advanced facilities customized for data users. General Telephone has recently received Commission authority to operate a similar data-oriented satellite system. Packet switching technology has permitted the implementation of several additional data networks by Telenet, Graphnet, and others.
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> More recently, the Commission allowed the IRCs to expand their points of operations so they can compete with Western Union for the landline haul portion of international record traffic. In 1979, this landline haul portion of international telex traffic represented 52 percent of Western Union's total telex revenues and 15 percent of its total revenues. The IRCs now have applied for authority to enter the domestic record market, by providing purely domestic service between and among their U.S. points of operation. In light of all of these factors, it is not surprising that Western Union's market position has weakened. As current new entrants gain operating experience and with additional new entry, the competitive position of these new entrants may become even more significant.

Thus, the committee is not persuaded that the Western Union market position should act as a bar to the repeal of section 222. However, with the elimination of section 222, the public, current and potential entrants, and the Commission will be able to make their decisions on services and rates based on their evaluations of actual market conditions. Whatever concerns the public, or potential or actual competitors may have about the competitive nature of the international or domestic marketplace can and must be addressed in the context of Commission procedures under section 214. The performance of the firms in a market under these conditions is likely to serve the public far better than one which is legislatively apportioned among potential entrants.

Changes in regulatory policy must be equitable. Hence, the committee expects that any decision by the Commission to allow Western Union into international markets will be balanced by an expanded policy favoring open entry by new carriers into domestic markets. In fact, the Commission is permitting such new domestic entry. The committee expects the Commission to continue this policy, and to expedite applications for domestic authority significantly.

Employee Protection

It is not contemplated that repeal of section 222 will erode existing employment protection rights enjoyed by employees of record carriers under applicable provisions of law. Entry of Western Union into international markets may be accomplished in a number of ways. including formation of a new subsidiary or by merger with an existing international carrier. Moreover, increased activity by international

carriers in domestic markets may lead to new ownership arrangements. In any case, the Committee does not expect that existing collective bargaining agreements as they may apply to new corporate formations will be affected as a result of enactment of S. 271.

Estimated Costs

In accordance with paragraph 11(a) of rule XXVI of the Standing Rules of the Senate and section 403 of the Congressional Budget Act of 1974, the Committee provides the following cost estimate:

The Committee does not believe that the budgetary impact of S. 271 is significant. No reduction in FCC staff is anticipated, although added efficiency is an expected result.

Regulatory Impact Statement

In accordance with paragraph 11(b) of rule XXVI of the Standing Rules of the Senate, the Committee provides the following evaluation of the regulatory impact of the legislation as reported.

The committee believes that S. 271 would have a deregulatory impact on the existing regulatory environment. The Committee believes the legislation would free up staff needed to interpret section 222, and thereby provide for greater staff efficiency. The Commission would then be free to address outstanding interconnection complaints against Western Union, and devote more time to analysis of the competitive nature of the international and domestic record markets.

Changes in Existing Law

In compliance with paragraph 12 of rule XXVI of the Standing Rules of the Senate, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new material is printed in italic, existing law in which no change is proposed is shown in roman):

The Communications Act of 1934

Section 222 of that Act

[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 communications 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 terminate or originate 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 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 transit through the continental United States.

[(7) The terms "domestic telegraph properties" and "domestic telegraph facilities" mean 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 furlough, illness, or leave of absence, except that there shall be no obligation upon the consolidated or merged carrier to reemploy any employee who is ab-

sent because 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 such 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, except Hawaii.

[(b) (1) It shall be lawful upon application to and 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 consolida-

tion or merger, within a reasonable time to be fixed by the Commission, after the consideration for the property to be divested is found 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 merger 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 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.

[(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 period 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 on 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 theretofore been an employee of any such carrier.

[(4) If any employee is transferred from one community to another, as a result of any such consolidation or merger, the carrier resulting therefrom shall pay, in addition to such employee's regular compensation as an employee of such carrier, the actual traveling expenses of such employee and his family, including the cost of packing, crating, drayage, and transportation of household goods and personal effects.

[(5) In the case of any consolidation or merger pursuant to this section, the consolidated or merged carrier shall accord to every employee or former employee, or representative or beneficiary of an employee or former employee, of any carrier which is a party to such consolidation or merger, the same 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 any 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 has exercised his right of retirement or any 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, pension, health, disability, or death insurance benefits, as the case may be, shall be accorded in conformity with the agreement or plan under which such individual exercised such right of retirement or under which such right to benefits accrued. For purposes of determining and according the rights and benefits specified in this paragraph, any period 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 impairment of any of the rights or benefits specified in this paragraph.

[(6) Any employee who, since August 27, 1940, 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 military or naval forces of the United States, shall be considered to have been in the employ of such carrier during the time he is 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 relieved from service in any of such forces under honorable conditions, such former employe 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 with such forces; except that this paragraph shall not require the consolidated or merged carrier, in the case of any such individual, to pay compensation, or to accord health, disability, or death insurance benefits, for the period during

which he was a member of such forces. If any such former employee is disabled and because of such disability is no longer qualified to perform the duties of his former position but otherwise meets the requirements for employment, he shall be given such available employment at an appropriate rate of compensation as he is able to perform and to which his service credit shall entitle him.

[(7) No employee of any carrier which is a party to any such consolidation or merger shall, without his consent, have his compensation reduced, or (except as provided in paragraph (2) and paragraph (8) of this susbection) be discharged or furloughed during the four-year period after the date of the 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 enforcement 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 [129 §§ 151–166] in the case of employees covered by the 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 [29 §§ 151–166].

[(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 collecitve bargaining agreements.]

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