



**THE SECRETARY OF COMMERCE**

Washington, D.C. 20230

MAY - 4 2000

The Honorable John McCain  
Chairman  
Committee on Commerce, Science  
and Transportation  
United States Senate  
Washington, DC 20510-6125

Dear Mr. Chairman:

I am writing to express concern about pending legislation that would restrict the authority of the Federal Communications Commission (FCC or Commission) to review mergers and impose conditions on licenses and other authorizations assigned or transferred in the course of mergers.

The market-opening provisions of the Telecommunications Act of 1996 have sparked an economic boom in the telecommunications industry. This boom, coupled with the convergence of technologies and the increasing globalization of markets, has resulted in an unprecedented increase in the number of merger-related activities. Because the overall impact of the growth of mergers is unclear, careful and thorough government review of individual transactions is essential to ensure that the resulting industry consolidation does not harm competition, consumers or the Nation. Mergers in the telecommunications industry, by nature, require the transfer of licenses, and the Communications Act of 1934 clearly requires the Commission to review the transfer of control of licenses taking into account the public interest, convenience and necessity standard. *See e.g.*, 47 U.S.C. §§ 214(a), 307(a), 310(b)(4), 310(d).

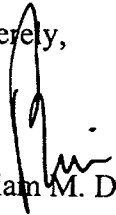
Both the Department of Justice and the Federal Trade Commission conduct merger reviews under the antitrust laws. Their activities are not the same as the Commission's analysis, and do not vitiate the need for independent Commission review. The Commission employs a public interest standard, has affirmative market-opening goals, and initiates a public comment process. And while the Federal Trade Commission has been active in mergers involving the cable and entertainment industries, it is barred by the Clayton Act from exercising jurisdiction over common carriers.

Recent legislation seeks to limit the Commission's role in approving mergers by limiting the amount of time that the Commission has to approve a merger, or by limiting the Commission's authority to impose conditions on merger approvals. I agree that FCC merger reviews should be completed expeditiously, and with predictable and transparent standards. I believe, however, that imposing time limits on FCC merger reviews ignores the fact that each merger presents different issues and concerns, some more difficult and complex than others. "Shot clock" time limits may not give the Commission sufficient time to conduct a thorough public interest analysis. This approach could also limit any flexibility that parties may need to amend applications to address particular concerns, deficiencies, or changing circumstances. As a result, the Commission may be forced to deny an application that would otherwise be approved if the parties were afforded sufficient time to address public interest concerns.

I also oppose legislation that restricts the Commission's authority to impose conditions on parties to a merger. As the chief regulator for the telecommunications industry, the Commission must not be restricted in considering the ways that mergers and consolidations affect numerous public interest issues such as national security, law enforcement, cross-ownership, local competition, and universal service. In fact, cross-ownership, which affects content, diversity, and localism issues, is a serious concern to the American public with respect to consolidation in the communications sector.

Finally, I would note that the Commission has undertaken its own study of its merger review process. On January 12, 2000, Chairman Kennard directed the Commission's General Counsel to assess the Commission's merger review process to determine how to facilitate future FCC merger reviews while ensuring that the public interest is met. This "transaction team" is also establishing procedures to ensure that the internal merger review procedures are uniform, transparent, and streamlined. I believe strongly that the Commission should have an opportunity to complete its merger review and implement its processes. These steps by the Commission eliminate the need for further congressional action.

Sincerely,



William M. Daley

Identical Letters Sent to:

The Honorable Ernest F. Hollings  
Ranking Minority Member  
Committee on Commerce, Science  
and Transportation  
United States Senate  
Washington, DC 20510-6125

The Honorable Thomas J. Bliley, Jr.  
Chairman  
Committee on Commerce  
House of Representatives  
Washington, DC 20515-6115

The Honorable Patrick J. Leahy  
Ranking Minority Member  
Committee on the Judiciary  
United States Senate  
Washington, DC 20510-6275

The Honorable Henry J. Hyde  
Chairman  
Committee on the Judiciary  
House of Representatives  
Washington, DC 20515-6216

The Honorable Orrin G. Hatch  
Chairman  
Committee on the Judiciary  
United States Senate  
Washington, DC 20510-6275

The Honorable John D. Dingell  
Ranking Minority Member  
Committee on Commerce  
House of Representatives  
Washington, DC 20515-6115

The Honorable John Conyers, Jr.  
Ranking Minority Member  
Committee on the Judiciary  
House of Representatives  
Washington, DC 20515-6216