antitrust

MEMORANDUM

THE WHITE HOUSE

WASHINGTON

May 19, 1983

MEMORANDUM FOR FRED F. FIELDING

FROM: JOHN G. ROBERTS

SUBJECT: Letter from Congressman Goodling on Department of Justice Antitrust Enforcement

Congressman Goodling (R-Pa.) wrote the President on April 28 to object to the purported decision of the Department of Justice not to enforce antitrust prohibitions against resale price maintenance. He asks the President to direct the Department to return to enforcing the law barring this practice. Ken Duberstein sent Goodling an interim response noting that his letter was brought to the President's attention and was being shared with you.

I recommended asking Justice to draft a response for your signature. The Antitrust Division has received numerous complaints concerning Bill Baxter's pronouncements on resale price maintenance (a legitimate practice, in Baxter's view) and presumably has a comprehensive response readily available. I have attached a draft memorandum to the Deputy Attorney General.

Attachment

THE WHITE HOUSE

WASHINGTON

May 19, 1983

MEMORANDUM FOR EDWARD C. SCHMULTS
DEPUTY ATTORNEY GENERAL
DEPARTMENT OF JUSTICE

FROM: FRED F. FIELDING Orig. signed by FFF
COUNSEL TO THE PRESIDENT

SUBJECT: Letter from Congressman Goodling on Department of Justice Antitrust Enforcement

I would appreciate it if the Antitrust Division could prepare a draft response to the above-referenced letter, for my signature. Since this issue has surfaced before, I assume that division has the substance of a response readily available.

Many thanks.

FFF:JGR:aw 5/19/83

cc: FFFielding
JGRoberts
Subj.
Chron

THE WHITE HOUSE

WASHINGTON

May 19, 1983

MEMORANDUM FOR EDWARD C. SCHMULTS
DEPUTY ATTORNEY GENERAL
DEPARTMENT OF JUSTICE

FROM: FRED F. FIELDING
COUNSEL TO THE PRESIDENT

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Subj.
Chron

ID # 141461

WHITE HOUSE
CORRESPONDENCE TRACKING WORKSHEET

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Date Correspondence Received (YY/MM/DD) / /

Rpts

Name of Correspondent: Bill Goodling

☐ **MI Mail Report** **User Codes: (A)** _____ **(B)** _____ **(C)** _____

Subject: Opposes Department of Justice's Decision not to Enforce Current Laws Making Resale Price Maintenance Illegal (letter to the President)

ROUTE TO:		ACTION		DISPOSITION		
Office/Agency	(Staff Name)	Action Code	Tracking Date YY/MM/DD	Type of Response	Code	Completion Date YY/MM/DD
CWHO11		ORIGINATOR	83/05/18			/ /
CWAT18		Referral Note: D	83/05/18		S	83/05/27
		Referral Note:	/ /			/ /
		Referral Note:	/ /			/ /
		Referral Note:	/ /			/ /
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ID: 141461 CORRESPONDENCE TRACKING WORKSHEET PAGE D01

INCOMING CORRESPONDENCE DATE 830428 RECEIVED DATE 830509

(PREFIX)	(FIRST)	(LAST)	(SUFFIX)
THE HONORABLE	BILL	GOODLING	

TITLE:

ORGANIZATION: U. S. HOUSE OF REPRESENTATIVES

STREET:

CITY: WASHINGTON STATE: DC ZIP: 20515

COUNTRY:

SUBJECT: OPPOSES DEPARTMENT OF JUSTICE'S DECISION NOT TO ENFORCE CURRENT LAWS MAKING RESALE PRICE MAINTENANCE ILLEGAL

AGY/OFF	ACTION CODE	TRACKING DATE
LADUBE	ORG	830509

ID A 830513

STAFF NAME: PRESIDENT REAGAN MEDIA: L OPID: LC TYPE: IBA

COMMENTS:

CODES: REPORT INDIV: 1240 USER:

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S 830528

May 13, 1983

Dear Bill:

Thank you for your April 28 letter to the President, which was received May 9, expressing your concerns regarding the enforcement of current laws relating to resale price maintenance.

Your letter was brought to the President's direct attention and is also being shared with White House Counsel. You may be assured that your statement of concern in behalf of the American consumer will receive prompt and careful consideration.

With best wishes,

Sincerely,

Kenneth M. Duberstein
Assistant to the President

The Honorable Bill Goodling
House of Representatives
Washington, D.C. 20515

KMD:CMP:KRJ:krj

cc: w/copy of inc to Fred Fielding - for DIRECT response

WH RECORDS MANAGEMENT HAS RETAINED ORIGINAL

#141461

BILL GOODLING
19TH DISTRICT, PENNSYLVANIA

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COMMITTEE ON
EDUCATION AND LABOR
SUBCOMMITTEES:
RANKING MINORITY:
ELEMENTARY, SECONDARY, AND
VOCATIONAL EDUCATION
HUMAN RESOURCES
COMMITTEE ON
FOREIGN AFFAIRS
SUBCOMMITTEES:
RANKING MINORITY:
AFRICA
ASIAN AND PACIFIC AFFAIRS

Congress of the United States
House of Representatives
Washington, D.C. 20515

ROOM 109
CANNON HOUSE OFFICE BUILDING
TELEPHONE: (202) 225-5836

DISTRICT OFFICES:
FEDERAL BUILDING
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2020 YALE AVE.
CAMP HILL, PENNSYLVANIA 17011
44 FREDERICK STREET
HANOVER, PENNSYLVANIA
TOLL FREE DISTRICT NUMBER:
800-632-1811

April 28, 1983

KD

The Honorable Ronald Reagan
President of the United States
The White House
Washington, D. C. 20500

Dear Mr. President:

It has come to my attention that the Department of Justice has made the decision not to enforce current laws making resale price maintenance illegal.

Although our economy is well on its way to recovery, now is not the time for the Department to make such a decision. Non-enforcement of this law could result in a lack of the competition which insures fair prices on various products. Many consumers take the time to shop at many stores for the most desirable price of an item before making a purchase, because they cannot afford the "manufacturers' suggested retail price"; many others shop at outlets providing discounts.

I am convinced that non-enforcement of this existing law will not help the economy. It will hurt it. If consumers cannot afford the price "set" for a specific product, they may decide against making the purchase altogether. Therefore, demand for many products may diminish -- and with a decrease in demand comes a decrease in the number of employees required.

We cannot afford to let this happen. If we do, some of our present efforts to employ the unemployed will be overshadowed as decisions of this type receive coverage by the media. Consumers will not take kindly to an Administration that appears to be keeping prices high by discouraging competitive pricing.

I am, therefore, respectfully requesting that you direct the Department of Justice to return to enforcing the current law outlawing resale price maintenance.

Sincerely,

Bill

BILL GOODLING
Member of Congress

BG:lr

The New York Times

DATE: 9/13/83

PAGE: D-6

Reagan Seeks Joint Research

By FRANCIS X. CLINES

Special to The New York Times

WASHINGTON, Sept. 12 — President Reagan asked Congress today to modify antitrust, patent and copyright law to encourage joint research and development ventures by corporations.

"Cooperation is necessary if American industry is to compete internationally," the President declared in a message to Congress.

The proposals would protect fully disclosed joint ventures in research and development from private antitrust suits and from damage suits by the Government. Joint ventures are necessary, Administration officials contend, to conduct the immensely expensive research projects required to produce breathroughs in modern technology.

In his message to Congress, the President said that existing laws could be effectively changed so that they still protected against price fixing but also did not "unnecessarily inhibit" the sort of joint reasearch under way in rival nations.

Would End Triple Damages

The proposals would revise present law so that joint research and development could be considered antitrust violations only if they restricted innovation or made price fixing easier. Mr. Reagan also proposed that joint ventures found to have violated antitrust law be liable only for actual damages, not the triple damages permitted under the law now.

The President's program joins several other Congressional proposals submitted by lawmakers to deal with increasing international competition in the high-technology, automobile and textile fields resulting from collaborative research in such countries as Japan, West Germany and France.

Joint research and development is not flatly banned under current American law, but it is subject to a "rule of reason" test that critics say leaves companies confused and cautious.

Other provisions of the President's program would end triple damage possibilities in the case of "intellectual property owners" who want to license their technology to others to reap larger benefits. They would also require courts to give greater weight to "procompetitive benefits" and economic ramifications than is now the practice in copyright and patent lawsuits.

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THE WALL STREET JOURNAL.

DATE: 9/13/83

PAGE: 4

White House Offers Bill to Spur Investment In Research by Lowering Antitrust Risks

By Robert E. Taylor
Staff Reporter of The Wall Street Journal

WASHINGTON—The Reagan administration proposed legislation to encourage investment in research and development largely by reducing antitrust risks for R&D joint ventures, copyrights and patents.

The bill didn't contain provisions the administration originally planned that would have reduced antitrust liability on a much broader front, beyond areas marked by innovation. The broader limits, though supported by top administration officials, were viewed as too controversial. And in fact, even the bill's protection for R&D joint ventures is less absolute than in previous drafts.

Currently, liability in all civil antitrust cases is triple the damages caused by the violator. The administration bill would lower that to single damages, plus interest, for patent and copyright abuses and for antitrust violations by R&D joint ventures that file papers with the federal government outlining their efforts.

Last March, William Baxter, head of the Justice Department's antitrust division, said the administration would seek to reduce antitrust liability to single damages for all actions that are ruled illegal because they are more anticompetitive than procompetitive. Under that proposal, only clearly illegal conduct such as price fixing would continue to face triple-damage liability.

Patent licenses can be held to be illegal if they overly restrict competition by, for instance, tying the use of a patented product to an unpatented one. Joint ventures are illegal if they combine too large a portion of an industry in circumstances that might encourage them to prevent innovation, rather than stimulate it.

This narrower version of the bill was urged on the administration last June by several senators who insisted that the broader measure couldn't clear Congress. "When you attack triple damages," said Sen. Charles Mathias (R., Md.) in a Senate hearing, "you're attacking one of the historic bastions of antitrust laws."

Rick Rule, a special assistant to Mr. Baxter, said the administration decided to tailor its package to measures clearly aimed at incentives for innovation and with the "greatest political viability."

President Reagan said the proposed legislation would, if passed, "enhance this country's productivity and the ability of U.S. industry to compete in world markets." He said it would remove disincentives for investing in ventures aimed at developing technology.

Aside from the liability issue, the bill would bar courts from finding any research and development joint venture or patent copyright use to be illegal under antitrust laws without considering its procompetitive justifications. The measure also would make it illegal for foreigners who infringe on a U.S. patent for a manufacturing process to import their products into this country.

The bill appears to be framed as an administration alternative to legislation already offered by Sens. Paul Tsongas (D., Mass.), John Glenn (D., Ohio) and others aimed at giving high-technology ventures greater protection from antitrust lawsuits.

But even for registered research and development joint ventures, the bill offers less protection than the earlier version discussed by Mr. Baxter, the antitrust chief. He said last June that the bill would offer them complete immunity from private antitrust suits.

At that time, Mr. Baxter resisted suggestions that the cut in liability be limited to research and development ventures. He said that "does seem to me to solve a very minor problem while there are more important ones around."

Mr. Rule said the administration doesn't currently plan to offer any broader bill to limit antitrust liability.

THE WHITE HOUSE

WASHINGTON

October 25, 1983

MEMORANDUM FOR FRED F. FIELDING

FROM: JOHN G. ROBERTS

SUBJECT: Access Charges to be Imposed by the FCC (Docket No. 78-72)

Theodore F. Brophy, Chairman of the Board of GTE Corporation, has written Mr. Baker to object to the proposed access charges to be imposed by the Federal Communications Commission on AT&T's long-distance competitors. Brophy attached a copy of a letter to FCC Chairman Fowler from the competitors, making the case that the contemplated charges would prevent effective competition with AT&T. The level of charges is the subject of a formal FCC proceeding, Docket No. 78-72. Copies of the letter to Fowler were sent to all interested parties, including the Attorney General and the Antitrust Division.

The FCC is, of course, an independent regulatory agency, so the Administration's views on matters pending before it should ordinarily be presented on the record by the appropriate department, in this case the Justice Department. That department has received copies of the analysis sent by Brophy to Baker, so unless the White House is disposed to become more directly involved in this matter - for example, by reviewing Justice's position - there is no need for any action or further referrals. In short, I recommend that we do nothing other than send Brophy a simple acknowledgment, stating that his views will receive careful consideration by appropriate executive branch officials - i.e., those in the Justice Department. A draft is attached.

Attachment

THE WHITE HOUSE

WASHINGTON

October 25, 1983

MEMORANDUM FOR JAMES A. BAKER III
ASSISTANT TO THE PRESIDENT
CHIEF OF STAFF

FROM: FRED F. FIELDING Orig. signed by FFF
COUNSEL TO THE PRESIDENT

SUBJECT: Access Charges to be Imposed by the FCC
(Docket No. 78-72)

Attached is a copy of our response to the letter sent to you by GTE Corporation Chairman Theodore F. Brophy, concerning access charges proposed by the FCC in Docket No. 78-72.

Attachment
FFF:JGR:aea 10/25/83
cc: FFFielding/JGRoberts/Subj/Chron

THE WHITE HOUSE

WASHINGTON

October 25, 1983

Dear Mr. Brophy:

Thank you for your letter of October 4 to James A. Baker III. You enclosed with that letter a copy of a letter to Federal Communications Commission Chairman Mark S. Fowler, concerning proposed access charges in FCC Docket No. 78-72.

Please be assured that your views will receive careful consideration by the appropriate officials in the executive branch. In this regard we note that copies of the letter to Chairman Fowler have been sent to officials in the Department of Justice.

Thank you for sharing your views with us.

Sincerely,

Orig. signed by FFF

Fred F. Fielding
Counsel to the President

Mr. Theodore F. Brophy
Chairman of the Board
GTE Corporation
One Stamford Forum
Stamford, CT 06904

bcc: James A. Baker III

FFF:JGR:aea 10/25/83
cc: FFFielding/JGRoberts/Subj/Chron

THE WHITE HOUSE

WASHINGTON

October 25, 1983

MEMORANDUM FOR JAMES A. BAKER III
ASSISTANT TO THE PRESIDENT
CHIEF OF STAFF

FROM: FRED F. FIELDING
COUNSEL TO THE PRESIDENT

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WASHINGTON

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Thank you for sharing your views with us.

Sincerely,

Fred F. Fielding
Counsel to the President

Mr. Theodore F. Brophy
Chairman of the Board
GTE Corporation
One Stamford Forum
Stamford, CT 06904

bcc: James A. Baker III

FFF:JGR:aea 10/25/83
cc: FFFielding/JGRoberts/Subj/Chron

ID # 161895 CU

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WHITE HOUSE
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Name of Correspondent: Theodore F. Brophy

☐ **MI Mail Report** **User Codes:** (A) _____ (B) _____ (C) _____

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ROUTE TO:	ACTION		DISPOSITION		
Office/Agency (Staff Name)	Action Code	Tracking Date YY/MM/DD	Type of Response	Code	Completion Date YY/MM/DD
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JR

GTE Corporation

Theodore F. Brophy
Chairman of the Board

One Stamford Forum
Stamford, CT 06904
203 965-2000

161895cc

October 4, 1983

Mr. James Baker, III
Chief of Staff and
Assistant to the President
The White House
Washington, D. C. 20500

Dear Jim:

Attached is a copy of a letter to the Chairman of the Federal Communications Commission from eight of the largest potential competitors of AT&T for interexchange voice telephone service ("OCCs").

The letter advises the Chairman that if the access charges proposed to be imposed by the FCC in its Docket No. 78-72 upon the OCCs are implemented, the now profitable OCCs will operate at substantial losses and the opportunity for effective intercity competition will be destroyed.

If the reorganization of AT&T in accordance with the modified final judgment is not to be an exercise in futility, the opportunity for competition must exist.

The OCCs do not seek a subsidy but an equitable opportunity to compete.

I would appreciate your thoughtful consideration of the attached letter.

Sincerely yours,

Ted

Theodore F. Brophy

TFB:rh

Attachment

October 4, 1983

Honorable Mark S. Fowler
Chairman
Federal Communications Commission
1919 M Street, N.W., Room 814
Washington, D.C. 20554

Re: CC Docket No. 78-72, Phase I

Dear Chairman Fowler:

The undersigned companies, which are attempting to provide competitive alternatives to AT&T's interstate MTS and WATS services, have joined in this letter to bring a matter of utmost gravity to your attention. Just three years ago, in this very proceeding, the Commission concluded that the public interest would be served by a competitive MTS and WATS market structure. However, this goal will never be realized with the level of access charges imposed on competing carriers ("OCCs" or "Competitors") under the Commission's new Modified Access Charge Plan.

We are confident that the Commission did not intend to stifle competition with the adverse financial consequences which will be visited upon the OCCs by its Modified Access Charge Plan. Accordingly, the purpose of this letter and accompanying economic analysis is to demonstrate the immediate and devastating impact of the Plan on the future of the competitive marketplace, and to request your prompt consideration of corrective action.1/

This letter and the accompanying analysis make one point clear -- the implementation of the Modified Access Charge Plan would preclude the OCCs from becoming meaningful competitors. The results of the study are so alarming that the industry considers it necessary to make them available

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1/ While the OCCs believe that the equal access requirements of the MFJ, will not, in fact, create a situation of marketplace equality, and will leave the OCCs at a severe competitive disadvantage, for at least several years, this letter only addresses the question of immediate impact under the Modified Access Charge Plan.

to the Commission at once. As shown below, this injury to competition is neither speculative nor confined to any particular competitor. The projected 1984 impact of the Plan is a pre-tax loss for the industry of up to $721 million.

Throughout the access charge proceeding, the FCC recognized that its goal of achieving a competitive market could be seriously jeopardized unless appropriate measures were adopted to account for the OCCs' inferior access arrangements during an adequate transition period. Unfortunately, the transitional mechanisms chosen by the Commission will not work. Instead, they unduly increase the competitive advantage which AT&T enjoys as a result of its historic monopoly position achieved under regulation. That is because the current differential in the AT&T/OCC interconnection charges will be reduced dramatically on January 1, 1984, even though the inferior interconnections now provided to AT&T's Competitors will remain the same.

AT&T's Competitors, under the current ENFIA arrangement, obtain a variety of discounts to reflect their inferior interconnections. ENFIA Rate Element 3 provides the OCCs with a 45 percent discount from the amounts paid by AT&T for the interstate use of non-traffic sensitive ("NTS") subscriber access lines. In addition, the Competitors are charged for their minutes-of-use on a basis that does not represent actual holding time. Altogether, the FCC-approved ENFIA factors result in individual OCCs paying anywhere from 65-75 percent less than AT&T for their inferior local access facilities.

However, with the changes required by the Modified Access Charge Plan, this differential will drop suddenly to about 25 percent, without any corresponding improvements in the existing OCC interconnection arrangements. This unprecedented "flash cut" of the differential2/ is primarily due to: (1) the reduction in the OCC discount on NTS plant

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2/ It has been the Commission's practice to provide for orderly transitions and avoid "flash cuts" in order to prevent market dislocations resulting from substantial rate increases. See, e.g., Amendment of Part 64 ("Computer II"), 84 F.C.C.2d 50 (1980) (adopting a bifurcated transition plan for the deregulation of CPE and rejecting the "flash cut" approach advocated by AT&T). In fact, in the Reconsideration Order, the FCC "cushioned" numerous other entities from any immediate drastic increases in access charges.

usage from 45 to 35 percent, and (2) a substantial increase in the number of minutes to be counted. Consequently, a smaller discount will be applied to a much greater total of OCC minutes, thereby causing a doubling, or in some cases tripling, of the access costs charged to AT&T's Competitors. At the same time, AT&T's interconnection costs will be reduced by approximately $3.9 billion, or some 29 percent.

As a practical matter, this dramatic reduction in the current AT&T/OCC differential means that the Competitors will pay local access charges that are significantly closer to AT&T's, but will continue to face the same dominant competitor and be subject to the same inferior grade of access. Under those conditions, the OCC industry will be placed in an impossible position.

To further compound the problem, AT&T recently announced that it will reduce its interstate MTS and WATS rates by approximately 10 percent. (Some industry estimates, in fact, indicate that the AT&T reductions targeted at the primary market segments served by the OCCs amount to 16 percent). If the OCCs maintained their current retail rate differential versus AT&T in an attempt to hold their customers, the industry will incur staggering losses. If the OCCs raised prices to account for the access charge increases, many subscribers will not be willing to tolerate the inconveniences and quality differences associated with an OCC's inferior access. Certainly, the ability to attract new subscribers will be largely undermined.

Under the current ENFIA access charge system, actual switched-voice revenues for the undersigned companies for the most recent four quarters (July 1982 - June 1983) were $1.93 billion, which yielded income before taxes of $327 million.3/ If the Modified Access Charge Plan had been in effect during that period, and the OCCs were to have maintained their 1983 rates in the face of an assumed AT&T 10 percent rate reduction, revenues would have declined to

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3/ Following a uniform set of assumptions described in Appendix A, different impact scenarios were developed using each company's actual 1983 usage data and 1984 projections.

Because of the competitive nature of this information, each signatory company independently provided its financial data to the law firm of Wiley, Johnson & Rein and it aggregated the data shown in this letter. An affidavit to that affect is attached hereto.

$1.45 billion due to the lower OCC volume resulting from less competitive rates. The industry as a whole would have incurred operating losses in the range of $185-$278 million depending upon whether a five or six cents-per-minute access charge is assumed. This would amount to an income decline of approximately $512-$605 million.4/

On the other hand, if the OCCs had reduced their rates by 10 percent to match the assumed AT&T reduction, the increased volume stimulated by the lower rates would have caused OCC revenues to total $1.89 billion. However, operating losses before taxes of $154-$280 million would still have resulted. Stated differently, a downward swing of $481-$607 million would have occurred under the Modified Access Charge Plan. While individual companies are impacted differently, every company is substantially affected.5/

The Competitors also have evaluated the effect of the plan on their 1984 projected volumes. Again, combined losses result. If the undersigned carriers reduced their rates by 10 percent to match AT&T's announced reduction, revenues would be $4.57 billion and pre-tax losses would be $300-$595 million. Should the OCCs maintain their current rates in 1984, those figures would become $2.56 billion due to lower volumes and cause a $506-$721 million loss. In startling contrast, if ENFIA remained in effect in 1984, the industry would have shown revenues of $4.66 billion and a positive earnings before taxes figure of $484 million.

These financial data indicate that such significant losses could not be compensated for by a mere shifting of costs or modification of company business plans. This situation is further compounded by AT&T's announced rate

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4/ See the Appendix to this letter for a graphic illustration of these impacts.

5/ The undersigned companies represent approximately 85 percent of the industry as measured by revenues. The other AT&T competitors therefore will have gross revenues of approximately $341 million in 1983. Assuming the remaining carriers would experience the average impact of the undersigned companies, this would translate into an operating loss for them of between $27-$49 million. If the remaining OCCs also attempted to absorb the higher access charges, their losses would amount to $33-$49 million. Thus, it appears certain that the industry as a whole would have been severely impacted by the Commission's Modified Access Charge Plan.

reduction. The undersigned companies believe that any significant OCC rate increase intended to reduce the adverse impact of the Modified Access Charge Plan and react to the announced reduction is not a viable solution and would serve only to aggravate further the economic situation.

The disastrous effects on competition are obvious. The very survival of the OCC industry is threatened, and its ability to attract capital to expand systems, and to become effective competitors, will be lost. Moreover, potential future entrants certainly would be deterred. The ultimate result will be a return to a monopolization of the interexchange industry by AT&T, making the coming division of the Long Lines/BOC transmission enterprise a totally futile and senseless action. Ultimately, the public will suffer from the loss of an opportunity to create a truly competitive interstate telecommunications marketplace.

The above figures clearly demonstrate that, from the outset, the mechanisms chosen by the Commission to preserve the opportunity for competition during an adequate transition period do not meet their objective. We strongly urge the Commission to take this data into account in its review of the forthcoming petitions to be submitted by the undersigned.

Respectfully submitted,

United States Transmission Systems, Inc.
J.C. Reynolds
President

MCI Communications Corporation
William G. McGowan
Chairman of the Board

U.S. Telephone, Inc.
Neal J. Robinson
President

GTE Corporation
Theodore F. Brophy
Chairman of the Board

Satellite Business Systems
Robert C. Hall
President, CEO

The Western Union Telegraph Company
Robert M. Flanagan
Chairman of the Board

EMX Telecom
Thomas Gabriszeski
President, CEO

Lexitel Corporation
George J. Vasilakos
President, CEO

cc: All FCC Commissioners
CC Docket No. 78-72 Parties

Appendix

The Effect of the Commission's Access Charge Reconsideration Order Upon the OCC Industry

To provide the Commission with a meaningful analysis of the effect of its Access Charge Reconsideration Order upon interexchange competition, each undersigned carrier has calculated the effect of the decision on it using common assumptions adopted by the group. The summary results of the calculations are provided in the attached chart.

The financial summary sheet lists six business scenarios. The first scenario is for the four quarters ending June 1983 using the actual costs of access, revenue, and demand experienced during that period. (See Case 1, Chart 1).1/ The second scenario also is a retrospective look at the four quarters ending June 1983, but it assumes that the 78-72 Access Charge Reconsideration Order was in effect, traffic-sensitive charges were consistent with those proposed by the exchange carriers in the pending access tariffs, AT&T reduced its prices as it recently proposed to the Commission, and the OCCs maintained their current price differential. For this case, we assumed industry volume increased as a result of lower prices (a demand elasticity of -0.7 was used) and that each OCC retained its current market share. The cost to the OCCs for switched access is assumed to be either 5 or 6 cents per minute per end.2/ (See Cases 4 and 5, Chart 1). The third scenario is also for the four quarters ending June 1983, but the OCCs' prices were not reduced. Demand for each OCC in this case was kept constant using the quantity demanded in the quarter ending June, 1982. (See Cases 2 and 3, Chart 1).

The fourth and fifth scenarios are prospective business cases using benchmark assumptions about financial and demand conditions in the four quarters of 1984. The fourth business scenario uses projections for expenses and demand for 1984 but with access charges under 78-72 and with prices being decreased for both AT&T and the OCCs. (See Cases 4 and 5, Chart 2). The fifth business scenario assumes that the OCCs

---

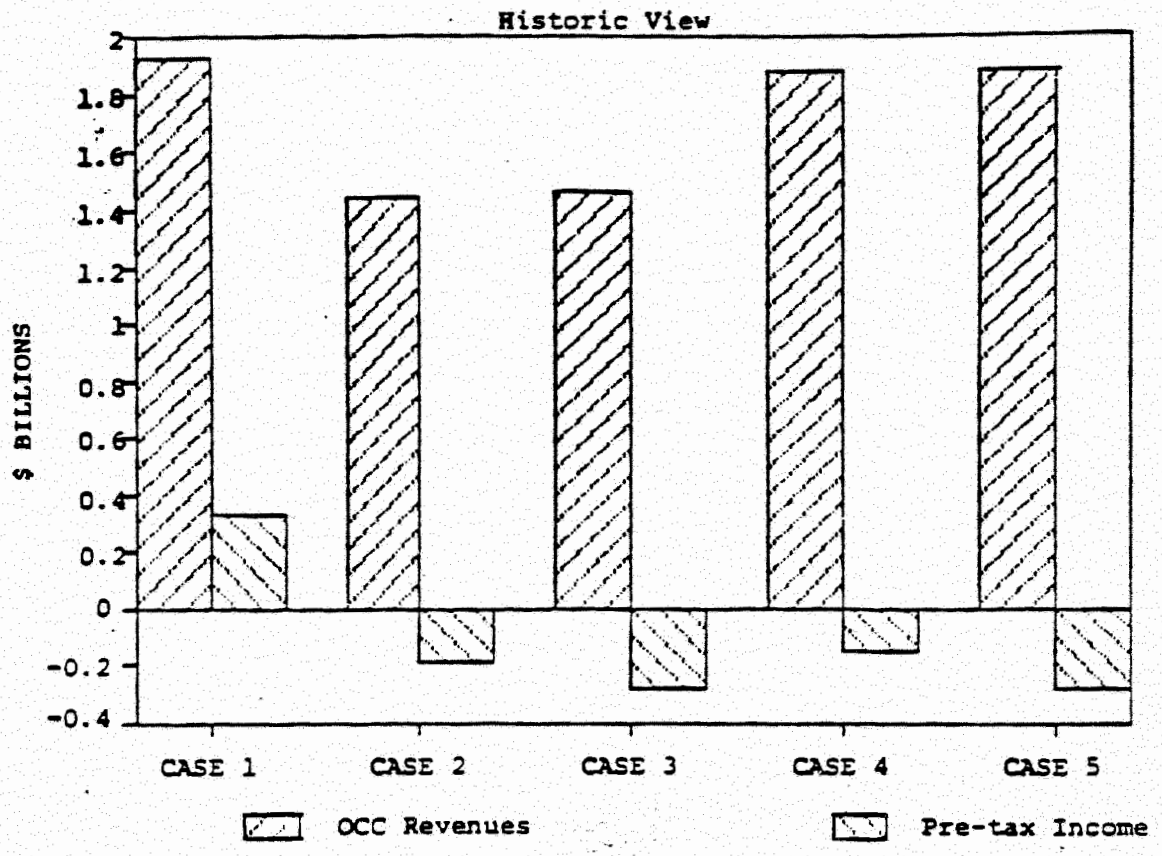
1/ Lexitel used the common assumptions with data starting from April, 1983, the beginning of its fiscal year. EMX Telecom has not yet begun operations and submitted no data.

2/ That is, each business case was run twice -- once using the 5 cent assumption and then the 6 cent assumption. That process bounded a likely range of impact.

do not cut prices to match the AT&T price decrease. For that case, volume for each OCC is assumed to remain constant at the level that existed in the quarter ending June 30, 1983, because of the reduced retail rate differential. Once again, the increased access charges imposed in 1984 by the 78-72 Reconsideration Order are applied. (See Cases 2 and 3, Chart 2). The sixth business scenario assumes that ENFIA was maintained in 1984. (See Case 1, Chart 2).

CHART 1

EFFECT OF NEW ACCESS CHARGES



CASE 1: Actual results for participating OCCs; 3rd quarter 1982 through 2nd quarter 1983

CASE 2: No OCC rate reduction; 5¢ per minute switched access charge assumption

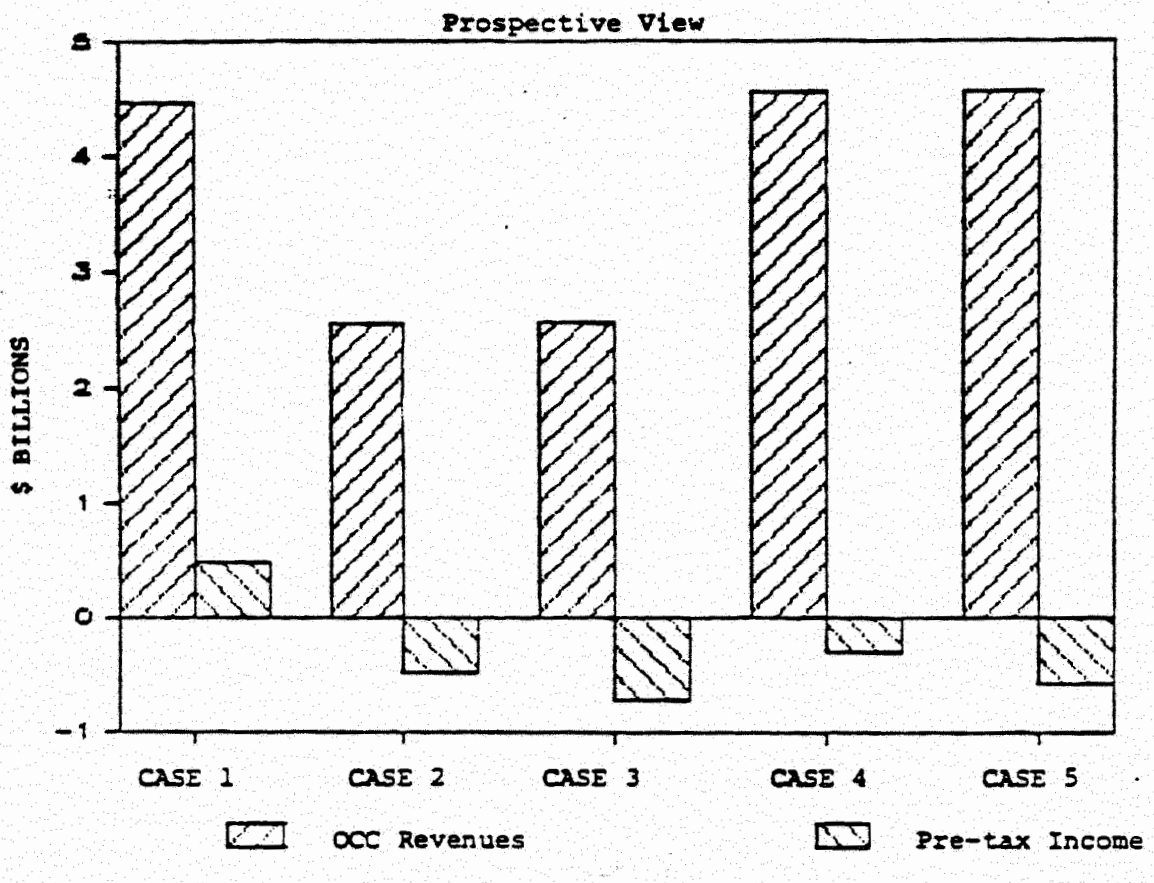
CASE 3: No OCC rate reduction; 6¢ per minute switched access charge assumption

CASE 4: 10% OCC rate reduction; 5¢ per minute switched access charge assumption

Case 5: 10% OCC rate reduction; 6¢ per minute switched access charge assumption

CHART 2

EFFECT OF NEW ACCESS CHARGES



CASE 1: 1984 projected results for participating OCCs; current ENFIA rate assumption

CASE 2: No OCC rate reduction; 5¢ per minute switched access charge assumption

CASE 3: No OCC rate reduction; 6¢ per minute switched access charge assumption

CASE 4: 10% OCC rate reduction; 5¢ per minute switched access charge assumption

CASE 5: 10% OCC rate reduction; 6¢ per minute switched access charge assumption

City of Washington)
) SS:
District of Columbia)

AFFIDAVIT OF PHILIP VICTOR PERMUT

Philip Victor Permut, being first duly sworn, deposes and states as follows:

I am a partner in the law firm of Wiley, Johnson & Rein. In that capacity, I was requested to be the recipient of economic data from each of the companies that have signed this letter except EMX Telecom. Since EMX Telecom has not begun operations it submitted no data. The information provided reflected switched-voiced revenues and income before taxes for the various scenarios noted in the letter.

Because they are competitors, each carrier's figures were kept strictly confidential. Wiley, Johnson & Rein performed the necessary arithmetic calculations to arrive at the figures used in this letter. The statistics developed for the remainder of the industry were extrapolated by assuming that the companies which signed the letter constitute approximately 85 percent of OCC industry revenue.

Philip V Permut
Philip Victor Permut

Subscribed and sworn to before me this 4th day of October, 1983.

[illegible]
Notary Public

My Commission Expires: 12/14/86

CERTIFICATE OF SERVICE

The undersigned hereby certifies that copies of the foregoing letter were mailed by first class mail, postage prepaid, on this 4th day of October, 1983, to the following:

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Howard D. Polsky

The Washington Post

DATE: 11-1-83

PAGE: E3

Administration Opposes Higher AT&T Hookup Charges

By Michael Isikoff
Washington Post Staff Writer

The Reagan administration has sharply criticized a Federal Communications Commission order that would increase by as much as 100 percent the charges that long-distance competitors of American Telephone & Telegraph pay to hook up to local phone lines.

The commission's order would "represent a dramatic increase" from the current rates the long-distance companies must pay and would be "disruptive" of the long-distance telephone market, according to a Commerce Department filing with the FCC released yesterday. In an accompanying letter to FCC Chairman Mark Fowler, Commerce Secretary Malcolm Baldrige asked that the commission lower those fees.

The surprise Commerce Department request puts the administration squarely behind MCI Communications Corp., GTE/Sprint, and other long-distance carriers in their continuing battle over rates with AT&T. The long-distance market is currently dominated by AT&T, which handles about 94 percent of all such calls compared with MCI's 3½ percent. (All other firms account for the remaining 2½ percent.)

The competitors currently receive a large discount in the charges they pay for access to local Bell System operations because the quality of the connection is inferior to that of AT&T's long-distance service. This allows them to undercut AT&T's prices by as much as 50 percent and gradually make small inroads into the market.

The FCC's decision, however, presents the theory that they gradually would receive "equal access" to local phone lines and thus be able to offer higher quality. But in a petition filed last month with the FCC, eight of the competing carriers protested that their rates would go up so fast that they would be threatened with "staggering losses" and eventual extinction. MCI has contended that its own annual access costs would jump from $210 million to $357 million.

A spokesman for AT&T yesterday decried the Baldrige letter as supporting a continued "subsidy for some of the highest profit-making companies in the country." Their current discount gives MCI and the others "an unfair" advantage over AT&T, the spokesman said.

The access-charge decision was intended to foster a more competitive long-distance market and originally was scheduled to take effect Jan. 1, the date of AT&T's divestiture, when seven Bell System regional operating companies are to be spun off from the parent company, while AT&T retains its research, manufacturing and long-distance operations.

Two weeks ago the FCC postponed the access-charge order until April 3. In addition, the House Commerce Committee last week passed legislation that would freeze temporarily the charges that the competitive carriers must pay.

file with letter we did on this

6

THE WHITE HOUSE

WASHINGTON

March 13, 1984

MEMORANDUM FOR FRED F. FIELDING

FROM: JOHN G. ROBERTS

SUBJECT: CCCT Decision Paper and Press Release Regarding Antitrust Barriers to Joint Research and Development

Richard Darman has asked for comments by 5:00 p.m. today on a proposal by Secretary Baldrige, for the Cabinet Council on Commerce and Trade, that the White House reiterate its strong support for legislation to foster research and development joint ventures. Last September the Administration introduced its proposal in this area, the National Productivity and Innovation Act of 1983. The President's Commission on Industrial Competitiveness recently recommended passage of such legislation, and bills similar to the Administration proposal are facing imminent action in both the Senate and House Judiciary Committees. Baldrige urges White House support for the Senate bill, scheduled to be voted on by the Committee on March 15, and calls for the issuance of a White House press release affirming Administration support for the legislation.

I have reviewed Baldrige's proposal and have no objections. The Administration is already clearly on record as supporting the substance of this legislative initiative, and there can be no objection to reiterating this support. (Presumably any Cabinet member who feels otherwise can simply write an op ed piece for the New York Times, as Baldrige did last Sunday on McGrath's steel merger decision.)

Attachment

THE WHITE HOUSE

WASHINGTON

March 13, 1984

MEMORANDUM FOR RICHARD G. DARMAN
ASSISTANT TO THE PRESIDENT

FROM: FRED F. FIELDING Orig. signed by FFF
COUNSEL TO THE PRESIDENT

SUBJECT: CCCT Decision Paper and Press Release Regarding Antitrust Barriers to Joint Research and Development

Counsel's Office has reviewed the above-referenced decision paper and proposed press release, and finds no objection to them from a legal perspective.

FFF:JGR:aea 3/13/84
cc: FFFielding/JGRoberts/Subj/Chron

THE WHITE HOUSE

WASHINGTON

March 13, 1984

MEMORANDUM FOR RICHARD G. DARMAN
ASSISTANT TO THE PRESIDENT

FROM: FRED F. FIELDING
COUNSEL TO THE PRESIDENT

SUBJECT: CCCT Decision Paper and Press Release Regarding Antitrust Barriers to Joint Research and Development

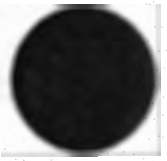
Counsel's Office has reviewed the above-referenced decision paper and proposed press release, and finds no objection to them from a legal perspective.

FFF:JGR:aea 3/13/84
cc: FFFielding/JGRoberts/Subj/Chron

ID # _____ CU

WHITE HOUSE
CORRESPONDENCE TRACKING WORKSHEET

☐ O - OUTGOING
☐ H - INTERNAL
☐ I - INCOMING
Date Correspondence Received (YY/MM/DD) / /



Name of Correspondent: Richard Dauman

☐ **MI Mail Report** **User Codes:** (A) _____ (B) _____ (C) _____

Subject: CCCT Decision Paper & Press Release Re: Antitrust Barriers to Joint Research & Development

ROUTE TO: / **ACTION** / **DISPOSITION**

Office/Agency (Staff Name)	Action Code	Tracking Date YY/MM/DD	Type of Response	Code	Completion Date YY/MM/DD
CUHOZL	ORIGINATOR	84/03/13			/ /
	Referral Note:				
CUAT 18	D	84/03/13		S	84/03/13 5:00 pm
	Referral Note:				
		/ /			/ /
	Referral Note:				
		/ /			/ /
	Referral Note:				
		/ /			/ /
	Referral Note:				

ACTION CODES:
A - Appropriate Action
C - Comment/Recommendation
D - Draft Response
F - Furnish Fact Sheet to be used as Enclosure
I - Info Copy Only/No Action Necessary
R - Direct Reply w/Copy
S - For Signature
X - Interim Reply

DISPOSITION CODES:
A - Answered
B - Non-Special Referral
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FOR OUTGOING CORRESPONDENCE:
Type of Response = Initials of Signer
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Comments: _____

Keep this worksheet attached to the original incoming letter.
Send all routing updates to Central Reference (Room 75, OEOB).
Always return completed correspondence record to Central Files.
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5/81

Document No. _____

WHITE HOUSE STAFFING MEMORANDUM

DATE: 3/13/84 **ACTION/CONCURRENCE/COMMENT DUE BY:** 5:00 TODAY

SUBJECT: CCCT DECISION PAPER & PRESS RELEASE RE ANTITRUST BARRIERS TO JOINT RESEARCH AND DEVELOPMENT

	ACTION	FYI		ACTION	FYI
VICE PRESIDENT	☐	☐	McFARLANE	☐	☐
MEESE	☐	☑	McMANUS	☐	☐
BAKER	☐	☑	MURPHY	☐	☐
DEAVER	☐	☑	OGLESBY	☑	☐
STOCKMAN	☑	☐	ROGERS	☐	☐
DARMAN	☐P	☑S	SPEAKES	☑	☐
FELDSTEIN	☑	☐	SVAHN	☐	☐
FIELDING	☐	☐	VERSTANDIG	☑	☐
FULLER	☐	☐	WHITTLESEY	☑	☐
HERRINGTON	☐	☐	_____	☐	☐
HICKEY	☐	☐	_____	☐	☐
JENKINS	☐	☐	_____	☐	☐

REMARKS:

Please provide comments/recommendations by 5:00 p.m. today.

Thank you.

RESPONSE:

1984 MAR 13 PM 1:09

Richard G. Darman
Assistant to the President
Ext. 2702

THE WHITE HOUSE

WASHINGTON

March 12, 1984

MEMORANDUM FOR THE PRESIDENT

FROM: THE CABINET COUNCIL ON COMMERCE AND TRADE

SUBJECT: Antitrust Barriers to Joint Research and Development

The President's Commission on Industrial Competitiveness recently made a series of recommendations designed to enhance U.S. industrial competitiveness. One of the recommendations is to modify the antitrust laws to encourage U.S. firms to form procompetitive joint research and development (R&D) ventures.

Improving U.S. industrial productivity and competitiveness will depend largely on our investment in R&D. New technologies provide society with wide-ranging benefits that cannot be fully captured by the individual investor. Hence, government should encourage greater private sector investment in R&D. However, the increasing complexity of R&D has pushed many large scale projects beyond the ability of any individual company to undertake. In fact, even IBM, the sixth largest company in America, found it necessary to participate in a joint R&D venture in semiconductor research. Moreover, more intense foreign competition means that U.S. industry will have to increase its investment in R&D.

Greater encouragement of joint R&D ventures would represent an Administration initiative to counter industrial policy proposals. Moreover, such an approach would stimulate U.S. industrial competitiveness without increasing Federal budget outlays.

The Commission's recommendation is consistent with a legislative proposal you submitted to the Congress in September 1983, the National Productivity and Innovation Act. Your proposal would encourage the formation of procompetitive joint R&D ventures by amending the antitrust laws while still protecting competition.

Congress is currently considering legislation that is similar to your proposal and the Commission recommendation. The House Judiciary Committee is expected to report soon a bill sponsored by Chairman Rodino that is largely similar to your proposal. This Thursday, March 15, the Senate Judiciary Committee is expected to vote on joint R&D legislation that is essentially your proposal with a few technical amendments.

We are reaching a critical stage in the legislative process. It is important that the Administration, particularly the White House, actively support the passage of this legislation without delay. Strong White House support is needed to pass this important legislation to help U.S. industry to compete more effectively in world markets.

Recommendations:

1. That the White House express its strong support for expeditous passage of your legislation in this session of Congress. In particular, the White House should strongly support approval of your amended proposal in the Senate Judiciary Committee on Thursday, March 15; and

2. That the White House issue the attached press release encouraging the Congress to enact joint R&D legislation in this session.

Approve _____ Disapprove _____

Malcolm Baldrige
Chairman Pro Tempore

Attachment

DRAFT

THE WHITE HOUSE

Office of the Press Secretary

March 14, 1984

STATEMENT BY THE PRESIDENT

The Congress is now considering legislation to foster research and development joint ventures by requiring more realistic antitrust treatment of those ventures. That proposal is the heart of the National Productivity and Innovation Act I submitted last year.

This legislation is another important step in the vital effort to make American industry more competitive in world markets. I am encouraged that this legislation has received bipartisan support in both the Senate and the House. I urge the Congress to pass it without delay.

antitrust file

EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET

ROUTE SLIP

TO	John Roberts	Take necessary action	☐
		Approval or signature	☐
		Comment	☐
		Prepare reply	☐
		Discuss with me	☐
		For your information	☐
		See remarks below	☐
FROM	Branden Blum	**DATE**	6/22/84

REMARKS

Attached is a copy of S. 1578 for your review.

OMB FORM 4
Rev Aug 70

Calendar No. 997

98TH CONGRESS
2D SESSION

S. 1578

To clarify the application of the Federal antitrust laws to local governments.

IN THE SENATE OF THE UNITED STATES

JUNE 29 (legislative day, JUNE 27), 1983

Mr. THURMOND (for himself, Mr. DECONCINI, Mr. DOMENICI, Mr. HATCH, Mr. HEFLIN, Mr. HELMS, Mr. LAXALT, Mr. PRYOR, Mr. STEVENS, Mr. BUMPERS, Mr. STENNIS, Mr. ROTH, Mr. BOREN, Mr. NICKLES, Mr. DIXON, Mr. SASSER, Mr. HOLLINGS, Mr. DENTON, Mr. WILSON, Mr. BOSCHWITZ, Mr. WALLOP, Mr. D'AMATO, and Mr. SIMPSON) introduced the following bill; which was read twice and referred to the Committee on the Judiciary

JUNE 15 (legislative day, JUNE 11), 1984

Reported by Mr. THURMOND, with an amendment

[Omit the part struck through and insert the part printed in italic]

A BILL

To clarify the application of the Federal antitrust laws to local governments.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Local Government Antitrust Act of 1983".

~~SEC. 2. The Federal antitrust laws shall not apply to any law or other action of, or official action directed by, a city, village, town, township, county, or other general function unit of local government in the exercise of its regulatory powers, including but not limited to zoning, franchising, licensing, and the establishment of monopoly public services, but excluding any activity involving the sale of goods or services by the unit of local government in competition with private persons, where such law or action is valid under State law, except to the extent that the Federal antitrust laws would apply to a similar law or action of, or official action directed by, a State. For purposes of this section, the term "Federal antitrust laws" means the antitrust laws, as such term is defined in the first section of the Clayton Act (15 U.S.C. 12), and section 5 of the Federal Trade Commission Act (15 U.S.C. 45).~~

SEC. 2. (a) Sections 4, 4A, and 4C of the Clayton Act (15 U.S.C. 15, 15a, and 15c) shall not apply to any law or other action of or official action directed by, a city, village, town, township, county, or other general function unit of local government in the exercise of its regulatory powers, including but not limited to zoning, franchising, licensing, and the establishment or provision of public services on an exclusive or nonexclusive basis in a manner designed to ensure public access or otherwise to protect the public health, safety,

or welfare, but excluding the purchase or sale of goods or services on a commercial basis by the unit of local government in competition with private persons, where such law or action is valid under State law.

(b) No damages, interest on damages, costs, or attorney's fees may be recovered under section 4, 4A, or 4C of the Clayton Act (15 U.S.C. 15, 15a, and 15c) from any unit of local government or official thereof acting in his official capacity.

Calendar No. 997

98TH CONGRESS
2D SESSION

S. 1578

A BILL

To clarify the application of the Federal antitrust laws to local governments.

JUNE 15 (legislative day, JUNE 11), 1984

Reported with an amendment